



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

Appeal Number: PA/12166/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 31 May 2019**

**Determination & Reasons Promulgated
On 13 June 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

AHMED [S]

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes (Counsel)

For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 30 November 2018, following a hearing of 16 November 2018, and which it sent to the parties on 20 December 2018. The tribunal's decision was to dismiss the claimant's appeal from the Secretary of State's decision of 2 October 2018, refusing to grant him international protection.

2. I have not directed anonymity. I note that the tribunal did not do so. Further, nothing was said about that before me despite the claimant having the benefit of legal representation. It is not otherwise apparent to me, in the absence of any request, that anonymity ought to be directed.

3. The relevant background circumstances are as follows: The claimant is a national of Afghanistan and he was born on 6 August 1993. He entered the United Kingdom (UK) illegally on 15 November 2016. In making that claim he said that his father is a commander in the Taliban but that he himself had resisted his father's requests to join that organisation. He also said he had assisted a person who had been kept by his father as a sex slave to escape. In addition to a fear of his father as a result of those matters, he also asserted that he feared the Taliban generally because he had worked with members of the American Forces and that he feared a specific Taliban group who had been angered by the actions of his father (see paragraph 3 of the decision of Judge Moxon of 16 June 2017). The asylum claim was refused and an appeal (the one heard by Judge Moxon) was subsequently dismissed on 16 June 2017 following a hearing of 14 June 2017. The claimant was found by Judge Moxon not to be credible. His appeal rights became exhausted on 9 August 2017. The claimant, however, did not leave the UK. Indeed, on 29 June 2018, he submitted further submissions to the Secretary of State concerning what he claimed to be a conversion to Christianity and risk arising in consequence of that. The submissions were treated as amounting to a fresh claim for asylum about which he was interviewed on 6 August 2018. In pursuing that claim he asserted that he would be at risk upon return to Afghanistan because he had converted from Islam and that such conversion was not permitted. He said he would be subjected to serious harm or would be killed by people in Afghanistan as a result. It was that claim which led to the decision of 2 October 2018 made by the Secretary of State and then to the tribunal's decision of 30 November 2018.

4. The tribunal heard oral evidence from the claimant and from one Reverend Barlow. It disbelieved the claimant's contention that he had genuinely converted to Christianity. In so deciding it was necessary for it to reach a view (whilst this was not of itself determinative) as to the probative value of Reverend Barlow's evidence. As to that, in addition to his oral evidence, it had a quite lengthy letter which he had written about the claimant and which appeared from B17 to B20 of the Secretary of State's bundle which had been before it. In addressing Reverend Barlow's evidence and the significance or otherwise of it, the tribunal said this:

“20. Mr Barlow is an evangelist. It is his task to “spread the Gospel” as he calls it. He organised bible and baptism study classes. A potential convert repeats “lessons” learnt at these sessions and repeats them to Mr Barlow and colleagues in his church. Providing a potential convert repeats the lessons learnt to the satisfaction of Mr Barlow and his colleagues a potential convert is baptised. However, simply because a potential convert has learnt his “lessons” satisfactorily and has stood the test does not of itself mean such a potential convert has genuinely converted to Christianity.

21. In cross-examination Mr Mullarkey Mr Barlow if he had read either of the two AIRs screening interviews, respondent's DECISIONs or the tribunal's DECISION to ascertain the truthfulness of the appellant. Mr Barlow he had not. Mr Mullarkey submitted that Mr Barlow ought to have done so before he (Mr Barlow) accepted the appellant as a Christian. In my view, it is not the “job” of Mr Barlow to conduct an enquiry of the sort suggested by Mr Mullarkey. Mr Barlow cannot look into the heart of a person to ascertain his or her truthfulness. It is his “job” to be satisfied that a potential convert “meets” on the face of it, the basic tenets of Christianity. If such a person has a command of those it is not Mr Barlow's “job” to ascertain the genuineness of conversion. It is the task of decision makers such as the respondent and a tribunal judge.”

5. There are some slight grammatical errors in the above passage but the meaning is clear. In seeking permission to appeal (which was sought on various grounds) one of the claimant's contentions was that the tribunal had failed to indicate what significance it was attaching to Reverend Barlow's evidence. Indeed, it was suggested that such represented "an omission of real significance".
6. Permission having been granted there was a hearing before the Upper Tribunal (before me) for the purpose of deciding whether the tribunal had erred in law. Discussion at the hearing focused on the above ground.
7. I have decided, as I informed the representatives at the hearing, that the tribunal did err in law with respect to its consideration of and treatment of the evidence of Reverend Barlow.
8. As to that, on my reading, what the tribunal was effectively saying was that given what it perceived as being his role or as it put it his "job", Reverend Barlow's evidence amounted to and could only amount to an assessment of the claimant's ability to remember facts relevant to Christianity to an extent that he satisfied prescribed requirements to be accepted for baptism. But I accept Mr Holmes submission that what was said in the lengthy letter referred to above went somewhat beyond that. It talked, in some detail, of the claimant's interaction with Reverend Barlow and his involvement in study of the Bible. Mention is made of his indicating to Dr Barlow, for example, which passages in the Bible "speak most strongly to him" and what his thoughts were about the significance of communion. Mr Holmes, who had represented the claimant not only before me but also before the tribunal, told me, with reference to his own note of what had been said at the hearing, that Reverend Barlow had given oral evidence concerning the claimant's understanding of the life and death of Jesus and the significance that that was thought to have for the claimant's own life.
9. Of course, the tribunal was not required to attach a particular amount of weight to Reverend Barlow's evidence. It might have been open to it, for example, to conclude that he had been duped or that his conclusions regarding the claimant's conversion were misplaced or unreliable. But in my judgment, it did have to address the breadth of his evidence and form a view as to whether that did assist with the question of the genuineness of the conversion and, if so, to what extent. It effectively marginalised and mischaracterised his evidence in its written reasons by suggesting it only amounted to an indication as to the claimant's ability to memorise facts and information relating to Christianity and by disregarding Reverend Barlow's own view as to the genuineness of the conversion. In my view had the tribunal not erred in that way it might (though it is far from inevitable) have reached a different view as to the conversion.
10. In the circumstances I have decided to set aside the tribunal's decision. As to disposal, it seems to me that, given that this is a case which turns upon credibility, the proper course is to remit without preservation of any of the tribunal's findings and conclusions. That, then, is what I do. This means there will be a complete rehearing before a differently constituted tribunal (a different judge). The tribunal conducting the rehearing will consider all matters, both fact and law, entirely afresh.
11. Having decided to set aside the tribunal's decision I am statutorily obliged to give directions for its rehearing. But it is not necessary for me to give extensive or prescriptive directions. So, I simply direct that there be a complete rehearing of the appeal, in Bradford, before a differently constituted tribunal with nothing preserved from the previous tribunal's findings. Other directions are best made by a tribunal judge.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. Further, the case is remitted to the First-tier Tribunal for a complete rehearing.

I do not direct anonymity. The First-tier Tribunal did not do so and I was not invited to.

Signed:

Dated: 11 June 2019

Upper Tribunal Judge Hemingway