Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/14220/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 27 September 2017	**on 25 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

H K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G McGowan, Quinn, Martin & Langan, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal MacKenzie dismissing an appeal on protection and human rights grounds.

2. Permission to appeal was granted by the Upper Tribunal on the grounds that the Judge of the First-tier Tribunal erred in her assessment of the evidence, particularly in relation to evidence of the appellant's religious activities.

3. The appellant is a forty-year-old Iranian national. He entered the UK in 2009 and claimed asylum on the grounds of political opinion. This claim was refused and a subsequent appeal was dismissed. In 2014 the appellant made further submissions on the basis of his claim to have converted to Christianity. A further refusal decision was issued in December 2016 and it is against this decision which this appeal was brought.

4. The Judge of the First-tier Tribunal heard evidence from the appellant himself, from an Iranian friend of the appellant who was recognised as a refugee on the grounds of his conversion to Christianity, and from a Christian minister, Rev W. Early in her assessment of the evidence the judge stated that as the appellant' s evidence in his previous appeal had not been found to be truthful, the appellant's credibility was low. The judge did not accept that the appellant was a genuine convert and did not consider that the evidence of Rev Weddell altered this assessment.

Submissions

5. At the hearing before me Mr McGowan referred to comments made by the judge at paragraph 13 of the decision. Here the judge recorded the appellant's response when it was put to him that he had lied at his previous appeal hearing. The appellant stated that he was frightened as his agent had told him he had to say certain things or he would be returned to Iran and punished. At paragraph 49, in making her findings, the judge stated that the appellant's "explanation that he was found to have lied at the previous appeal because his former agent had told him to 'say certain things or he would be returned to Iran' was wholly incredible…" There were no specific reasons given to support this finding.

6. Mr McGowan continued that at paragraph 47 the judge referred to a lack of explanation for the appellant's conversion, but his explanation was set out in his witness statement, to which the judge failed to have regard. At paragraphs 51 and 57 the judge dealt with the evidence corroborating the appellant's conversion, including the evidence of Rev. W, as an "add-on" that did not alter the adverse credibility finding the judge had already made. Mr McGowan characterised this as a *Mibanga* type of error.

7. Mr Matthews, for the respondent, began by referring to the appellant's explanation for lying at his previous hearing. Mr Matthews sought to reject any suggestion that when the judge referred at paragraph 49 to the appellant's "former agent" she had in mind the appellant's "former legal agent". The judge had properly considered new evidence in accordance with *Devaseelan*. In relation to the appellant's explanation for his conversion the judge did not state at paragraph 50 that there was no explanation but that there was no "satisfactory explanation". The judge was not required to refer to every piece of evidence and it should not be

inferred that the judge had overlooked the explanation in the appellant's witness statement.

8. On the supposed *Mibanga* error Mr Matthews submitted that the judge had looked at the evidence in the round and did not reach a conclusion before considering the evidence. For instance, the appellant did not even know the date he was baptised. The evidence of Rev. W was taken into account.

9. Mr Matthews then referred to paragraph 59 of the decision, where the judge stated she gave no weight to evidence that the appellant had been attending church and Bible classes and had been baptised. Mr Matthews acknowledged that this might have been expressed better but read as a whole the decision showed the judge had considered all relevant matters.

Discussion

10. In my view there are several problems with the judge's reasoning which, if considered individually might not be sufficient to show her findings are unsound, but taken together raise serious concern about the basis for her findings. For instance, what did the judge have in mind when she referred to the appellant's "former agent". It might well be regarded as wholly incredible, in the absence of any supporting evidence, for the appellant to claim that his former legal agent told him to say certain things. It is much less apparent why it would be wholly incredible for the agent who facilitated the appellant's journey to the UK to have told him to say certain things. Those who have heard a number of appeals involving asylum or protection will from time to time have heard an appellant allege that a people smuggler, or agent, told them to say certain things. While Mr Matthews made a good point about the effect of *Devaseelan*, Mr McGowan pointed out that the appellant was in the position, albeit of his own making, where he had either to maintain that he had told the truth in his previous appeal or make an admission that he had not done so and seek to provide an explanation. The proffered explanation ought not to have been disregarded without fuller reasoning of a more adequate nature.

11. The Judge of the First-tier Tribunal, as Mr Matthews pointed out, gave a number of reasons for finding that the appellant's conversion was not genuine. There is a sense from reading the decision that while the judge was prepared to give full weight to any factors adversely impacting upon the alleged conversion, she was less willing to accord significant weight to countervailing factors suggesting that the conversion might be genuine, such as the appellant's religious activities, his knowledge of Christianity, and perhaps most significant of all, the evidence of Rev. W. In this context the explanation provided by the appellant in his witness statement of the reasons for his conversion becomes important. At paragraph 50 of the decision the judge comments on several

responses made by the appellant at his asylum interview and in his oral evidence about why he converted but makes no mention of the fuller explanation provided by the appellant in his witness statement. Mr Matthews was of course correct in principle to say that the judge did not need to refer to all the evidence, and to point out that she found that there was no "satisfactory explanation" for the conversion rather than no explanation at all. Nevertheless, in finding there was no satisfactory explanation for the conversion, the judge made no reference at all to the explanation in the witness statement, despite referring in detail to what the appellant said in this regard at interview and in oral evidence. It is therefore difficult to infer that the judge took into account the witness statement when making the adverse finding.

12. Having regard to the matters set out above I am not satisfied that the judge gave adequate and valid reasons for the findings made. In so doing the judge erred in law. The decision is set aside and requires to be re-made.

13. Prior to the hearing the appellant's solicitors wrote to the Tribunal to say that Rev. W would not be able to attend the hearing because of church commitments. I did not consider it would be appropriate to make fresh findings for the purpose of re-making the decision without the evidence of Rev. W. While sometimes it seems witnesses do not appreciate the importance of attending Tribunal hearings where a decision may be re-made, I recognise that a witness practising a profession may have other commitments from which it is difficult to disengage. Under the circumstances the appropriate course is for the appeal to be remitted to the First-tier Tribunal for a hearing before a different judge with no findings made by Judge MacKenzie preserved.

Conclusions

14. The making of the decision of the First-tier tribunal involved the making of an error on a point of law.

15. The decision is set aside.

16. The appeal is remitted to the First-tier Tribunal for a fresh hearing with no findings made in the current appeal preserved.

Anonymity

The First-tier Tribunal did not make an anonymity direction. As the asylum appeal is to be reheard I will make such a direction to preserve the positions of the parties until the appeal is decided. Unless or until a court or tribunal directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and to the respondent. Failure to comply with this direction may lead to contempt of court proceedings.

Deputy Upper Tribunal Judge Deans 24th October 2017