



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/12863/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 26 September 2017**

**Decision & Reasons Promulgated  
On 3 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**MARYAM ROOSTAMI MORAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Wilkins counsel instructed by Sultan Lloyd Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 1 May 1984 and is a national of Iran.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Davies promulgated on 17 May 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 8 November 2016 to refuse her protection claim .
5. The refusal letter gave a number of reasons which were in essence that it was not accepted that the Appellant was a genuine convert to Christianity.

#### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Davies ("the Judge") dismissed the appeal against the Respondent's decision .
7. Grounds of appeal were lodged arguing: that the Judge was in error in that :
  - (a) His approach to the evidence of the miracle was flawed.
  - (b) His concern about how the Iranian authorities found that the Appellant had attended the house church failed to consider the possibility that members of the church would have been asked about other congregants.
  - (c) The Judge failed to give any reasons for finding that the that it was not credible the Appellant would have maintained contact with her mother when her father had disowned her.
  - (d) The Judge failed to give adequate reasons for dismissing the witnesses evidence that the Appellant was a genuine convert.
  - (e) The Judge failed to consider the risk on return to the Appellant as a result of her baptism.
8. On 12 June 2017 Designated Tribunal Judge Shaerf gave permission to appeal in the following terms:
  - (a) The Judges reasons for rejecting the Appellants claimed account of the raid on her parental home by the authorities is arguably inadequate. He arguably failed to explain why or how the Appellants explanation is sufficiently muddled and evasive to call into question her credibility.
  - (b) The Judge accepted the testimony of the two church witnesses, including the Appellants Pastor, but arguably failed to give sufficient reasons for doubting her Christian life.

(c) It is arguable he erred in attaching too much weight to the circumstances of her conversion rather than the evidence into practice Christianity, whereby in Iran or the United Kingdom.

9. At the hearing I heard submissions from Ms Wilkins on behalf of the Appellant that :

(a) The Judges assessed the plausibility of her account that she had been the subject of a miracle. While plausibility may be an issue in many cases are not matters of faith different. To analyse what occurred in that way is to ask whether what she claimed was rational. Many intelligent people believe in miracles, it was difficult to be a Christian and not believe in miracles. What she claimed had happened was not inherently implausible. The Judge therefore found it implausible that she would attribute her recovery to anything other than a descent to a lower altitude although in fact hat was not quite what she said and in that respect the Judge made a mistake of fact.

(b) There was no dispute that the Appellant had been to the base camp of Everest and now attended Church: can this be outweighed by implausibility and the application of a test of rationality.

(c) The Appellant had adduced evidence that she lived a Christian life: she attended Church, classes and attended services regularly and had been baptised. Reliable evidence would need to adduced to outweigh this.

(d) The Judges finding that she would not be in contact with her mother was not rationally reasoned.

(e) The Judge failed to consider whether the Appellant would be exposed to risk as a result for being baptised. There is no consideration as to whether the authorities would consider Baptism an affront to Islam.

10. On behalf of the Respondent Mr Bates submitted that :

(a) The Appellants motivation for first becoming interested in Christianity is a significant issue given that it is the spark for her decision to attend the house Church.

- (b) The Judge found her answers vague on this issue. He was entitled to consider why as a well-educated person who was an experienced climber would attribute her recovery to a miracle rather than acclimatisation. The Judge found her evidence on this issue was evasive.
- (c) The Judge was entitled to note that in the asylum interview when asked what she did on return to Tehran to practise Christianity she made no reference to attending a house until Q91.
- (d) In relation to the Dorodian witnesses he found them credible but considered that their opinions were formed without being in possession of all the facts.
- (e) In relation to the risk on return the Judge was entitled to consider the risk based on the truth as found by the Tribunal and that she had been baptised as an opportunistic endeavour and therefore she would be able to satisfy the Iranian authorities that she was not a Christian.

11. In reply Ms Wilkins on behalf of the Appellant submitted:

- (a) The Iranian authorities would take baptism seriously.
- (b) The Dorodian witnesses believed that the Appellant was a genuine Christian and attested to her regular attendance at Church: this was the best evidence of conversion. The Judge had to give rational reasons for rejecting that evidence.
- (c) In relation to how the Iranian authorities knew of the Appellant they arrested her friend who had a text from her. It was plausible that the authorities would find out about her even if she does not know exactly how.
- (d) In relation to whether the Appellant referred to her attendance at a house Church late in the AI she had already confirmed her friends arrest in her screening interview.
- (e) The suggestion that the Appellant was evasive at paragraph 23 of the decision in how she dealt with altitude sickness was unreasonable given that

she described behaviour in conformance with the advice given in the NHS document that was before the court.

### **Finding on Material Error**

12. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.

13. In this case the Appellant claimed that she was the subject of a miracle during an expedition to the base camp of Mount Everest when she was suffering from altitude sickness and a Christian friend prayed to Jesus for her and told her that she should ask Jesus for help and there was a 'strange feeling', the blood vessels in her nose burst open and she had 'cracks' on her lips. This incident sparked an interest in Christianity which the Appellant followed up by attending at a house church in Iran which was eventually raided causing her flight to the UK. The Appellants case is then that she arrived in the UK on 14 May 2016 and within a week of her arrival had started regularly attending Gorton Church in Manchester. I note as an aside that neither the refusal letter nor the Judge gives any weight to the fact that at the time of the asylum interview in November 2016 the Appellant was asked numerous detailed questions about Christianity and there is no suggestion that any of her responses were factually incorrect.

14. Ms Wilkins argues that the Judges approach to her account of the miracle, which then impacted adversely on all his other findings and clearly weighed very heavily on the Judges mind, was fundamentally flawed in that he assessed the *plausibility* of her account and approaching her evidence in that way was asking whether her account was rational which in the context of a religious experience was inappropriate. I start off by reminding myself of helpful and relevant advice given in the House of Lords case of R (Williamson and Others) v. Secretary of State for Education and Employment [2005] UKHL 15 where Lord Nicholls addressed the issue of religious beliefs very well, warning judges that great care must be taken assessing the value of faith and beliefs to another human being:

"Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot

always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime.”

15. The Judge addresses the claimed miracle at paragraphs 22-25 of the decision and at paragraph 24 summarises his approach to her evidence in this way:

*“I find it implausible that an experienced mountaineer with the appropriate training and advice and with no previous exposure to Christianity and with a high degree of education would draw such conclusions from her experience and recovery from mountain sickness.”*

16. Ms Wilkins argued that in making this assessment the Judge firstly based it on a factual error in that she had followed the standard advice to prepare for such a climb and therefore did not expect to be sick and that while she did indeed move to a lower altitude she still did not feel well and returned to the group who were higher up but nevertheless only felt well after the ‘encounter’ with Layla. Thus she argued that the Judge was not entitled to conclude that she recovered by following altitude sickness advice and should have realised that because that was not her case. In fact I note that the Judge recognised that the Appellant was still feeling unwell when she climbed back up to re-join her group (paragraph 23) and therefore his conclusion that her health improved because she followed advice given is inconsistent with his own findings.

17. I find merit in Ms Wilkins argument that to suggest it was implausible that the Appellant would not believe in a miracle because, in part, she was well educated and an experienced climber flies in the face of the clear evidence of many intelligent members of religious faiths who accept that miracles occur and that her case is that she improved only after speaking to Layla not as a result of following advice about altitude sickness.

18. The Judge also makes an adverse credibility finding in relation to her inability to explain how the Iranian authorities came to know that she attended the house church (paragraph 32). Given the background material before him about intelligence led raids on house churches and the use of torture and ill treatment during detention and the fact that her case was that Layla, her friend, was

arrested and had a phone with a text from the Appellant on it I am satisfied that this adverse credibility finding was inadequately reasoned and contrary to the background material.

19. The Judges approach to the Dorodian witnesses is also challenged in that having accepted the 'honesty and sincerity' of the Church witnesses (paragraph 40) who confirmed that the Appellant attended Church regularly and had been baptise4d he rejected their evidence that she was a genuine Christian because her claim was '*fatally undermined by the almost complete lack of credibility in her account of events in Iran*' noting that the Church witnesses knew little about her life in Iran. I note that there is no suggestion that the witnesses were given the opportunity to consider whether their view of the Appellant would be different if they were told about the claimed miracle or her account of attending a house church in Iran. I am satisfied that in those circumstances the reasons given for rejecting witnesses whose evidence he had found to be honest and sincere was inadequate if their lack of knowledge about her previous life was the sole basis for rejecting their opinion.

20. I also find that given my concerns about the Judges approach to her claimed miracle and the very significant weight he gives to that in undermining her claim and in assessing the genuine nature of her manifestation of faith his rejection of the Dorodian witnesses evidence is inadequately reasoned.

21. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

22. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

*(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*

*(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*

23. In this case I have determined that the case should be remitted as the findings about the core of the Appellants account of her conversion are unsustainable. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester before me on a date to be fixed.

24. I made the following directions for the resumed hearing:

- List for 3 hours
- Farsi Interpreter

Signed

Date 1.10.2017

Deputy Upper Tribunal Judge Birrell