



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

Appeal Number: AA/05267/2015

THE IMMIGRATION ACTS

Heard at North Shields

On 18th March 2016

**Decision & Reasons
Promulgated
On 12th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR. YOUSEF AHMADI

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr. Yousef Ahmadi in person; No representative

For the Respondent: Mr. P Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision and reasons promulgated by First-tier Tribunal Judge Hillis on 19th August 2015, in which he dismissed an appeal against the refusal by the Secretary of State for the Home Department on 11th March 2015 to refuse the appellant's fresh claim for

asylum and to serve a Notice of Immigration Decision, to remove the appellant to Iran.

Background

2. The appellant is an Iranian national who arrived in the UK on or about 5th April 2008. He made a claim for asylum that was refused for the reasons set out in a decision of the respondent dated 5th November 2008. The appellant did not appeal that decision. On 18th February 2015, the appellant made further submissions to the respondent and on 11th March 2015, the respondent made a decision to refuse the appellant's fresh claim for asylum and to serve a Notice of Immigration Decision to remove the appellant to Iran. It was that decision, which gave rise to the appeal before First-tier Tribunal Judge Hillis.
3. The appellant's claim for refugee status has two facets to it. They are referred to at paragraph [10] and [11] of the Judge's decision. First, the appellant fears the family of a female friend who have accused him of adultery. He claims that he has been tried in his absence, although he does not know the outcome of that trial. Second, the appellant claims to have converted to Christianity whilst he was in Istanbul between 2006 and 2008.
4. The respondent in her decision of 5th November 2008 considered the first aspect of the appellant's claim. The respondent concluded that the reason given by the appellant for claiming a well-founded fear of persecution is not one that engages the United Kingdoms obligations under the 1951 Refugee Convention, but in any event the respondent comprehensively rejected the account. As I have said before, the appellant did not appeal that decision. On 18th February 2015, the appellant submitted fresh representations inviting the respondent to treat his fresh representations as a fresh claim for asylum. The claim is set out in a letter dated 16th February 2015 written on the appellant's

behalf by the Ryedale Citizens Advice Bureau. Insofar as is material to the appeal before me, the letter states:

“We write to submit fresh representations requesting that you consider this case as a fresh claim in light of the following information. To this end we enclose evidence of our client’s conversion to Christianity and further objective evidence of the situation for Christian converts in Iran.

...

Previous Asylum/ Human Rights Claim

Mr Ahmadi arrived in the UK in 14th April 2008 and claimed asylum the next day. His religion was originally recorded as Zoroastrian. He was interviewed on November 2008. On that same day he filled in a Questionnaire for a Travel Document Application for the Islamic Republic of Iran. His application for asylum was refused on 05 November 2008. He did not lodge an appeal against the decision.

...”

5. It is conceded in that letter that the appellant had not previously mentioned being a Christian.

The decision of First-tier Tribunal Judge Hillis

6. The appellant was not represented at the hearing before the First-tier Tribunal. He gave evidence before the Judge with the assistance of an interpreter. The Tribunal also heard evidence from Mr J Kendall in respect of the appellant’s Christian faith. The Judge’s findings as to credibility and fact, are set out at paragraph [24] to [38] of his decision. The claim based on Apostasy is considered at paragraphs [26] to [35] of the decision.
7. The claim based on Adultery is disposed of at paragraph [25] in the following way:

“The starting point for my assessment of his application based on the claimed prosecution on a charge of adultery is the 2008 Determination in which he was found to be not credible in the core aspects of his claim. The Appellant has submitted no new evidence in respect of that claim and merely repeated his account in his testimony at the hearing. I, therefore, conclude the Appellant has failed to show to the low standard required, he faces a risk of persecution or ill-treatment which would engage Article 3 of the ECHR for that reason.”

The grounds of appeal

8. The appellant appealed on the grounds that he believes that he will face dangerous circumstances if returned to Iran on account of his conversion to the Christian faith. He candidly states that he disagrees with the Judge’s decision that he is not a Christian and that it is not dangerous if you have a relationship with a married female.
9. Permission to appeal was refused on the papers by First-tier Tribunal Judge Cox on 17th September 2015. The appellant renewed the application for permission to appeal to the Upper Tribunal and on 20th October 2015, Upper Tribunal Judge Kopieczek granted permission. In doing so, he noted what had been said by the Judge at paragraph [25] of the decision, and observed that there is no judicial determination on the Tribunal file in respect of the earlier claim for asylum in 2008. He also recorded that it is clear from the determination and manuscript record of proceedings before the Judge, that the appellant still maintained as a significant part of his appeal, that he would be at risk on return because of the alleged adultery.

The hearing before me

10. The respondent has filed a rule 24 response. The respondent claimed that the Judge gave himself the correct self direction when he recorded

in his determination at paragraph [25] that the fear of prosecution on grounds of adultery, had already been found not to be credible in the appellant's earlier asylum claim "in the 2008 Determination" which had not been appealed.

11. Mr Mangion conceded before me that there has been no previous judicial consideration of the appellant's 'adultery claim'. The previous claim for asylum had been comprehensively rejected by the respondent in her decision of 5th November 2008 but the appellant had not appealed that decision. Rightly in my view, he accepted that at paragraph [25] of his decision, the Judge does not therefore adequately address that aspect of the appellant's claim.
12. Insofar as paragraph [25] of the Judge's decision refers to a determination in which the appellant was not found to be credible in respect of core aspects of his claim, that was not a judicial determination. Therefore, the principle established in **Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702** that the first Judge's determination should *always* be the starting-point, does not apply here.
13. As the appellant maintained that he is still in fear of the family of his female friend in Iran who have accused him of adultery despite their platonic relationship, in my judgement, it was incumbent upon the Judge to properly consider and address that aspect of the appellants claim. The failure of the Judge to do so, particularly when the appellant gave some explanation for why he did not appeal, discloses a material error of law.
14. I note that the Upper Tribunal in accordance with Part 3 of the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal is in terms of disposal of appeals, likely on each occasion to proceed to remake the decision, instead of remitting the case to the First Tier Tribunal unless the Upper Tribunal is satisfied that the effect of

the error of the First Tier Tribunal Judge has been to deprive a party before the First Tribunal of a fair hearing or other opportunity for that parties case to be put to and considered by the First Tier Tribunal.

15. In my view the most fair and proportionate way in which to deal with this case given the nature and extent of the factual findings to be made in relation to the 'adultery claim' is to remit the matter for hearing in the First-tier Tribunal. In my judgment it was open to the Judge to make the findings that he did in relation to claim based upon 'Apostasy' for the reasons given at paragraphs [26] to [35]. The adverse findings made by the Judge follow a careful consideration of the evidence before him. Thus although I set aside the decision of the Judge, the findings made in relation to the 'Apostasy' claim can be preserved.

Notice of Decision

16. The appeal is allowed and the appeal is remitted to the First-tier Tribunal for a fresh hearing of the appeal, but with the findings made by First-tier Tribunal Judge as to the 'Apostasy' claim, preserved.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and there can, therefore, be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Mandalia