



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/12495/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 21 February 2018**

**Decision and Reasons
Promulgated
on 27 February 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAMIN [D]

Respondent

Representation:

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Respondent: Mr T Haddow, Advocate, instructed by Latta & Co,
Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against the decision of FtT Judge P A Grant-Hutchison, promulgated on 3 October 2017, allowing the appellant's appeal.
3. This decision should be read also with:

- (i) the SSHD's grounds of appeal, attached to her application for permission dated 10 October 2017;
 - (ii) the appellant's rule 24 response dated 15 January 2018; and
 - (iii) the appellant's outline submissions dated 20 February 2018.
4. The nub of the first ground is that the judge inadequately explained why, having concerns over the appellant's evidence, he preferred evidence from three church members, and that the process should have been the testing of the appellant's evidence not that of the church members.
 5. On this matter, I prefer the submissions by Mr Haddow.
 6. The case was not a contest between the evidence from the appellant and from the church witnesses, which was all designed to show the appellant to be a genuine Christian convert.
 7. The ground implies that if there were good reasons to doubt the evidence of the appellant, his case could not be saved by other evidence; but that is not the correct approach. The judge had to test the evidence both of the appellant and of the church members, and then reach his eventual decision in the round, giving appropriate weight to all evidence (other than that found entirely false).
 8. The decision shows that is just what the judge did.
 9. The second ground is that the judge failed to take account of issues raised under section 8 of the 2004 Act, and that the reasoning behind finding him to be a credible witness is flawed.
 10. Mr Haddow's first argument on this ground was that the appellant's claim did not rely on a finding that he was credible, which was not in the decision, and the case turned on the credibility of independent witnesses. For the sufficiency of such evidence he referred to *SA (Iran) v SSHD* [2012] EWHC 2575 (Admin) at paragraph 24, where the judge was at a loss to understand how a professed conversion was to be tested by anything other than active participation in church.
 11. *SA (Iran) v SSHD* is not authoritative; the remarks made at paragraph 24 were obiter; and they have not found favour in any subsequent conversion case, many of which have come before courts and tribunals since 2012. Difficult as the task may be, judges have to decide not only whether appellants are outwardly observant but whether, on all the evidence, they are genuine.
 12. On this aspect, I therefore prefer the submission by Mrs O'Brien that without such a finding, the appellant's case must have failed.
 13. The SSHD's complains not that the judge made no finding of genuine conversion, but that the finding lacked the underpinning required by law. Paragraph 17 is to be read as a finding of a genuine conversion. The

judge's view was that while the appellant would not have succeeded by his own evidence, his case was dragged over the line by the rest of the evidence (of which, as Mr Haddow pointed out, there was a good deal, both oral and written).

14. The remaining point is the judge's approach to section 8, which was the main focus of Mrs O'Brien's submissions.
15. As pointed out in the refusal letter and in the grounds, the section 8 point was strong, based on use of false identity, date of birth and travel history in a persistent attempt to enter the UK from France and failing to take reasonable opportunities of seeking asylum before arriving in the UK.
16. The point was strong but not necessarily decisive. The judge recorded its underpinning at paragraph 1. At paragraph 19 he simply said, "I do not believe that section 8 applies as I have decided matters on wider issues of credibility".
17. That wording opened the way to the criticism in the ground and submissions of failing to take account of statutory factors which the judge had no jurisdiction to disapply. Mr Haddow fairly accepted that the meaning of paragraph 19 is not entirely clear, and that to disregard section 8 entirely would be an error of law.
18. Mr Haddow referred to cases on inadequacy of reasoning, to show the exacting standard required of a challenge, and to contrast this case with examples where reasoning was found inadequate. In *VV* (grounds of appeal) [2016] UKUT 00053 the UT at paragraph 25 referred to the approval in the House of Lords of a statement by Sir Thomas Bingham MR that an issue of adequacy of reasons was to be resolved "on a straightforward reading without excessive legalism or exegetical sophistication".
19. Judge are well used to section 8, which is a feature of many (perhaps most) protection cases, and is subject to settled case law.
20. No doubt the judge might have framed paragraph 19 differently if he had an eye to later close forensic challenge, but in my view the decision is to the effect that although serious points were made against the appellant's credibility, including section 8 issues, his evidence as a whole disclosed a reasonable likelihood that he is a genuine convert. That involved giving section 8 issues such weight as they deserved, not a misconception that judges are not bound to apply statute.
21. The decision of the First-tier Tribunal shall stand.
22. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman
22 February 2018