



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09715/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 13 September 2018

Decision and Reasons Promulgated
On 18 September 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHSEN [J]
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr G P McGowan, of Quinn, Martin & Langan, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 30 August 2016, refusing the appellant's protection claim, based on being an Iranian Christian convert.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.

- (iii) The decision of FtT Judge Mrs D H Clapham, promulgated on 23 October 2017.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission filed on 20 December 2017 (the FtT having refused permission).
 - (v) The grant of permission by UT Judge McWilliam, dated 19 January 2018.
 - (vi) The respondent's rule 24 response, dated 14 February 2018, to the grant of permission.
2. Having considered the grounds and submissions, I indicated my decision, along the following lines.
 3. The judge bases her decision on an adverse credibility finding. She says at paragraph 98 that this is based on a number of points, not individually significant, but decisive when taken together.
 4. Her first reason (paragraphs 99 and 100) is a discrepancy over whether Saeed was a friend of the appellant "from school" or since their childhood in the same neighbourhood, having been at different schools. Although the judge finds this a "clear inconsistency" the distinction depends on a rather strict interpretation of the phrase "from school". As Mr McGowan argued, that might mean "since school days". Subtle distinctions may be lost, or falsely detected, in evidence which has been translated from Farsi to English. This is a weak reason for discrediting an account of conversion.
 5. The second reason (paragraph 101) goes to whether the process of conversion took one month, or two months, or as suggested in oral evidence was "literally overnight", a narrative the judge saw as being "cobbled together on the hoof". Mr McGowan submitted that the appellant did not say he experienced an overnight conversion, but described a gradual process. The judge narrates the oral evidence in considerable detail, but no reference to overnight conversion is to be found. This reason lacks an identifiable basis in the evidence.
 6. The next reason (paragraph 102) is similarly flawed. The judge derives from a statement the idea that the appellant had "burning" and "urgent" questions about Christianity which he failed to explain, and she holds this to be contradicted by his simple emphasis on love and peace. The evidence on which this contradiction is based is not identified, and could not be found during submissions. Again, the judge appears to have set up a false notion.
 7. Paragraph 103, based on the days of the week on which the appellant attended house church meetings, is within reason, but of little force.

8. At paragraph 104 the judge is “at a complete loss” to understand why Saeed’s sister would telephone the appellant, and that this detail discloses the fabrication that Saeed would have told his sister of the appellant’s conversion. However, the judge does not explain why it is inconsistent with the rest of the claim that Saeed’s sister might telephone the appellant about Saeed’s disappearance, or why this reveals fabrication.
9. Paragraph 105 is based firstly on the appellant not being able to know how the authorities might have found out about his attendance at the house church, and secondly on saying that the authorities did not tell his father why they came to his house, but that they told his mother that he had converted, a “marked inconsistency”. Mr McGowan submitted this was simply additional information emerging, and that the alleged inconsistency had not been founded upon at any stage by the respondent, or put by the judge to the appellant.
10. Paragraph 106 says that the appellant attempted to cover up an inconsistency over his friend’s occupation, mentioning only later that he was a taxi driver. This is more of an irrelevancy rather than an inconsistency. Mr McGowan referred to the appellant’s evidence that Saeed was once a plasterer, and later gave up due to a bad back and became a taxi driver. The decision does not show why the appellant’s evidence was undermined by his description of his friend’s occupation.
11. Paragraph 107 finds on the appellant knowing little of the other members of the house church other than their Christian names, rejecting his youth and cultural norms as explanations. The reasons are not apparent. Those matters do not speak for themselves. As was submitted, a degree of caution among those involved in a risky activity would not be surprising.
12. Paragraph 108 finds on absence of evidence from friends in the UK and fellow worshippers, even if church office holders were unwilling as a matter of policy to attend. That is reasonable, although, as Mr McGowan pointed out, there was evidence in writing from Destiny Church, to which the judge makes no reference.
13. The hearing in the FtT was on 14 June 2017, and the decision was promulgated on 23 October 2107. That is an undesirable delay. No explanation is given. It does not by itself amount to error of law, unless the decision can be shown to be unsafe on that account. There are no individually strong reasons in this decision. At least two of the reasons, paragraphs 101 and 102, are based on impressions gained from the oral evidence, but without any recital or reference to the passages of evidence on which those impressions are based. The judge has narrated the oral evidence in detail but has not cited that evidence when giving her reasons, and the passages to confirm her impressions cannot be found. Such impressions are not much of a basis for findings, and even less so after the passage of 4 ½ months.
14. In light of the delay and vagueness in formulating the reasons several of them cannot stand, and what remains is inadequate to support the decision.

15. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
16. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, the nature of this case is such that it is appropriate under section 12 of the 2002 Act and Practice Statement 7.2 to remit to the FtT for an entirely fresh hearing.
17. The member(s) of the FtT chosen to consider the case are not to include Judge Clapham.
18. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

13 September 2018
Upper Tribunal Judge Macleman