



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

Appeal Number: AA/09245/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 March 2015**

**Decision & Reasons Promulgated
On 15 April 2015**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**L.H.K.
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, instructed by Elder Rahimi Solicitors
For the Respondent: Miss A Brocklesby-Weller, Senior Presenting Officer

**DECISION AND REASONS FOR SETTING ASIDE
THE FIRST-TIER TRIBUNAL'S DETERMINATION**

1. I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. As a consequence there is a prohibition on the disclosure or publication of documents or information relating to the proceedings or any matter likely to lead members of the public to identify the appellant.

Introduction

2. The appellant is a national of Iran born in 1982. She claims to have arrived in the United Kingdom on 15 January 2011 with entry clearance as a student. The appellant claimed asylum on 17 December 2013 and that application was refused in a decision of 22 October 2014, for reasons set out in a detailed letter of the same date. Also on that date the Secretary of State made a decision to remove the appellant to Iran pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. The appellant appealed such decision to the First-tier Tribunal, that appeal being heard by First-tier Tribunal Judge Obhi on 17 December 2014 and dismissed on all grounds in a determination promulgated on 2 January 2015.
4. Broadly, it is the appellant's case that she was born and brought up in the Islamic faith in Iran but that since being in the United Kingdom she has rejected that faith and converted to Christianity. She was baptised into the Christian faith at St Andrew's Church in High Wycombe on 20 July 2014. The appellant asserts that if she practices her new religion in Iran she will be subjected to persecutory treatment, breaching her Refugee Convention and Article 3 rights.
5. Judge Obhi concluded, for reasons set out in paragraphs 18 to 20 of her determination, that the appellant is not a genuine Christian convert. In an alternative finding, Judge Obhi concluded that even if the appellant is a genuine convert to Christianity she would not be at risk of persecution in Iran because she is likely to practice her religion in private.
6. On 27 January 2015, First-tier Tribunal Judge E M Simpson granted the appellant permission to appeal to the Upper Tribunal. Thus the matter came before me.

Error of Law

7. The appellant's grounds of challenge are lengthy but can be summarised succinctly in the following terms:
 - (i) The First-tier Tribunal erred in failing to provide sustainable reasons for its adverse credibility finding in relation to the genuineness of the appellant's conversion to Christianity;
 - (ii) The First-tier Tribunal erred in failing to consider and lawfully apply the *ratio* of the decision of the Supreme Court in HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.
8. I take these two strands of challenge in turn.
9. As to the former, the pleaded grounds seek to identify twelve purported errors made by the First-tier Tribunal in its consideration of the appellant's credibility. I do not set out herein each of the claimed errors, many of which overlap and a number of which amount to no more than disagreement with the findings of the First-tier Tribunal. There are however a number of features of the reasoning process undertaken by the First-tier Tribunal which lead me to conclude, when they are taken together, that its findings as to the genuineness of the appellant's claimed conversion to Christianity are vitiated by legal error.

10. In paragraph 18 of its determination the First-tier Tribunal states:

“She speaks in her statement of her ideological opposition to many of the cultural restrictions on women in Iran, such as having to wear the Hijab, however she does not state that she had any particular difficulty in wearing it whilst in Iran”
11. This, in my view, misrepresents the appellant’s evidence. As I read this aspect of the First-tier Tribunal’s determination it was therein treating as a matter adverse to the appellant’s overall credibility the fact that although she now professes an ideological opposition to the Hijab, this was not her view whilst she was living in Iran.
12. However, in her handwritten statement of the 27 December 2013 the appellant speaks at length (47 lines) about the problems for those in Iran who chose not to wear, or appropriately wear, the Hijab and that, as a consequence of these problems, she *“preferred staying at home and going out when it was urgent”* and *“[F]or the very same reason there was a 6 year gap between my studies in Iran and UK”*.
13. In my conclusion it was not open to the First-tier Tribunal to find that the appellant had *“no particular difficulty in wearing [the Hijab] in Iran”* without engaging with the detailed evidence given on this very issue by the appellant in her statement of 27 December 2013.
14. Moving on, the First-tier Tribunal also stated as follows in paragraph 18 of its determination, in relation to the evidence given by Reverend Dust:

“Having heard from Reverend Dust, it is more a journey than an overnight change, and only time will tell whether her change of religion is a permanent change or not. ... It is, as Reverend Dust put so eloquently in his statement, impossible to enter into a person’s heart and mind and to know for sure whether someone has changed their religion. One has to look at the outward manifestations. The reverend sees the appellant at the church on a regular basis and he therefore accepts her claim that she has changed. He presented as an honest, credible and reliable witness, but also someone who is welcoming of any expression of interest in his faith. It is his business to try and encourage people to believe the gospel and he openly welcome those who wish to embrace his religion to do so. Whenever he sees her, he does so in the context of the church, as that is the only relationship he has with her and therefore, it is not his place to question or doubt what someone says but to accept it openly. He does not have the fullest information about individuals and is not called upon to make decisions about credibility in a wider context. There is no mechanism in place for assessing whether someone's claimed conversion is an actual conversion, or something of convenience to that individual. Therefore whilst I accept that the appellant was baptised as she claims, and as is evidenced by the record from her register at St Andrew’s Church, and I accept the reverend’s evidence, it is only a small part of the total evidence before me. In endeavouring to get inside the appellant's ‘heart and mind’, the most important evidence is that of the appellant herself.”
15. It is clear from reading this passage that despite finding Reverend Dust to be a credible and reliable witness the First-tier Tribunal considered his evidence, on the issue of the genuineness of the appellant’s conversion to Christianity, to be of little weight. Whilst issues of weight are entirely a

matter for the First-tier Tribunal, an assessment of such has to be underpinned by a rationality of reasoning. I find such rationality of reasoning to be lacking in the First-tier Tribunal's determination.

16. As part of its rationale for attaching little weight to Reverend Dust's conclusions, the First-tier Tribunal twice in paragraph 18 allude to the fact that his conclusions were reached without full knowledge or information about the appellant's circumstances; however, nowhere in its determination does the Tribunal disclose what additional knowledge or information that it had that Reverend Dust did not.
17. Furthermore, the First-tier Tribunal proceeded on the basis that Reverend Dust's opinion was partially based on an unquestioning acceptance of the appellant's own assertions as to the genuineness of her conversion. I can find nowhere in Reverend Dust's evidence a statement to this effect, neither can I find record of this being put to Reverend Dust at the hearing for his comment.
18. Reverend Dust sets out in his letter of 12 December 2014 why he is of the opinion that the appellant is a genuine convert to Christianity, stating:

"Although one cannot conclusively say if someone has come to a real and living faith in Jesus Christ, what I can see is the evidence of her changed life, her desire to serve others and an inner peace that emanates from her."
19. There is no indication in this passage that the Reverend unquestioningly accepted the appellant's assertions, or that he was required so to do. On the contrary, if anything can be discerned from this passage, it is that the Reverend's opinion was derived from a rounded view of the appellant's actions and behaviour over a period of time.
20. This error is compounded in my view by the First-tier Tribunal's consideration of Reverend Dust's evidence in paragraph 19 of its determination, where it is said:

"I asked the Reverend whether he had visited the appellant at home. He said that he had but he had only been to the front room of the house that she shares with her relatives. He did not mention anything about her living circumstances to suggest that there was anything to indicate that she had conveyed her beliefs to her lifestyle."
21. I am troubled by this passage for a number of reasons. First, there is nothing in the determination or the Record of Proceedings that suggests that the Reverend was asked about whether there was anything in the appellant's living circumstances that indicated that she had conveyed her beliefs to her lifestyle. Furthermore, the Tribunal fails to identify what change to the appellant's living circumstances it anticipated or expected the Reverend to be able to comment upon, from a visit to the front room of a house that she shares with her relatives.
22. The first sentence of paragraph 19 of the determination also discloses a matter of some curiosity, the Tribunal stating therein that it found the appellant's evidence "*considerably less persuasive*" than that given by Reverend Dust. It may be that this is simply an infelicity of phrasing but, if read literally, it is suggestive of the Tribunal finding Reverend Dust's

evidence to be persuasive, a conclusion which on its face contradicts what is clearly intended to be conveyed by the penultimate sentence in paragraph 18 of the determination.

23. Whilst the First-tier Tribunal were clearly entitled to place significant weight on the appellant's inability answer a number of questions relating to events 'recorded' in the bible, and indeed to other aspects of the appellant's evidence referred to in paragraph 19 of the determination, in my conclusion it failed to engage in a rational and reasoned manner with the evidence given by Reverend Dust as to the genuineness of the appellant's conversion. For this reason I find that the First-tier Tribunal's conclusions on this issue are flawed by legal error.
24. I must also consider the second limb of the appellant's grounds of challenge i.e. that the First-tier Tribunal failed to lawfully apply the decision of the Supreme Court in HJ (Iran). In her Rule 24 response, the Secretary of State submitted in relation to this issue that given the First-tier Tribunal's conclusion that the appellant was not a genuine convert its failure to apply "*the HJ Iran test*" did not disclose a material error of law. At the hearing Ms Brocklesby-Weller did not seek to persuade me that the First-tier Tribunal's determination in this respect was lawful.
25. It is clear that the First-tier Tribunal failed to cite, consider or apply the Supreme Court's decision in HJ (Iran), but rather purported, in error, to apply an earlier decision of the Tribunal in that same case. Whilst, as the Secretary of State submitted in her Rule 24 response, such error would not be material in circumstances where the appellant had been found not to be a genuine convert, for the reasons given above I have found that the First-tier Tribunal's conclusions in this latter regard to be themselves flawed by legal error.
26. For all the reasons given above I set aside the determination of the First-tier Tribunal and direct that the appeal be determined *de novo*.
27. The parties agreed, and I accept having considered paragraph 7 of the Senior President's Practice Direction of 25 September 2012, that the nature and extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal.

Decision

For the reasons given above, the determination of the First-tier Tribunal is set aside. The decision in the appeal is remitted to the First-tier Tribunal to be determined *de novo*.

Signed:

A handwritten signature in black ink, appearing to read 'A. O'Connor', with a long horizontal flourish extending to the right.

Upper Tribunal Judge O'Connor
Date: 26 March 2015