Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04349/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 November 2017	**On 17 November 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

E H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter, Counsel instructed by Fadiga & Co
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 13 June 2017 of First-tier Tribunal Judge Widdup which refused the appellant's asylum and human rights claim. The asylum claim was not found credible and the Article 8 ECHR claim not found to be made out where the applicant had no family life here and only a limited private life.

2. The grounds of appeal concerned the appellant's asylum claim. The basis of his claim can be summarised as follows. The appellant maintains that he is from Shiraz. In 2014 he opened a shop with a business partner, his

aunt's husband. At around the same time he began to become isolated from his family and started drinking heavily.

3. In December 2015 an old friend, R, came to the shop and offered the appellant support and friendship. In March 2016, with R's support, the appellant gave up alcohol. At around the same time R told the appellant that he was a Christian. The appellant became interested and began to attend a house church with R. He would attend approximately once a week. The appellant maintained that he converted to Christianity on 18 June 2016.

4. On 19 October 2016, the appellant did not go to the house church in R's car as usual as on that day he had to wait at the shop as his business partner was late. He went to the house church later on and as he was approaching, he saw that it was being raided by the authorities. He contacted his brother and told him what had happened. His brother took him to a friend's house where the appellant was able to remain until an agent smuggled him out of the country.

5. The appellant arrived in the UK on 2 November 2016 and claimed asylum the same day. The respondent refused the appellant's asylum claim on 25 April 2017. He appealed and the appeal hearing took place in front of First-tier Tribunal Judge Widdup on 6 June 2017.

6. In paragraphs [45]–[47] the First-tier Tribunal explained why the respondent's view that the appellant had not shown a good reason for converting to Christianity or that the appellant did not have sufficient knowledge of Christianity was not accepted.

7. At [49] the judge found that there was nothing incredible about the appellant's account of his alcoholism having been something that led R to introduce him to Christianity.

8. At [51]–[54] the judge identified why he found it less credible that the appellant maintained that he had become isolated and begun drinking heavily. Judge Widdup also found that it was unlikely that the business partner would have been unaware of the appellant's alcohol problem given the amount that the appellant claimed to drink and that R saw him drinking. Judge Widdup also indicated that it was less credible that the appellant was able to give up alcohol entirely in the manner he described.

9. At [54] the decision goes on to state:

> "These details by themselves are not inherently incredible but they are sufficient to give rise to concerns about the accuracy of the Appellant's account. I will assess these details together with other features of the Appellant's evidence."

10. The First-tier Tribunal indicated at [55] that the account of a house church in Shiraz was consistent with the country evidence. The judge did not find credible, however, the coincidence of the raid on the house church being on the same day that the business partner was late, leading both to the

appellant being late and to his leaving his Bible behind. The First-tier Tribunal records at [55] the appellant's evidence being that he did not take his Bible with him on that day because he was "working".

11. At [56] the judge did not find the appellant's explanation as to how the authorities knew he had been attending the house church to be credible. He did not accept that the house church would keep a list of the names of those attending where it was illegal to attend and would have been dangerous to keep such a record.

12. At [57] the judge found it "difficult to reconcile" the appellant leaving his Bible behind on the day of the raid when he usually took it with him. The judge again refers to the reason for this being that the appellant was "working". Further, it was also found at [57] that after seeing the raid on the house church the appellant would have had the opportunity to return to his shop and get rid of any incriminating materials, including his Bible but did not do so.

13. At [59] the First-tier Tribunal found that the appellant's claim to practice Christianity genuinely in the UK was undermined by his attending two very different churches, one of the witnesses accepting that to be unusual.

14. The judge also found at [60] that the appellant's account was inconsistent as he indicated in his asylum interview at question 72 that he had never told anyone in his family about his conversion but it was also part of his account that he had told his brother after he witnessed the raid on the house church.

15. At [61] the First-tier Tribunal concluded:

> "61. I have considered all the Appellant's evidence in the round. I have discounted some of the Respondent's concerns and I accept that the Appellant does have some knowledge of Christianity. However, my concerns about the details of his account are such that even on the lower standard of proof I do not find that his account of his introduction to Christianity and the house church by [R] and his conversion or attendance at the house church is credible.
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> 62. It follows that the Appellant has not proved to the lower standard that he is at risk on return and the asylum claim together with the claim for humanitarian protection therefore fail."

16. The grounds of appeal maintain, firstly, that the First-tier Tribunal applied too high a standard of proof. The judge did not accept a number of the respondent's reasons. He found other parts of the applicant's claim "not inherently incredible". He found that the account of attending a house church in Shiraz was consistent with the background evidence. Where that was so, if the lower standard was applied, it was not rational to conclude that the account was not credible. The grounds at paragraph 4 state (verbatim):

> "The reasons for rejecting the account are few and minor, and further issue is taken with them on the in the subsequent grounds set out below."

17. On analysis this appeared to me to be either disagreement or a rationality challenge rather than a question of legal misdirection.

18. It is unarguable that Judge Widdup was aware of the lower standard of proof. He refers to it at [6] and at [61] when reaching his conclusion after analysing different parts of the account.

19. As well as references to the need to assess the evidence in the round, the decision also shows at [54] and [61] that the approach taken was entirely in line with that set out in R (Karanakaran) v SSHD [2000] EWCA Civ 11. The Court of Appeal sets out the correct approach at [55] of Karanakaran as follows:

> "What they decided was that when assessing future risk decision-makers may have to take into account a whole bundle of disparate pieces of evidence:
>
> (1) evidence they are certain about;
>
> (2) evidence they think is probably true;
>
> (3) evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true;
>
> (4) evidence to which they are not willing to attach any credence at all."

20. Having identified at [54] that some aspects of the evidence were not "inherently incredible", the First-tier Tribunal judge defers a final conclusion until the other aspects of the evidence had been assessed. As indicated in the summary of the decision above, in other paragraphs he sets out other parts of the evidence on which he had a clearer view, indicating what was and was not accepted.

21. Those parts of the decision show that it is not arguable that the First-tier Tribunal judge took an incorrect legal approach to the assessment of the evidence and that he applied in form and substance the correct standard of proof.

22. Where that is so, the first ground really seeks only to argue that it was not open to the First-tier Tribunal to find against the appellant, the parts not accepted being "few and minor". However, it was for the First-tier Tribunal to decided what weight to place on the different parts of the evidence in a holistic assessment. It is not correct to characterise his concerns about the core parts of the account, such as the coincidence of the appellant being late on the day of the raid and his leaving his Bible in the shop, the discrepancy as to whom he told and his attendance at two very different churches in the UK as either "few" or "minor". The first ground of appeal does not have merit.

23. The grounds at paragraph 5 object to the finding at [59] concerning the appellant's attendance at two different churches in the UK. The fact that the judge sets out that there might be a plausible reason for this, did not

oblige him to accept that reason and it remained open to him to find in the context of the evidence as a whole that this feature of the appellant's church attendance this undermined the claim to be a genuine Christian convert.

24. The grounds then maintain at paragraph 6 that the judge proceeded on an incorrect factual basis when stating that the appellant's evidence had been that his business partner was not aware of his drinking. This had been put to the appellant directly in evidence and he confirmed that his partner did know of his problems with alcohol. However, the grounds concede that the judge does not appear to make a clear adverse inference from this point so it is difficult to see how this aspect of the challenge is material.

25. Paragraph 7 of the grounds maintains that the First-tier Tribunal Judge was mistaken at [55] and [57] in recording the appellant's evidence to be that he did get to the house church until later on the day of the raid and did not take his Bible with him because he was "working". The grounds maintain that the appellant's oral evidence was that he was "walking" and so did not take his Bible.

26. I accept that the record of proceedings from counsel before the First-tier Tribunal records the appellant stating that he was "walking" and not "working". The First-tier Tribunal judge's record is not legible.

27. The difficulty with this ground, however, is that the adverse credibility finding does not arise directly from the fact of the appellant "working" rather than "walking". The adverse credibility finding at [55] concerns the coincidence of the appellant's business partner being late on the day of the raid and the appellant going on his own later in the day and not with R. The appellant "working" or "walking" is not relevant to that finding and any mistake as to what the appellant said does not undermine it.

28. At [57] the judge found that where the appellant usually took his Bible with him, it was not credible that he did not do so on the day of the raid so that it was at the shop when the authorities went there. That is another "coincidence" point. The judge notes the "only" explanation for leaving the Bible behind was that the appellant was "working". The appellant maintains that he gave a different explanation, that he was "walking" and so not in a private car with R as usual. Accepting that this was his evidence, in my judgment, however, given the concern that the judge sets out at [55] and [57] on the coincidence of the appellant going late and without his Bible on the day of the raid, the explanation that the appellant was "walking" and not going in R's car was not something that could oblige the judge to accept the coincidence. Further, in the context of the other cogent adverse credibility findings in this decision, even had the explanation of leaving the Bible behind being that the appellant was "walking" been accepted as credible, it could not have amounted to evidence capable of leading to a different outcome. Indeed, the judge goes on in [57] to consider the account as if the appellant had chosen on that one occasion to leave his Bible behind, whatever the reason, but still

finds that this leads to further credibility problems as the appellant could be expected to have attempted to go back to remove it.

29. The grounds in paragraph 8 object to the finding that the appellant could have removed the incriminating materials from his shop because the appellant should have been given an opportunity at the hearing to address the point. It is well-rehearsed that a judge at a hearing does not have to give an indication of every credibility concern in order to afford an opportunity for them to be addressed, the burden of proof being on the applicant, here assisted by legal representatives.

30. For these reasons, the grounds of appeal do not show a material error of law in the decision of First-tier Tribunal Judge Widdup.

Notice of Decision

31. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed  Date: 16 November 2017
Upper Tribunal Judge Pitt