



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

Appeal Number: PA/11284/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 May 2018**

**Decision & Reasons Promulgated
on 10 May 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ABDOLREZA [R]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms H Cosgrove, Latta & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Clapham dismissed the appellant's appeal by a decision promulgated on 6 December 2017. Permission was granted to appeal to the UT on 3 grounds.
2. The respondent conceded that grounds 1 and 2 together disclose error of law, along these lines. The respondent accepted that the appellant was no longer a Muslim, and was agnostic or atheist in his views. The judge did not deal adequately with the expert report and the appellant's submissions, set out in his skeleton argument, that he would be liable to

be questioned on return about his asylum claim; he could not be expected to lie; and honest disclosure would place him at risk. Parties further agreed that the judge did not make the findings of fact necessary to resolve these matters. That included the issues whether the appellant left Iran illegally, which might impact on documentation he could obtain for his return; whether it might be open to him to return on documentation which would not draw attention to him as a failed asylum seeker; whether he was reasonably likely to be questioned; what was reasonably likely to emerge if he was questioned; and the likely response of the authorities.

3. Parties agreed that the foregoing required the decision to be set aside and a further hearing to take place.
4. If confined to those matters, it would be apt for the UT to complete the decision.
5. The appellant also advanced ground 2, which contends that the judge misrecorded the appellants' evidence about documentation linking him to the charity, and so was under a misconception which she took as a significant point against him. Ms Cosgrove supported the grounds with a copy of the record she kept in the FtT. Mrs O'Brien said that the record kept by her colleague in the FtT supported the record for the appellant. She submitted, however, that the difference, which comes down to an "if", was not significant enough to show an error.
6. It was common ground that if the appellant succeeded on this ground also, the outcome should be a remit to the FtT for a fresh hearing.
7. I reserved my decision.
8. I consider that ground 2 does disclose error, although not precisely for the reason contended. The judge found the matter to be a "complete contradiction" leading her to find the "whole account relative to the charity ... a complete and utter fabrication". That goes a very long way on a tenuous basis.
9. Records kept by different parties, unless they are a full oral transcription, will never be word for word the same; but the finding challenged in ground 2 is so strong that it cannot sit even with a relatively minor misrecording of the evidence.
10. I note also that although the hearing was on 26 July 2017, the decision was promulgated only on 6 December 2017, and contains no explanation for the delay. This was not part of the grounds, and parties did not make any submissions on whether delay was significant; but it may partly explain lack of precision in the outcome.
11. 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, as explained above, 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.

12. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
13. The member(s) of the FtT chosen to consider the case are not to include Judge Clapham.
14. No anonymity direction has been requested or made.

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

3 May 2018
Upper Tribunal Judge Macleman