



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

Appeal Number: DA/00601/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th November 2014**

**Decision and Reasons
Promulgated
On 19th November 2014**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AHMED HUSSAIN MOHAMMED
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Shilliday (Senior Home Office Presenting Officer)

For the Respondent: Mr E Cole (instructed by Staines & Campbell, Solicitors)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State in relation to a Determination of the First-tier Tribunal (Judge Aziz and Dr De Barros) promulgated on 25th June 2014.
2. The appeal before the First-tier Tribunal, which it allowed on asylum grounds, was against the Secretary of State's decision to refuse to revoke a deportation order.

3. The grounds seeking permission to appeal to the Upper Tribunal referred to the Appellant's lengthy and horrendous immigration history which is set out. Essentially, as argued by Mr Shilliday, the Secretary of State challenges the reasoning of the First-tier Tribunal and asserted its reasoning was inadequate to support a conclusion that the Appellant is a genuine Christian convert. In particular at paragraph 9 of the grounds the Secretary of State says:-

"In coming to that conclusion, the Tribunal balanced the scales in the appellant's favour based on the witnesses ("men of religion") testimony (para 142). However after cross-examination of the second witness, it became apparent the Appellant had not informed him of his immigration history and criminal past. It is submitted that the Appellant intentionally did not disclose his past to the witness for self-serving reasons. Given that his claim to be a convert is clearly not credible (para 141). The Appellant is a persistent liar and has the propensity of fabricating evidence. The Appellant had ample time to notify the Secretary of State upon his first interest in his Christian interest (sic) however failed to do so, instead using this as bait to avoid removal (para 48)".

4. The grounds go on to suggest that the Tribunal tipped the scales incorrectly in the Appellant's favour and failed to make a reasoned decision rejecting credibility.
5. Before me Mr Shilliday referred to the grant of permission by the First-tier Tribunal Judge and in particular to the final part of the third paragraph thereof where the Judge said:-

"Given the unusual strength of the evidence against the Appellant as acknowledged by the panel themselves in the case of the deportation of a foreign criminal, it is arguable that more careful and greater analysis of the pastors evidence was required in this case including perhaps reasons why those pastors had simply not been gullible when faced with a manipulative Appellant as the accepted evidence appears to demonstrate."

6. Mr Shilliday submitted that it is important to identify the context of the Pastors' evidence and in that regard he referred me to paragraph 27 of the Determination where the Tribunal referred to a letter from a third Pastor, the Rev Nassar and the contents of that letter which were untrue for the reasons given.
7. Mr Shilliday referred me to paragraph 93 of the determination where the panel set out Pastor McFarlane's evidence and submitted that his evidence suggested that the role of the Appellant at church amounted to no more than serving tea and biscuits. He also referred to paragraph 141 where the Tribunal says that the Judge set out the Appellant's appalling history to Pastor McFarlane who had been hitherto unaware of it. The Pastor said

that his opinion as to the genuineness of the Appellant's conversion was unchanged. Mr Shilliday submitted that was hardly surprising given that it had been sprung upon him. Essentially he argued that more cogent reasons were required for accepting the Appellant's conversion particularly given the considerable adverse matters in this case and that the Tribunal's reasons were not sufficiently cogent.

8. I take no pleasure in dismissing this appeal to the Upper Tribunal.
9. The Appellant's appalling history is of relevance. He was first encountered by the UK authorities in April 2004 having arrived clandestinely. Five months later he claimed asylum as a Syrian national with a name other than the one he now uses. That application was refused and his appeal dismissed. After he became appeal rights exhausted he was removed to Syria in March 2005. However, he was refused entry on the basis he was not Syrian.
10. He then claimed asylum again, this time in the name he now uses, as an Iraqi national. That application was also refused, his appeal unsuccessful and he became appeal rights exhausted once again in July 2005.
11. He was then convicted of assault in October 2007 and sentenced to 12 months imprisonment. As a result of that offence deportation proceedings ensued. His appeal against the decision to deport him was dismissed in 2008. He was refused onward appeals and the deportation order was signed in August 2008.
12. In March 2009 the Appellant made a series of asylum representations which were considered by the Secretary of State who refused to revoke the deportation order. The Appellant once again lost his appeal against that decision and was once more appeal rights exhausted by December 2010.
13. He made a third asylum application and a further application to revoke the deportation order in 2011 which was refused and certified.
14. He made a fourth asylum and human rights application and an application to revoke the deportation order in 2012. That application was rejected in March 2014 and it was his appeal against that decision that was before the First-tier Tribunal.
15. The First-tier Tribunal noted that there were three heads to the Appellant's claim not to be returnable to Iraq. The first was that he would be at risk of persecution as he had converted from Islam to Christianity; secondly that he had a number of health issues and thirdly that he was in a relationship with a British National and her child.
16. The tribunal rejected the second and third grounds.

17. With regard to his conversion to Christianity the Tribunal noted numerous adverse points and in particular that no mention had been made previously of his conversion despite his now claim to have been interested in and converted to Christianity at the time he was making applications to the Secretary of State. He also entered into Islamic marriages and the Tribunal noted the letter from Pastor Nassar, the contents of which were untrue. The Tribunal noted the timing of the Appellant's claim and the Appellant's inconsistent evidence about this. Indeed the Tribunal found nothing this Appellant said could be believed and that his partner had similarly embellished and exaggerated matters and her evidence was not trustworthy either. The Tribunal set that out in considerable detail and also set out in detail the evidence that it heard from two Pastors.
18. The Tribunal's findings of fact start at paragraph 110 of the Determination and continue to paragraph 142. It is at paragraph 119 that the Tribunal said that it was difficult to attach any weight to what the Appellant said but went on to note that "fortunately for him it is not only his own testimony that he relies upon". The Tribunal referred to a large amount of documentary evidence before them and to the evidence of the two Pastors. The Tribunal note that the Secretary of State's position was that if the Appellant's conversion to Christianity was indeed genuine then he would be at risk of persecution in Iraq.
19. The Tribunal specifically state at paragraph 138 that had the evidence of his conversion been limited to his own and his partner's evidence it was unlikely that he would have succeeded. However, the Tribunal placed considerable reliance on the oral evidence of Pastor Sameh Youssef Khalil and Pastor Steve McFarlane of Langston Church in Portsmouth, which has been the Appellant's Church for over two years.
20. The Tribunal said that it had listened very carefully to the evidence of both of those witnesses. Both were independent witnesses and both were "men of religion". The Tribunal noted that the Pastors had witnessed the Appellant's religious observance at close hand and it accepted that neither witness would have appeared before the Tribunal had they believed the Appellant's conversion to be a fabrication. The Tribunal found both witnesses highly credible and in particular Pastor McFarlane's evidence particularly persuasive because he had been head Pastor at the Appellant's Church for a period of over two years.
21. It cannot be said that the Tribunal did not consider the possibility that the two Pastors had been gullible and been duped by the Appellant because the Judge specifically asked the Pastors about how and whether they considered his conversion genuine. In particular they preferred Pastor McFarlane to the Appellant's appalling history and whether that affected his decision. He said that it did not. Apart from the Tribunal's own questions to the Pastors, the Secretary of State was represented at the hearing and no doubt raised these matters also.

22. In paragraph 142 of the Determination it is clear that the Tribunal found the decision in this case difficult and unpalatable. Nevertheless the Tribunal indicated that bearing in mind the low standard of proof required in asylum cases and the two credible independent witnesses it accepted the Appellant's claimed conversion and on that basis allowed the appeal.
23. The First-tier Tribunal, unlike me, the author of the grounds or Mr Shilliday had the benefit of hearing from those witnesses. Apparently, neither their credibility nor their independence was challenged by the Home Office Presenting Officer. The reasoning is full and detailed in that regard.
24. While it is an unpalatable decision that a person with the background and behaviour of this Appellant should be granted refugee status in the UK, nevertheless in the same way as persons who cynically manufacture sur place claims by parading in front of Embassies waving flags or appearing on Facebook or Blogs are entitled to succeed, as was made clear by the Court of Appeal in Danian v SSHD [2002] IMM AR 96. The Court of Appeal said that there is no express limitation in the Refugee Convention in relation to persons acting in bad faith, despite Counsel's attempt in Danian to have one implied.
25. The appeal to the Upper Tribunal is dismissed.

Signed

Date 18th November 2014

Upper Tribunal Judge Martin