



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/05917/2016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision and Reasons
Newport Promulgated
On: 25 August 2017 On: 27 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

AR

(anonymity direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Alban, Fountain solicitors
For the Respondent: Mr A McVeety, Senior Home Office
Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Eames in which he dismissed the appeal of the Appellant, a citizen of Iran, against the Secretary of State's decision to refuse asylum and issue removal directions.

2. The application under appeal was refused on 31 May 2016. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Eames on 18 November 2016 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was refused by First-tier Tribunal Judge O'Garro on 21 February 2017 but on renewal to the Upper Tribunal was granted by Upper Tribunal Judge Lindsley on 10 April 2017 in the following terms

The grounds of appeal contend that firstly the First-tier Tribunal erred in law by concluding that the appellant's inability to say which book, chapter and verse in the Bible his favourite Bible story came from meant that his conversion was not genuine. This is an error of law as it is irrational and insufficiently reasoned conclusion. Secondly it is contended that the failure to remember whether Easter was in March or April was not a matter which was sufficiently reasoned as to be an adequate reason why the appellant was not a genuine convert in the context of the other evidence which supported his having genuinely converted. Thirdly it is argued that the First-tier Tribunal failed to engage with the evidence from the appellant's Facebook where he discusses his Christian faith, and whether this created a risk on return in the light of AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 even if the appellant was found not to be a credible witness.

3. By a rule 24 response dated 25 April 2017 the Respondent opposed the appeal arguing that the judge gave adequate reasons for his credibility findings.
4. At the hearing before me Mr McVeety appeared to represent the Secretary of State and Ms Alban represented the Appellant.

Background

5. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Iran born on 13 June 1992. He left Iran as a minor arriving in the United Kingdom and claiming asylum in December 2008. His application was refused on 4 January 2010 and his appeal dismissed on 18 February 2010. After becoming appeal rights exhausted he applied for voluntary return before making further representations in 2013 and 2016. These further representations formed the basis of the claim now under appeal. The Appellant accepts that his original claim for asylum was based on a false premise.

6. The application under appeal is based upon the Appellant's claimed conversion to Christianity. The Respondent accepts that a genuine convert will face danger on a return to Iran but in the refusal letter gives detailed reasons for not accepting the Appellant's conversion. The genuineness of his conversion was the sole matter for the First-tier Tribunal Judge to decide and in dismissing his appeal on asylum grounds the Judge found that the core of his account lacked credibility.
7. The grounds of appeal are summarised in the grant of permission. It is suggested that the Judge's reasons for finding that the Appellant's account was not credible were irrational and/or inadequately reasoned and that in any event he failed to take into account the effect of the Appellant's Facebook activity.

Submissions

8. For the Appellant Ms Alban said that the Judge had given inadequate reasons for finding that the Appellant's failure to recall the chapter and verse of his favourite Bible story militated against his credibility. The interview record shows that he offered to show the interviewer where in the Bible the story could be found. Equally his failure to recall the month of Easter correctly was a very minor matter that should not have been held against him. Easter fell on 27 March 2016. Ms Alban accepted that the interview took place on 19 April 2016. Ms Alban added that the Judge had failed to consider the effect of the Appellant's Facebook activity and this should have been considered in isolation from the credibility of his conversion. Ms Alban was not able to say whether AB and others (internet activity - state of evidence) Iran [2015] UKUT 0257 had been raised in submissions and accepted that it was not raised in the grounds of appeal to the First-tier Tribunal or the skeleton argument.
9. For the Respondent Mr McVeety said that the adverse credibility finding was not just down to the two points highlighted. It is wrong to artificially separate these issues. The Judge dealt with credibility in detail. Looking at these two matters the Appellant was not even able to say that the story was found in the New Testament. So far as Easter is concerned it was the same month as the interview. The starting point however was the Appellant's record of telling lies and the Judge highlights this in his decision. The Appellant's previous dishonesty was held against him and there was nothing irrational in this. So far as

the Facebook activity is concerned this was not advanced at the hearing on the Appellant's behalf.

10. Ms Alban responded to say that the Facebook question was raised on the day according to her instructions. I consulted the Judge's typed record of proceedings and noted that there was nothing to suggest that it was raised. I gave leave for a statement to be filed by the advocate representing the Appellant before the First-tier Tribunal. A statement was duly filed by Lauren Franchina dated 30 August 2017. Ms Franchina states that her notes show that the Judge's attention was drawn to pages 408-410 of the Appellant's bundle which contained evidence of the Appellant's Facebook posts but there is no reference in the notes to AB and others and there is no copy of the case on the Appellant's file. She was unable to confirm that it had been raised in submissions.

11. I reserved my decision.

Error of law

12. This is a case where the First-tier Tribunal Judge has a simple factual issue to decide. The issue was whether the Appellant had genuinely converted to Christianity. It was the Appellant's case that he had converted, or at least begun the process of conversion, in 2013 and this was supported by documentary and oral evidence. The Respondent did not accept that his conversion was genuine and pointed to a number of matters to substantiate this doubt including the two raised in the grant of permission to appeal.

13. In his statement of reasons, the First-tier Tribunal Judge deals with the Appellant's credibility at paragraph 64 onwards before reaching his conclusion as to credibility at paragraph 80. It is a detailed explanation covering more than three pages and fourteen paragraphs of the decision. The two specific matters taken from the Respondent's reasons for refusal letter and referred to in submissions and the grant of permission to appeal are dealt with in one of those fourteen paragraphs. At paragraph 69 the First-tier Tribunal Judge, having accepted in the previous paragraph that the Appellant has answered some of the Respondent's doubts, continues ...

"In other areas, however, I find that doubts remain. The main ones are these:

- I do find it particularly strange that when asked about his favourite part of the Bible, while he could describe the story, he could not name the parts of the Bible it came from. The appellant has explained that by saying, in essence, that the story occurred in several places in the Bible, and the structure of the Bible, with chapter and verse numbers etc, was superimposed on its substance and was merely a way of identifying parts of the Bible one wanted to refer to. He may have a point, but it is still true that those who study the Bible use that referencing system and it is reasonable to assume it is important to know the context of stories in the Bible, particularly one's favourite ones. I do find that to be a weakness in the appellant's case.
- It is also said by the respondent that it is curious that the appellant did not know the month in which Easter fell in 2016, the year in which he was being asked this question. He justified this by saying that in previous years and the following year it was indeed April. But it does seem unlikely to me that a person who had converted with all his heart to Christianity was not aware of the month of this most important of Christian festivals. I take into account that the appellant's background is Iranian and hence his possible lack of familiarity with the Western calendar, but on the other hand he has not shown any difficulties with the Western calendar in other parts of his evidence. This then is also a shortcoming which weakens his claim to have converted."

14. Having identified these two weaknesses the Judge examines other aspects of the Appellant's claim finding, as already noted, that he has answered some of the Respondent's doubts but also finding factors that militate against his credulity. These factors including his acknowledged dishonesty relating to his previous claim (paragraph 65), the timing of his claimed conversion (paragraph 73) and his overall dishonesty (paragraph 74-77). It is a comprehensive assessment and, in my judgement, a balanced assessment. Whilst it is possible that a different Tribunal may have reached a different decision as to where the balance lay there is nothing that could be said to be irrational, perverse or inadequately reasoned. Indeed, the Judge's reasoning is very clearly set out. It is abundantly clear that the Judge has not taken the two highlighted issues in isolation, if he had done it may well be that his conclusion could be considered irrational for these are indeed relatively minor matters. However, these two aspects form only part of the Judge's

overall credibility assessment. He finds them to be 'shortcomings' or 'weaknesses' and the fundamental factor leading to the adverse credibility finding is the Appellant's dishonesty. It is a finding that the Judge was manifestly entitled to make and the conclusion at paragraph 80

"Putting those shortcomings all together, I find they collectively cast enough doubt on the appellant's account that overall I do not find he has shown to the lower standard of proof that he is a genuine Christian convert, or that he has genuinely adopted Christianity as his faith"

reflects the balanced nature of the reasoning and the decision. In my judgement there is no error of law.

15. The other point raised by the Appellant relates to the Facebook posts. The complaint before me is that the Judge failed to take account of AB and others and, if he had done so, he should have reached the conclusion despite the adverse credibility finding that the Appellant was at risk on return.
16. In the first place, I am satisfied that AB and others was not brought to the attention of the Judge. It is not referred to in the grounds of appeal, the skeleton argument, the Judge's record of proceedings or the decision. Ms Franchina, the advocate at the hearing, cannot confirm that it was raised but can confirm that there is no mention of it in her notes and that there is no copy on file. I am sure that there would have been if it had been raised in submissions. It is not a Country Guidance decision. There can in my judgement be no criticism of the Judge in these circumstances for not mentioning the case in his decision.
17. So far as the substance of the allegation of risk is concerned Ms Franchina says that the Judge's attention was drawn to pages 408-410 of the Appellant's bundle which contained evidence of the Appellant's Facebook posts. This does not fit very well with the indexed bundle submitted to the First-tier Tribunal which records pages 393-413 of the bundle as "Various Photographs with Church Members". Further this is not supported by the Judge's typed record of proceedings but of course this is not meant to be a verbatim transcript. I accept that these pages were mentioned because Ms Franchina has made a statement to that effect but it certainly appears that they can have been mentioned no more than in passing.

18. Nevertheless, the failure of the Judge to mention these two Facebook posts in his decision and the failure to mention AB and others may still amount to an error of law so those posts must be examined. There are two relevant posts by the Appellant. The first (at page 409) reads

“Good morning beautiful people. We have bible study today at ... Bethel Church at one pm. It is going to be in English, Farsi, Kurdish (surani). I have provided some Kurdish, Farsi and English bible books. Pastor AC has provided this service. I be there as well. God bless you all.”

The second (at page 410) dated 13 October reads

“Hello everyone, we have bible study today at ... Bethel church at one pm. It is going to be in English, Farsi, Kurdish (surani) by Pastor AC. Come along”

This is the entirety of the Appellant’s relevant Facebook activity as evidenced in the bundle before the First-tier Tribunal or indeed elsewhere.

19. The headnote to AB and others makes it clear that the case is not intended to give guidance because there was no sufficient evidential basis to do so and that the decision was reported only so that the evidence considered by the Upper Tribunal was in the public domain. It must follow from this that, if an argument is to be put forward to the Upper Tribunal relating to the effect of Facebook activity on a return to Iran that those putting forward such an argument must expect to do so armed with more evidence than was the case in AB and others. This case is the very antithesis of that. There was no argument before the First-tier Tribunal and no evidence relating to reception in Iran put forward. As noted above the Facebook posts were raised no more than in passing and no argument was put forward as to their relevance on the Appellant’s return. It is raised for the first time in the application for permission to appeal and then without any of the evidence that was absent in AB and others and indeed without any argument other than the reference to AB and others. Although the skeleton argument submitted to the Upper Tribunal mentions the Facebook posts and AB and others the bundle of documents, whilst copying most of the bundle put forward to the First-tier Tribunal, does not include Section E (pages 393-462) of the First-tier bundle) containing the Facebook posts. Section C - Case Law does not include AB and others. Every indication is given that the Facebook posts and AB and others is an afterthought and, in

the hearing before me, Ms Alban did little to suggest otherwise doing no more than repeating the grounds of appeal.

20. In my judgement, the failure of the Judge to mention the two Facebook posts in his decision and the failure to mention AB and others does not amount to a material error of law. These two posts are brief and in my judgment inconsequential. The First-tier Tribunal Judge found that the Appellant's claimed conversion was not genuine so these posts cannot be said to be evidence of conversion. They are evidence only that the Appellant has posted notification, on two occasions, of a Bible study class. There was no argument put before me, and no reason for me to consider that the Iranian authorities would take such posts as evidence of apostasy causing them to have an adverse interest in the Appellant on his return.
21. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to dismiss the appeal

Summary

22. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Appellant's appeal.

**Signed:
2017**

Date: 26 September

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A handwritten signature in black ink, appearing to read 'John Phillips', written in a cursive style.

J F W Phillips
Deputy Judge of the Upper Tribunal