



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/14284/2016

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 9<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 17<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MN

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer

For the Respondent: Miss L Bashow of Counsel instructed by Compass Immigration  
Law Ltd

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appeals against a decision of Judge Cruthers (the judge) of the First-tier Tribunal (the FTT) promulgated on 12<sup>th</sup> March 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FTT and I will refer to him as the Claimant.

3. The Claimant is an Iranian citizen born 18<sup>th</sup> August 1984 who appealed against the Respondent's decision dated 19<sup>th</sup> December 2016 to refuse his protection and human rights claim. The claim was made on the basis of conversion from Islam to Christianity. The Claimant claimed that he had converted so that he is now a Jehovah's Witness.
4. The Respondent accepted that if the Claimant was a genuine convert to Christianity he would be at risk if returned to Iran, but did not accept that there had been a genuine conversion.
5. The appeal was initially heard by Judge Holt on 31<sup>st</sup> January 2017 and dismissed in a decision promulgated on 22<sup>nd</sup> February 2017. Material errors of law were found in this decision by Upper Tribunal Judge Smith who in a decision promulgated on 25<sup>th</sup> August 2017, set aside the FTT decision and remitted the appeal back to the FTT to be heard afresh.
6. Judge Cruthers heard the appeal on 14<sup>th</sup> February 2018. After hearing evidence from the Claimant, and two witnesses Mr Edmans and Mr Nikrooz, the judge accepted that the Claimant had proved to a reasonable degree of likelihood that he had converted to Christianity. In reaching this decision the judge took into account that the Claimant had initially been refused asylum on 7<sup>th</sup> January 2015, and there had been a previous appeal hearing before Judge Lloyd-Smith in May 2015, which had been dismissed, and that decision had never been successfully challenged. In relation to that decision the judge considered the principles in Devaseelan [2002] UKIAT 00702.
7. The decision made by Judge Cruthers caused the Secretary of State to apply for permission to appeal to the Upper Tribunal. The grounds seeking permission to appeal are summarised below.
8. It was submitted that the judge had erred in considering the Devaseelan principles, in relation to the strong adverse credibility findings made by Judge Lloyd-Smith. It was submitted that the judge had erred and failed to adequately explain his conclusion that the conversion was genuine, given the previous findings that the Appellant was an incredible witness, and the adverse findings made at the hearing which amounted to further adverse credibility findings. By way of example the judge had found that the Appellant had not told the truth about attempting to convert people by knocking on doors, because he did not have a sufficient grasp of English. Also he did not know the specific Jehovah's Witnesses' name for the Old and New Testament and did not know the name of the national headquarters. Neither of the two people the Appellant claimed to have converted attended the hearing to give evidence, and the judge described other aspects of the Appellant's claim as vague and implausible. These findings are contained at paragraphs 58-62.
9. It was submitted that the judge had placed too much weight on the evidence of the two witnesses and their evidence did not explain why the Claimant demonstrated little knowledge of the basic details of the faith at the hearing, and the witnesses had not taken into account that a person may learn religious teachings solely because they want to remain in the UK, as opposed to genuinely converting.

10. It was also submitted that the judge had apparently treated the Claimant's baptism as being near determinative of his genuine conversion.
11. Permission to appeal was granted by Judge L Murray of the FTT in the following terms;
  - "3. It is arguable that, despite setting out the adverse credibility findings in the previous determination in full, the First-tier Tribunal Judge fails adequately to explain why in the light of these comprehensive adverse findings that the Appellant is now to be believed in relation to his conversion to Christianity."
12. Following the grant of permission the Claimant did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) rules 2008.
13. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

14. On behalf of the Secretary of State Mr Bates relied upon the grounds contained within the application for permission to appeal. It was submitted that the judge had found the evidence of the two witnesses to be determinative, as it had been recorded at paragraph 52, that without that evidence, the appeal would have been dismissed. It was submitted that the judge was wrong to regard the witness evidence as determinative. Mr Bates pointed out that the Claimant had been introduced to the Jehovah's Witness faith by a man called Mohammad Reza, who the judge found at paragraph 66 had stopped attending church after securing refugee status. This indicated that the witnesses had been wrong to believe that Mr Reza was a genuine Christian.
15. It was submitted that the witnesses had spoken of "very robust efforts" at paragraph 69, to ensure that all baptisms are genuine, but no detail had been given of the procedure for checking that an applicant for baptism was genuine.
16. Mr Bates submitted that the judge had failed to undertake an independent assessment of credibility and had found in favour of the Claimant simply because the witnesses believed him. The judge had failed to adequately explain why he regarded the evidence of the witnesses as being so strong.
17. On behalf of the Claimant Miss Bashow submitted that the judge had given clear reasons for the findings that he had made. The reasoning given by the judge disclosed no error of law, and the judge had correctly followed the guidance in case law by referring to the decision in Ali Dorodian.
18. The judge was entitled to give weight to the witness evidence and had given reasons for attaching weight to that evidence. The judge had correctly applied the Devaseelan guidelines. The judge had correctly followed the guidance in SJ Iran [2003] UKIAT 00158 in which an Adjudicator had rejected an Appellant's claim to have converted to Christianity, but on appeal the IAT heard evidence from the Appellant and a Minister

of the Church, and based on that evidence allowed the appeal as it was accepted that the Appellant was committed to the Christian faith. It was submitted that in this case, the judge had not erred by relying upon the evidence of the two witnesses, who are both elders with the Jehovah's Witnesses' faith.

19. It was not accepted that the Claimant had displayed little knowledge of the faith as the Secretary of State had accepted at paragraph 33 of the refusal decision that the Claimant had demonstrated a reasonable knowledge of the bible when interviewed. It was submitted that the judge was entitled to take into account the Claimant's knowledge of the Christian faith, the evidence of his regular attendance at church and the duration that he had been attending, the evidence of the witnesses, and the fact that there was a robust process before an individual could be baptised.
20. In response Mr Bates submitted that the judge was wrong to attach weight to the fact that the Claimant had continued to attend church after refusal of his first appeal, and had been baptised. An explanation for that could be that if the Claimant wished to succeed with his appeal, he had to maintain attendance at church and apply for baptism. It was submitted that the judge had erred by not appreciating that the Appellant's claim was manufactured, with manufactured evidence.

### **My Conclusions and Reasons**

21. Following the appeal hearing in May 2015, the Claimant made further submissions, based upon his conversion to Christianity, which the Secretary of State accepted amounted to a fresh claim for international protection. Those further submissions were refused on 20<sup>th</sup> December 2016.
22. The judge had to take into account, notwithstanding that the submissions amounted to a fresh claim, the findings made by Judge Lloyd-Smith in May 2015, in accordance with the guidance in Devaseelan. I find that the judge appropriately followed that guidance, and my reasons for reaching this conclusion are set out below.
23. The judge set out the principles in Devaseelan at paragraph 23 of his decision. In my view the judge then demonstrated that he had correctly applied those principles. Not only did the judge apply the principles in Devaseelan, it is my view that he undertook a comprehensive examination of all the evidence that was presented in connection with this appeal.
24. Having set out the Devaseelan principles, the judge then set out, at length, the findings made by Judge Lloyd-Smith. These findings are contained at paragraphs 55(i)-(viii) and 56 of the judge's decision.
25. The judge demonstrated that he was aware of the Devaseelan principles, and the adverse findings made in the previous appeal. The judge then at paragraphs 57-62 sets out further adverse findings, which are summarised at paragraph 4 of the grounds seeking permission to appeal.

26. The judge proceeds to carry out a balancing exercise, because at paragraphs 63-72 he sets out factors which in his view assist the Claimant. One of the points made is the passage of time. This is not the only point but it is relevant.
27. In my view it cannot be said that the judge did not consider the possibility that the Claimant may have manufactured a false claim. At paragraph 66 the judge records that Mr Edmans "was realistic enough to accept the possibility that people might be using the Jehovah's Witnesses' faith to stay in the UK." It was also recorded that Mr Edmans felt that the faith had been used "when someone like Mohammad Reza secured refugee status in the UK and then stopped attending."
28. The judge recorded at paragraph 65 that he had no doubts as to the sincerity of the two witnesses who gave evidence before him. In my view the judge did not allow the appeal simply because the witnesses are sincere. The judge took into account that the Claimant had been baptised. This was not the case when the appeal was heard by Judge Lloyd-Smith.
29. In my view, reading the judge's decision as a whole, it is not the case that the baptism is determinative or as claimed in paragraph 7 of the Secretary of State's grounds "near determinative of the question of his genuine conversion." The judge was entitled to place weight upon the baptism and that efforts are made to ensure that all baptisms are genuine. Both witnesses confirmed to the judge that they were aware of the possibility of their faith being misused for immigration status purposes, but notwithstanding that, the witnesses believed that the Claimant was a genuine convert.
30. It is relevant, and the judge took into account, the length of time that the Claimant had been attending the church and the regularity of his attendance.
31. Both witnesses referred to an "examination by elders" before an individual is accepted as a Jehovah's Witness, and Mr Edmans explained that if an individual wishes to be baptised, they are asked "some 30 or 40 questions" by three different elders, to try to ensure that they understand the subject of the faith.
32. The judge has considered all aspects of this case, and taken fully into account the findings made in the previous appeal, and has properly conducted a balancing exercise. The judge was entitled to reach the conclusion that the Claimant had genuinely converted, notwithstanding the adverse points which the judge fairly set out in his decision.
33. The grounds upon which permission to appeal were granted, display a disagreement with the conclusion reached by the judge, but they do not disclose a material error of law. The judge was entitled to make the findings that he did, based upon the evidence before him, and has provided adequate and sustainable reasons for those findings.

## Notice of Decision

The decision of the FTT does not disclose a material error of law. The decision is not set aside and the appeal of the Secretary of State is dismissed.

**Anonymity**

The FTT made an anonymity direction. Unless and until a Tribunal or court directs otherwise the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Claimant or any member of his family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) rules 2008.

Signed

Date 9<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

Because the decision of the FTT stands so does the decision not to make a fee award.

Signed

Date 9<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall