



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/01635/2019**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 10 July 2019**

**Decision & Reasons Promulgated  
On 17 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**Ali [M]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sadiq of Adam Solicitors

For the Respondent: Mr Tan Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Austin promulgated on 15 April 2019, which dismissed the Appellant's appeal against a refusal of a protection claim on all grounds.

### The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. The Appellants claim was that he had fled from Iran as his attendance at a House Church consequent upon his conversion to Christianity was discovered. The Appellant evidence was that he had continued to practice his faith in the UK and in the 2 years since his arrival he and his wife and children were all involved in the Church and he both attended the Church and was involved in outside activities. At the appeal the Appellant was supported by Reverend [K] and two members of his congregation Mr [J] an Iranian who was appointed a lay pastor in the Church of England in Shiraz for 4 years by the Bishop of Iran and Mr [B] a member of the Church for 39 years and leader of the Alpha Course the Appellant attended.
4. First-tier Tribunal Judge Dearden ("the Judge") dismissed the appeal against the Respondent's decision.
5. Grounds of appeal were lodged arguing that the reasons given for the finding that the Appellant was not a genuine Christian were inadequately reasoned and his approach to the evidence of the expert witnesses was flawed relying on TF (Iran) [2018] CSIH 58
6. On 14 May 2019 First tier Tribunal Judge Bulpitt gave permission to appeal.
7. At the hearing I heard submissions from Ms Sadiq on behalf of the Appellant that
  - (a) The reasons given for rejecting their evidence was inadequate. He referred to the fact that certain types of witness could be regarded as experts.
  - (b) In relation to Mr [J] the very brief summary of his evidence was unfair as he had a lot to say about the reasons for why he found the Appellant to be genuine. In relation to Mr [B] the Judge suggested that the weight he gave his opinions was limited by language and communication difficulties but given that the Appellant speaks English and Mr [J] speaks Farsi and no questions were

put about this issue by the Judge or the HOPO to allow the issue to be addressed to find against him was unfair.

- (c) There is no assessment of the fact that these witnesses had known the Appellant for 2 years having seen him attend Church on a regular basis each week and participate in activities outside the Church as well.
- (d) The Judge found against him only for failing to mention the fact that he was baptised 29 years ago in Japan.
- (e) There were no clear findings in respect of the attendance at the house church in Iran.
- (f) While he does not hold against the Appellant any shortcoming in respect of his knowledge of the Bible equally the Judge does not recognise the depth of knowledge he displays.

8. On behalf of the Respondent Mr Tan submitted that:

- (a) He agreed with much that Mr Sadiq had said and conceded that there were errors of law.
- (b) He accepted that given TF was persuasive he had failed to do justice to the evidence of the witnesses.
- (c) He accepted that the findings about the events in Iran were unclear.
- (d) There was no consideration of the depth of involvement of the Appellant, his wife and children in the life of the Church both inside and outside the Church itself.

### **Finding on Material Error**

9. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.

10. The Appellant was supported at court by three witnesses who gave oral evidence and I am satisfied that in respect of two of those witnesses the Judges approach was flawed. Reverend [K] readily accepted that there were limits to what he could say about the Appellant personally as he had had no direct conversations with him and about his faith.

11. The Judge however dismissed the evidence of Mr [J] at paragraph 56 a witness who had a background of responsibility with the Church both in Iran and the UK, spoke Farsi and knew the Appellant well none of which is reflected in the decision. The Judge unfairly summarised his evidence that if someone tells him he is a Christian his role is to believe them when his written statement and oral evidence must be read together. I agree that this is an inadequate assessment of his evidence. Importantly the Judge has failed to engage with the different types of evidence that such a witness could give as set out in TE at paragraphs 52-58 and the fact that such evidence can be regarded as expert evidence that is entitled to respect. The same applies to the treatment of Mr [B]'s evidence: Mr [B] runs the Alpha course which of itself reflects a degree of knowledge that at least merits consideration of whether he should be accepted as an expert. Additionally the Judge states 'It is apparent that Mr [B]'s conversations with AM would be limited with AM by language constraints': it is apparent from the way that this is worded that no direct questions was put to the witnesses about this to give him an opportunity to address the challenge.
12. The failure of the First-tier Tribunal to address and determine the weight to be given to expert evidence constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
13. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be re-determined afresh.
14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
  - (a) *the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*

*(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*

15. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the failure to properly address witnesses evidence. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

16. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed

Date 12.7.2019

Deputy Upper Tribunal Judge Birrell