



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

Appeal Number: AA/06634/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WM

Respondent

Representation:

For the Appellant: Mr S Staunton, Senior Home Office Presenting Officer

For the Respondent: Ms Althea Radford, Counsel instructed by Fadiga and Co.

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge James) allowing the respondent's appeal against a decision taken on 8 April 2015 to refuse the respondent's asylum claim and to remove the respondent from the UK.

Introduction

3. The respondent is a citizen of Afghanistan born in 1994. He claims he was born into an Islamic family and brought up as a Muslim. About two years before coming to the UK and whilst studying at university in Kabul the respondent became disillusioned with Islam after reading the Koran in full. At question 53 of the asylum interview the appellant also stated that before he started reading the Koran he was "*always confronted by so many questions*". The respondent was particularly concerned about the treatment of women and enemies of Islam.
4. The Secretary of State accepted the respondent's identity and nationality and that if a person converts from Islam to Christianity he would be regarded as an apostate and would be at risk upon return to Afghanistan. However, it was not accepted that the respondent had decided to convert - he had simply attended some Bible classes. Although the respondent had demonstrated a reasonable knowledge of the Bible in the asylum interview he had limited knowledge of the Old Testament. It was not plausible that the respondent had obtained a passport in March/April 2014, many months before his father found his Bible or that he would have left the Bible unhidden in his room where his father could find it.

The Appeals

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Harmondsworth on 20 April 2015. He was represented by Ms Radford. The First-tier Tribunal found that the respondent was an educated young man and there was nothing about him reading the Bible which established that he had decided to become a Christian. The respondent relied upon an e-mail from Reverend Patrick Wright (incorrectly described as "Mr White" in the decision) dated 17 April 2015 but he did not offer any opinion about the respondent's convictions. The judge also found that it was not credible that the respondent decided to become a Christian within a relatively short time after starting to read the Bible without any critical questioning, it was not credible that he would be so willing to trust the friend who gave him the Bible, there was no reason for the respondent to leave Afghanistan in such haste and it was not credible that the respondent's uncle would make arrangements for his departure without knowing where he was to be taken.
6. The appeal was dismissed and the respondent appealed to the Upper Tribunal. On 5 June 2015, Upper Tribunal Judge Perkins allowed the appeal on the basis that the respondent had said in interview that he was always confronted with so many questions (about Islam) and therefore it was not right for the judge to find that it was not credible that the respondent did not have doubts much sooner. A rehearing was ordered and that took place at Harmondsworth on 21 July 2015. In the meantime, the respondent was released from detention on 19 June 2015. The judge decided to determine the appeal on the basis of submissions only. This time, the judge found that the evidence overwhelmingly supported the respondent's

claim to have converted from Islam to Christianity in his religious beliefs. He was a Christian. The appeal was allowed.

The Appeal to the Upper Tribunal

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent was a genuine convert when he was not tendered to give evidence and without engaging with the reasons for refusal. The letters and e-mails from the catholic priest were not convincing independent evidence of conversion and no member of the church was called to give evidence in support. The respondent's evidence was not tested and should have been treated with caution.
8. Permission to appeal was granted by First-tier Tribunal Judge Heynes on 17 September 2015 on the basis that it was arguable that the decision did not adequately address the series of credibility issues cited in the refusal letter.
9. Thus, the appeal came before me

Discussion

10. Mr Staunton submitted that the judge failed to address any of the credibility issues raised in paragraphs 36-53 of the refusal letter. The issue was narrow but the judge should still have engaged with the credibility issues raised. The appeal should be remitted for a further de novo hearing.
11. Ms Radford submitted that there was only one issue of fact in dispute i.e. conversion to Christianity. Risk on return was accepted between the parties. It was a matter for the judge whether oral evidence was required. What remains is a reasons challenge; the judge's key passages are at paragraphs 9-11 of the decision and then paragraph 22 refers to the refusal letter. This was a perfectly reasonable decision. The judge did not need to identify and go through the individual factors which the Secretary of State said took away credibility. Every credibility point was addressed by the respondent in his witness statement and none of those points constrained the judge to reject the respondent's evidence. There is no basis for criticising the finding that the catholic priest was independent and credible. Pastors in detention centres are not permitted to have involvement in appeal beyond one letters of support. Evidence was provided to the First-tier Tribunal. It is surprising for the Secretary of State to argue that material evidence had to be excluded because she frustrated the attendance of witnesses at the hearing. There is no support in the decision for the submission that the judge failed to treat the evidence with sufficient caution.
12. Ms Radford confirmed that it was the judge's suggestion to proceed on submissions only and there was no formal consent from the presenting officer. The respondent decided not to give evidence in light of the judge's suggestion. Neither party was able to cite any authority as to when the First-tier Tribunal should proceed on submissions only. In the absence of any binding authority I find that it was open to the judge to suggest that

the appeal could be heard on the basis of submissions only. It is evident that the judge considered the refusal letter because it is referred to in paragraph 22 of the decision and the judge stated that the reasons for refusal were weighed in the matter. However, the judge also considered the documentary evidence in support of the respondent's claim to be a Christian at paragraph 24 of the decision and found that evidence to be compelling.

13. I have considered R (Iran) v SSHD [2005] EWCA Civ 982 in the context of the reasons challenge. The decision must enable the Upper Tribunal to understand why the judge made the decision including identification of the vital issues but that does not mean that every factor that weighed with the judge in the appraisal of the evidence has to be identified and explained. The appellate courts are anxious not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when making material findings. There should be no practice of bringing appeals because the judge had not made reasoned findings on matters of peripheral importance.
14. The judge considered the e-mail from Reverend Wright dated 17 April 2015 and correctly identified that Reverend White was satisfied in his assessment of the respondent's faith (contrary to the finding at paragraph 5 above). Reverend Wright had requested a colleague to assess the respondent's account and he found that the respondent's faith was genuine. In addition, the judge considered a certificate of baptism dated 27 April 2015, two letters from Reverend Elias dated 24 May 2015 and 15 June 2015 confirming that the respondent attended weekly religious services at the detention centre and witness statements from the respondent confirming that his belief is genuine and that he attends church four days a week.
15. I am satisfied that it was open to the judge on that evidence to find that it was reasonably likely that the respondent's conversion to Christianity was genuine. I agree with the submission that it is inappropriate for the Secretary of State to complain about the absence of oral evidence from the pastors when it is plainly the Secretary of State's own policy that prevented them from giving oral evidence in support of the respondent. In those circumstances, it was open to the judge to find that their written evidence was sufficient. I find that the credibility issues raised in the refusal letter can properly be described as peripheral given that the judge accepted the evidence set out at paragraph 14 above.
16. Thus, the First-tier Tribunal's decision to allow the respondent's appeal did not involve the making of an error of law and its decision stands.

Decision

17. Consequently, I dismiss the appeal of the Secretary of State.

Signed 

Date 5 February 2016

Judge Archer
Deputy Judge of the Upper Tribunal