Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04221/2014

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision Promulgated**
On: 30th January 2015	**On: 6th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

AK
(Anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Pratt, Waddell Taylor Bryan solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran date of birth 10th June 1992. She appeals against the decision of the First-tier Tribunal (Judge Cruthers) who on the 30th July 2014 dismissed her asylum and human rights appeal[1].

[1] Appeal brought against a decision dated 11th June 2014 to remove from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999

2. The matter in issue before Judge Cruthers was whether the Appellant was at risk in Iran for reasons of her religious belief. The Appellant claimed to have converted to Christianity.

3. Her appeal before Judge Cruthers was not her first. In January 2013 Judge Pickup of the First-tier Tribunal had heard and dismissed an asylum appeal on essentially the same grounds. It had been contended before him, *inter alia*, that the Appellant was a genuine Christian who could not reasonably be expected to conceal her faith should she be returned to Iran. Her case was supported by members of the Church, including a Reverend Andrew Lythall, who attended and gave evidence on her behalf. Judge Pickup had not doubted the sincerity of any of the supporting witnesses. He had however concluded that the Appellant had not shown, even to the lower standard of proof, that she had genuinely converted to Christianity. His reasons for that finding were, in summary, that she had been unable at interview to demonstrate even basic knowledge about Christianity (such as the difference between the Old and New Testaments); there were "a significant number of gaps in the appellant's understanding of the Christian faith"; her explanation for her lack of knowledge, that she did not know that she could read the bible in Farsi, was contradicted by the evidence that she had been presented with a Farsi bible upon her baptism; she had sought to portray herself as someone interested in Christianity by 'liking' and posting various items on Facebook, but the fact that this was only in a short period immediately prior to her asylum interview suggested that this was a cynical attempt to generate positive evidence; there had been a significant delay in claiming asylum after the claimed conversion. Judge Pickup therefore rejected the Appellant's evidence and dismissed the appeal.

4. The Appellant was not removed from the United Kingdom. She continued to attend church and on the 25th May 2014 she successfully managed to persuade the Secretary of State to treat her representations as a 'fresh claim' for asylum. She relied on evidence from members of her church that she had indeed been attending services regularly, and on evidence from her vicar, Reverend Canon Elizabeth Chegwin Hall. The Respondent again refused asylum, relying heavily on the conclusions of Judge Pickup.

5. When the matter came before Judge Cruthers he correctly identified the decision of Judge Pickup to be his "starting point". That principle derives from the Upper Tribunal decision in Devaseelan[2] and in the context of this appeal it meant that Judge Cruthers was bound to treat Judge Pickup's findings as determinative of matters as they stood in January 2013; he was obliged to closely examine the new evidence of religious adherence and commitment and to assess whether, on the lower standard of proof, it showed the Appellant to be a genuine Christian,

[2] Devaseelan [2002] UKIAT 00702*

contrary to those original findings. Having referred himself to that principle Judge Cruthers summarises the findings of Judge Pickup. He then sets out the new evidence. As I note above, this included further evidence from the Appellant about her involvement in the Church since January 2013, evidence from Canon Chegwin Hall about her contact with the Appellant, and evidence from other members of the church, including the Appellant's aunt.

6. Judge Cruthers had no hesitation in accepting the sincerity of the evidence of the "church witnesses" who spoke to the Appellant's attendance at services. He specifically notes Canon Chegwin Hall's evidence that she had personally spoken to the Appellant on numerous occasions and had "repeatedly elicited that she has had a conversion experience to Christianity". He notes that the Canon had not given evidence in such an appeal before and that she expressed doubts about another person whom she knows to be making a similar asylum claim. She is a senior and experienced member of the Church. The determination then sets out the evidence of the Appellant's aunt, who claims that she and her two sisters have all converted to Christianity and that she believes that her influence was instrumental in the Appellant having converted herself. Under the heading "my assessment" the determination draws the following conclusions from the evidence:

    a) The fact that the Appellant has continued to attend Church could be a sign of her persistent faith, but could "equally" be a sign of her commitment to pursuing a false asylum claim [para 84];

    b) There was still no satisfactory explanation for the delay in claiming asylum. The Appellant was baptised in March 2012 and had given evidence that she knew at that point that she could not return o Iran - she had not however claimed until October 2012 [85];

    c) It is "extremely telling" that the Appellant's Facebook page contained no references to Christianity at all prior to the 17th October 2012, the day before her asylum interview [86].

7. On the basis of those findings the appeal was dismissed in the following terms [at 88]:

    "… assessing all the evidence as best I can, it is my conclusion that events since 21 January 2013, even with the extra evidence adduced, are not sufficient to displace Mr Pickup's principle conclusion as to the appellant not being a genuine Christian convert, i.e. taken overall, the evidence does not establish, even on the reasonable likelihood standard, that the applicant is someone genuinely committed to Christianity, as opposed to being someone

claiming to be committed to that faith for the purposes of pursuing an asylum claim"

The Submissions

8. The Appellant now has permission[3] to appeal on the following grounds:

   i) Having accepted Canon Chegwin Hall as an experienced and senior member of the clergy who had had several conversations with the Appellant about her conversion experience, the Judge then gave no reasons why he did not consider this evidence weighty enough to displace the findings in the first determination;

   ii) This failure to give reasons left the Appellant with no understanding as to why she had lost: Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC).

9. Whilst the Respondent agrees that the "assessment" section of the determination is brief, it is submitted that the Tribunal has given adequate reasons for its conclusions. The Tribunal was entitled to find that the new evidence was not sufficient to displace the findings of Judge Pickup.

Error of Law

10. This was a difficult case. As both Judge Pickup and Judge Cruthers identified, attempting to discern whether or not a claimant has made a genuine religious conversion is one of the most challenging tasks a judge in this jurisdiction is faced with. Outward signs of faith, such as wearing a crucifix, are relatively easy to achieve. In this case the Appellant relied on what might be considered such superficial gestures: just because someone chooses to wear a cross and attend church every Sunday does not mean that he or she is truly a Christian. She also however relied on the evidence of an experienced member of the church. Judge Cruthers states in terms that he has no reason to doubt the sincerity or objectivity of Canon Chegwin Hall: why then did he not accept her conclusions? The present appeal turns on whether adequate reasons were given in respect of her evidence.

11. The section of the determination headed 'my assessment' does not directly address the evidence of Canon Chegwin Hall that she has used her many years of experience in the Church to evaluate the Appellant's "conversion experience" as being a genuine and credible one. It is possible however, to find Judge Cruthers' conclusions at paragraph 77:

    "I accept that Reverend Chegwin Hall does not believe that the

[3] Granted by Judge Bartlett of the First-tier Tribunal on the 18th August 2014

> appellant is "hoodwinking" her as regards the genuineness of her commitment to Christianity. My task, however, is to weigh up all the evidence before me and I do not know how acquainted (or otherwise) Reverend Chegwin Hall is with all the reasons that have been given for disbelieving the appellant's claims relating to Christianity (i.e. those given by the respondent and Mr Pickup)"

12. The determination has, at that point, already set out those reasons in full. The Appellant's knowledge was found to be lacking, there were discrepancies in her evidence and the chronology gave rise to two concerns: the unexplained delay between the Appellant's baptism and asylum claim, and her "self-serving" and brief foray into posting overtly Christian material on Facebook. Those latter issues were evidently of great concern to Judge Cruthers, since he reiterates them in his "assessment" section. Reading the determination as a whole, however, it seems to me that paragraph 77 is at the heart of his findings. He accepts that Canon Chegwin Hall is experienced and sincere. She is not however the decision maker in this appeal, and he has not been satisfied that she knew all of the reasons why the claim had earlier been refused. Implicit in this comment is the suggestion that if she had done, she may not have reached the conclusions that she did. The "assessment" section is brief but I do not believe that the Appellant can be ignorant as to why her appeal has been dismissed. The reasons are set out in full by Judge Pickup, whose conclusions Judge Cruthers expressly adopts. There is no requirement in Devaseelan that the second tribunal gives a whole set of new reasons for its findings. The task of the second tribunal is to assess all of the evidence and see whether different conclusions can be reached. Judge Cruthers has done this.

13. At the hearing I expressed some concern about paragraph 84 of the determination:

> "[the outward signs of the Appellant's faith]…could be signs that the appellant has persisted with a genuine commitment to the Christian faith, despite her first appeal having been dismissed on 21 January 2013. But, **equally**, those signs are compatible with the appellant having decided to persist with using Christianity as a vehicle to secure leave to remain in the UK…"
>
> [emphasis added].

14. The burden of proof in asylum appeals is a low one. If one explanation is "equally" as valid as another, the appellant has discharged the burden of proof. Having read the determination as a whole however, I am satisfied that the Tribunal has applied the correct standard of proof. The correct standard is set out at paragraph 7, and in two places is applied to the same question considered in paragraph 84. In 86:

> "… it seems to me appropriate to describe many of the crucial activities of this appellant here as "self-serving" – in the sense that they are very likely to be activities undertaken to support the appellant's bid for refugee status, rather than genuine expressions of the appellant's commitment to Christianity"

And 88:

> "… i.e. taken overall, the evidence does not establish, even on the reasonable likelihood standard, that the applicant is someone genuinely committed to Christianity, as opposed to being someone claiming to be committed to that faith for the purposes of pursuing an asylum claim"

15. The use of the word "equally" at 84 is unfortunate but having read the determination as a whole I am satisfied that Judge Cruthers' findings did not stop there. He finds that one explanation might be as "equally" plausible as another, but then goes on to give reasons why the balance tips away from the Appellant to the extent that she fails to discharge even the lower standard of proof.

Decisions

16. The determination of the First-tier Tribunal does not contain an error of law and it is upheld.

17. The First-tier Tribunal made a direction for anonymity. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the UT(IAC) Presidential Guidance Note 2013 No 1: Anonymity Orders I continue that Order.

Deputy Upper Tribunal Judge Bruce
3rd February 2015