



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

Appeal Number: PA/07465/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 December 2017**

**Decision & Reasons Promulgated
On 20 December 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**UMID KABULOV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Turner, Counsel, of Imperium Chambers

For the Respondent: Ms A. Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal N M Paul (Ftj), promulgated on 22 June 2017, dismissing the Appellant's appeal against the Respondent's decision dated 18 July 2016 refusing his asylum and human rights claims.

Factual Background

2. The Appellant is a national of Turkmenistan, date of birth 23 May 1998. He entered the UK on 2 January 2010 as a student and was granted further leave to remain in the same capacity until 11 May 2013. A further application for leave to remain for the purposes of study was refused on 9 October 2013. The Appellant withdrew an appeal against this decision on 5 February 2014. A further application for leave to remain as a Tier 4 (General) Student was refused on 18 March 2014. Although an appeal before the First-tier Tribunal was successful, on 24 March 2015 the Upper Tribunal set aside the First-tier Tribunal's decision and the appeal was dismissed for want of jurisdiction. Having made an appointment to claim asylum on 15 December 2015, the Appellant formally claimed asylum on 14 January 2016.
3. The Appellant claimed that he was born a non-practising Muslim and that he converted to being a Jehovah's Witness in 2014/2015. He claimed his mother converted from Islam to being a Jehovah's Witness in or around 2006. The Appellant claimed that, when he lived with his mother in Turkmenistan, the authorities came to the family home and arrested everyone at a meeting. Despite being released because of her age the Appellant believed his mother was constantly questioned and detained by the authorities. The Appellant feared returning to Turkmenistan as he was now a Jehovah's Witness and his religion was not permitted in that country. He believed he would be persecuted and oppressed particularly given that he had converted from Islam.
4. The Respondent accepted as reasonably likely the Appellant's claim to be a Jehovah's Witness, although his involvement was said to be at "a low-level." The Respondent rejected the Appellant's claim that he was born a Muslim because he provided no information about the Muslim faith. Given that the study of Islam was compulsory in Turkmenistan, and given that the Appellant attended school in that country, and served in the military between 2006 and 2008, the Respondent rejected the Appellant's claim to have been born a Muslim. The Respondent noted that, while there was some state-sponsored societal discrimination against Jehovah's Witnesses, and that this was felt most acutely by converts from Islam, given that the Appellant was not deemed to be a convert from Islam he was not deemed to be at risk of persecution.

The decision of the First-tier Tribunal

5. The First-tier Tribunal judge had before him a bundle of documents running to 61 pages that included, *inter alia*, a witness statement from the Appellant, two letters of support from Jan Nechanicky (the Presiding Officer of the London Russian Congregation of Jehovah's Witnesses), several photographs of the Appellant as a Jehovah's Witness and photographs claiming to be of the Appellant when he was

a Muslim, and 2 separate articles relating to the position of Jehovah's Witnesses in Turkmenistan. The judge heard oral evidence from the Appellant and Mr Nechanicky.

6. In his 'Conclusions and Reasons' the judge accepted the Respondent's concession that the Appellant was a Jehovah's Witness, despite referring to a striking "lack of rigour" in her reasoning. From paragraph 22 onwards the judge considered whether the Appellant's conversion was genuine. At paragraph 23 the judge stated, "I have to consider whether or not the timing of his conversion was tactical or genuine." At paragraph 26 the judge concluded that the Appellant had not provided any sensible explanation as to why, having arrived in the UK, it never occurred to him to undergo training to become a Jehovah's Witness until 2014. At paragraph 27 the judge stated that the Appellant's family "... may have had some connection with Jehovah's Witnesses", and stated, "The truth is that he came from a background which might be vaguely described is [sic] having an interest and/or participation in the faith of Jehovah's Witnesses." The judge appeared to conclude that the Appellant's family were never active as Jehovah's Witnesses in such a way that would bring them to the adverse attention of the authorities and that being a Jehovah's Witness formed part of the Appellant's 'DNA', much like a person who described themselves as a Christian because they came from a Christian country but without engaging in any proselytising or other kind of evangelical activity.
7. The judge proceeded to find that the Appellant's "association with becoming a Jehovah's Witness" (at paragraph 28) had nothing to do with any proselytising zeal on his part, and that his claimed activity as a Jehovah's Witness was "a smokescreen that simply did not provide the Appellant with any hard evidence on which to hang his claim on being a genuine participating Jehovah's Witness." The judge concluded, although accepting that the Appellant was a Jehovah's witness, that he did not engage in any kind of activity that would render him at risk if returned to Turkmenistan.

The grounds of appeal and the error of law hearing

8. The grounds of appeal variously assert that the judge failed to have any or adequate regard to the evidence of Mr Nechanicky, that there was no adequate consideration of the Appellant's activities as a Jehovah's Witness, that the judge failed to consider whether the Appellant would face a risk of persecution in Turkmenistan as a Jehovah's Witness, and that there was an absence of consideration of the background evidence. Permission was granted on all grounds.
9. At the outset of the 'error of law' hearing I asked Ms Fijiwala to draw my attention to the part of the judge's determination in which he resolved the dispute of fact as to whether the Appellant was a convert

from Islam, as he claims, or that he was born a Jehovah's Witness, as claimed by the Respondent. Ms Fijiwala was unable to point to any part of the decision where the judge specifically resolved this dispute of fact. She submitted that the judge had accepted the Respondent's position that the Appellant had always been a Jehovah's Witness, but accepted that the judge did not provide any reasons for adopting the Respondent's position.

10. I heard brief submissions from Mr Turner and then Ms Fijiwala's reply. I indicated, having considered the representations from both parties, that I was satisfied that the judge had made material errors of law rendering the decision unsustainable.

Discussion

11. The Appellant consistently maintained that he was born a Muslim, but that he did not practice his religion. He claims that his mother became a Jehovah's Witness around 2006, and that he became interested in converting in 2014. The Respondent did not accept the Appellant's claim that he was a Muslim. This was because the Appellant was unable to answer even rudimentary questions about Islam in his asylum interview. As a consequence, the Respondent did not accept that the Appellant underwent a genuine conversion and concluded that he had always been a Jehovah's Witness, albeit not one who appeared to practice his religion with any zeal.
12. There was therefore a clear dispute between the parties as to whether the Appellant was born a Jehovah's Witness or a Muslim, and whether he would be perceived as an apostate if returned to Turkmenistan. The judge's decision is however unclear, both as to whether the Appellant did undergo a conversion, and as to whether the judge rejected the Appellant's claim to have been born Muslim. Paragraphs 23 and 24 suggest that the judge accepted that the Appellant underwent a conversion, but paragraph 27 suggests that the Appellant already had a connection with Jehovah's Witnesses and that he came from a background "... which might be vaguely described is [sic] having an interest and/or participation in the faith of Jehovah's Witnesses." It is unclear what the judge by this. Moreover, nowhere does the judge adequately resolve one of the principal disputes between the parties. Ms Fijiwala submitted that the judge accepted the Respondents position that the Appellant was born a Jehovah's Witness and that he was not a convert from Islam. If this was the case, then the judge does not provide any reasons for rejecting the Appellant's claim to have been born a Muslim. This much was accepted by the presenting officer. Without resolving this material dispute of fact, and without giving any reasons for preferring the Respondents position, I am satisfied that the judge materially erred in law.

13. I am additionally satisfied that the judge failed to adequately engage with the evidence of Mr Nechanicky. At paragraph 18 the judge noted that Mr Nechanicky had no formal contact with the Appellant as part of his training, and that the person who acted as the Appellant's mentor, Mr Vitali Ostapenko, had not been called as a witness. The judge properly noted that Mr Nechanicky "... could only speak as to what he understood the position to be", but Mr Nechanicky gave what appeared to be a first-hand account of the nature and extent of the Appellant's activities as a Jehovah's Witness. While the judge was entitled to raise concerns that the mentor who undertook the Appellant's training to become a Jehovah's witness was not giving evidence, the evidence from Mr Nechanicky was still relevant when determining whether the Appellant was a genuinely active Jehovah's Witness, and required the judge to engage with the evidence and provide reasons for rejecting it. The judge's approach to Mr Nechanicky's evidence is deficient. There is no assessment as to whether the Tribunal found this witness to be credible or not, and there was no evaluation of this witness's evidence.
14. I am satisfied, for the reasons given above, that the FtJ materially erred in law. Both parties were in agreement that, given the absence of any material finding as to whether the Appellant would be perceived as being an apostate, and in the absence of any satisfactory engagement with the evidence from Mr Nechanicky, and the absence of any engagement with the background evidence as to whether the Appellant would face a real risk of persecution simply for being a Jehovah's Witness, it was appropriate to remit the appeal back to the First-tier Tribunal, to be heard by a judge other than Judge of the first-tier Tribunal N M Paul.

Notice of Decision

The First-tier Tribunal decision is vitiated by material errors of law. The case is remitted to the First-tier Tribunal for a fresh (de novo) hearing, to be heard by a judge other than Judge of the First-tier Tribunal N M Paul.



4 December 2017

Signed
Upper Tribunal Judge Blum

Date