Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/02738/2018
PA/06133/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
21 September 2018	**On 21 November 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE CONWAY

Between

[M S]

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

[A A]

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For Mr [S]: Mr Devlin, instructed Latta & Co. Solicitors.
For Mr [A]: Mr Irvine, instructed by Latta & Co. Solicitors.
For the Respondent in both appeals: Mr Komarowski, for the Government Legal Service of Scotland.

DETERMINATION AND REASONS

1. Each of the appellants is a national of Iran who claims asylum on the basis of conversion to Christianity. We deal with the two appeals together with the agreement of all parties. On the behalf of the Secretary of State, Mr Komarowski told us that he concedes in each of the cases that the judgment of the First-tier Tribunal discloses errors of law. In the case of [A], he accepts the appellant's argument that insufficient attention was paid to the evidence of the minister. [S]'s case is more complicated. There, the judge did give explicit consideration to the evidence of the minister, but there was other evidence which might conceivably have made up the deficit in knowledge of the Christian faith identified by the judge. In both cases, the Secretary of State took the view that the decision of the First-tier Tribunal should be set aside and the appeal listed for reconsideration by the First-tier Tribunal, with no findings preserved.

2. From the appellants' side, Mr Devlin and Mr Irvine indicated that they both agreed with that method of disposal.

3. We agree too. We will order remittal in these cases, not only for the reasons identified by Mr Komarowski, but also because of the recent publication of the decision of the Inner House in TF and MA v SSHD [2018] CSIH 58, which offers a number of useful reminders to judges about some of the dangers which beset fact-finders in this type of case.

4. The judgment needs to be read carefully. A number of perhaps alarming comments on it have already, to our knowledge, been made. It may therefore assist the judges responsible for the re-hearings of these appeals, and possibly their colleagues also, if we supply some general comments of our own. We emphasise that they are made without the benefit of any submissions.

5. The first point which shines out from the opinion of the Court as delivered by Lord Glennie is that in these cases, as in all others, it is vitally important that the fact-finder considers the evidence as a whole. That does not mean simply considering all the evidence. It means considering it together, not merely separately.

6. Secondly, in cases of this sort, evidence of church members who have had dealings with the appellant is entitled to weight which may be derived from their experience in working with other converts and distinguishing between true and false converts. Here the remarks in TF and MA, directed as they were to the determination of the individual cases, may require a little expansion. The rules of evidence do not apply to the First-tier Tribunal or the Upper Tribunal, so there is not any need to qualify a witness as an "expert" before that person's evidence of opinion or hearsay evidence becomes admissible. The citation of cases in areas to which the rules of evidence do apply, which is undertaken by the Inner House, should not mislead Tribunal Judges into thinking that a similar process has to be

adopted in Tribunals. The only test for admissibility in Tribunal proceedings is that of relevance. It will usually be clear that witnesses of the type being referred to have something relevant to say about the appellant's case, and it follows that their evidence, albeit opinion evidence, should be received as evidence in the case. As the Inner House makes clear, the weight to be attached to the evidence will be a matter for the individual fact-finding judge. There may probably be enquiries into the extent to which the person giving the opinion is able to show that his or her opinion should be accepted; and, in any event, the opinion evidence needs to be set in the context of all the evidence in the case, to be considered as a whole.

7. Thirdly, there is the issue of what should be the judge's approach in circumstances where the judge is confident that the appellant is not telling the truth. As Lord Glennie points out, the mere fact that somebody is not telling the truth in one part of his evidence does not necessarily mean that he is not telling the truth in another part of his evidence. Equally, it does not mean that he is telling the truth in the other part of his evidence. If a person's evidence is disbelieved, that does not of itself mean that there is evidence to the contrary effect. So, for example, in an ordinary civil case, the mere fact that the Court does not believe one of the pursuer's witnesses in relation to a road traffic accident does not carry any implication that the accident did not occur. We would, however, draw attention to the fact that the matter may be a great deal more complex where the evidence being given is that of the witness's own feelings or beliefs. If the judge is confident that the witness is giving an untruthful account of his own beliefs, it is not easy to see that another person's assertion that the witness appears to have the beliefs he asserts will carry the weight that it would have in the absence of any evidence at all from the witness himself. Again, it is a matter of putting all things in the balance and looking at everything as a whole.

8. Finally, we would point out that nothing in the opinion of the Inner House in TF and MA casts any doubt at all upon the general principle that it is for an asylum appellant to establish his case and for the First-tier Tribunal Judge to assess it. It is not for the Secretary of State to disprove the case; nor is the fact-finding process delegated to witnesses, however well qualified.

9. For the reasons we have given, and with the consent of the parties, we set aside the judgments of the First-tier Tribunal in both of these cases. We direct that the appeals be reconsidered by the First-tier Tribunal. No findings are preserved, and the Tribunal is to be differently constituted from the Tribunals which heard the original appeals.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 12 November 2018.