



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10969/2017

THE IMMIGRATION ACTS

Heard at Field House
On 15 August 2018

Decision & Reasons Promulgated
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M Y
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford, Counsel, instructed by Elder Rahimi Solicitors
(London)

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born on 22 March 1984. He appealed against a decision of the Secretary of State dated 11 October 2017 refusing to grant him asylum or humanitarian protection. The basis of his claim was that he was a convert from Islam to Christianity. His appeal came before Judge of the First-tier Tribunal Martins

for hearing on 12 December 2017. In a Decision and Reasons promulgated on 19 March 2018 the judge dismissed his appeal.

2. Permission to appeal was sought in time by the Appellant's former representatives on the basis that the judge had erred materially in fact in asserting at [53] that in a previous appeal the Immigration Judge had found the Appellant not to be credible on account of discrepancies and inconsistencies in his story, albeit this was a different basis of claim. It was asserted that this was a material error because although the Appellant had made a previous claim for asylum which had been refused, he did not appeal that decision. Thus, there was no decision by the First-tier Tribunal and the judge's confusion over this issue undermined the safety of her findings and decision.
3. A renewed application for permission to appeal to the Upper Tribunal was made by the Appellant himself on the same basis in that he says: "*I believe I did not appeal against any refusal in 2006. I did not attend any hearing and the Immigration Judge made a mistake in finding that I had a hearing where I was found no credible.*"
4. I granted permission to appeal upon consideration of the papers in a decision dated 20 June 2018, albeit the application was two days out of time, in light of the fact that the Appellant was unrepresented. Permission was granted on the basis that it was arguable that the error of fact infected the approach of the First-tier Tribunal Judge to the Appellant's current claim and that she had failed to give full consideration to the oral evidence of Mr David Soltani in her finding at [57], bearing in mind the lower standard of proof applicable.

Hearing

5. At the hearing before the Upper Tribunal, Ms Radford pointed out that the Respondent's bundle contained documents that did not relate to this Appellant but in fact related to an entirely different person, with a date of birth of 1 February 1987. It was not clear from the papers whether this was a person who has been treated as an alias of the Appellant or an entirely different person. I therefore requested that Mr Tarlow take instructions on this issue, which he did, and confirmed that the documents relating to the third party related to an entirely different person and in light of that and the confusion that that had caused, he accepted there was a material error of law.

Findings

6. I accept Mr Tarlow's helpful concession that the decision of the First tier Tribunal is unsustainable and flawed by material errors of law. It is, of course, of concern that documents relating to an entirely different asylum seeker have made their way into the file of this particular Appellant, which is not only a breach of that person's right to confidentiality in his asylum claim but also a clear data protection breach. It has also been responsible for confusion as to whether or there had been a previous appeal hearing in respect of an earlier asylum claim, which impacted on the fair assessment of the Appellant's credibility,

Decision

7. I set aside the decision of the First-tier Tribunal and remit the appeal for a hearing *de novo* before a different Judge of the First-tier Tribunal.

DIRECTIONS

1. The appeal should be listed for two hours.
2. A Farsi interpreter is required.
3. I further direct the Respondent to issue a new Respondent's bundle containing documents relating only to this particular Appellant
4. Consideration should be given to listing the appeal at Taylor House on the basis that the Appellant resides in North London, as do the witnesses belonging to his Church

Notice of Decision

The appeal is allowed to the extent that it is remitted for a hearing *de novo* before the First tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Date 7 September 2018

Deputy Upper Tribunal Judge Chapman