



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12419/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 28th June 2018

Decision and Reasons Promulgated
On 23rd August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Mr H.R
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. H. Sadiq, Counsel, instructed by Adam Solicitors.

For the respondent: Mr. C Bates, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is an Iranian national who made a claim for protection on the basis he had converted from Islam to Christianity. He said he did so before leaving Iran and whilst in the United Kingdom he became involved with the World Harvest Bible Church where he was baptised. His claim was refused

by the respondent who did not find his account of events consistent and took the view that his Christian church practices here were motivated by an attempt to remain rather than any genuine religious beliefs.

2. His appeal was listed before First-tier Tribunal Judge Siddiqi at Manchester on 3 January 2018. His representative, then as now was Mr Sadiq. An application to adjourn was made before the hearing on the basis the appellant was unfit to give evidence due to his mental state. This was refused but he would be treated as a vulnerable witness in accordance with the joint Presidential Guidance. The application to adjourn on this basis was not renewed at hearing.
3. However, there was a further application at hearing on the basis that a witness, Pastor Linscott of the World Harvest Bible Church, was unavailable. It was said the appellant only became aware of this on 26 December 2017 and his representatives' offices were closed over Christmas and the New Year. There was a presenting officer in attendance and there is no reference to any objection. The judge commented that no witness statement from Pastor Linscott had been served and it was not apparent that he would have been giving evidence. Furthermore, the appellant had been notified of the hearing on 28 November 2017 and had sufficient time to ensure his witnesses were available.
4. The adjournment application was refused. The judge referred to a letter in the papers from Pastor Linscott and commented that it contained little detail about the pastor's interaction with the appellant. At paragraph 25 f) the judge commented on the absence of any witnesses from the church to support his claim. The judge commented there was no evidence from Pastor Linscott to confirm his unavailability. The refusal letter indicated that Pastor Linscott had not replied to the respondent's enquiries. The judge also had a letter from a Pastor Murphy had confirmed his church attendance, but little detail was given. The judge indicated significant weight was being attached to the absence of any witnesses from the church in line with the decision of Dorodian 01/TH 01537. The judge concluded paragraph 27 by accepting the appellant had been baptised and attended church but was not satisfied his conversion was genuine. His appeal was dismissed.

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5. Permission to appeal was granted on the basis it was arguable the judge erred in law in refusing the adjournment. The grant of permission referred to the absence of an express reference to the judge as to the fairness of the refusal of an adjournment and commented on the importance of the witness's evidence to the claim.

6. At hearing, Mr Sadiq said that when his office opened on 2 January 2016 there was an email from the appellant to the effect that he had been advised on 26 December 2017 that Pastor Linscott would be unavailable. The appellant had indicated that the pastor had booked a last minute trip. Mr Sadiq said that his office then contacts Pastor Murphy who indicated she could not attend at short notice and suffered from ill-health. He was able to provide an email from Pastor Murphy dated 2 January 2018 in which she stated that due to severe health problems she has not been involved with the Iranians in the church for nearly a year and could not attend court at the moment. She said it was a matter for the senior pastor whether he felt he knew the person well enough to attend.
7. I asked Mr. Sadiq whether, in the event I found an error of law he was in a position to proceed with the appeal. He indicated he was not and referred me to a letter dated 12 June 2018 from Senior Pastor Morton of the Go-Church Manchester. That letter indicated that neither he nor any of the other pastors involved were available for today's date. Pastor Murphy had annual leave booked and will be out of the country. He himself is on compassionate leave to look after his wife who underwent major surgery on 18 June.
8. Mr. Bates said that the presenting officer's minutes record that the adjournment application was in fact opposed. He pointed out that no written statement from the pastor had been forthcoming. At E1 of the respondent's bundle there was a letter from a Pastor Linscott giving details of the appellant's church involvement. He said it was important that the respondent be advised in advance of the witnesses because they were able to check on certain Dorodian witnesses and see whether they had been found credible in the past. He pointed out there is no direct evidence from the planned witness that they were unavailable. The email referred to today had not been placed before the presenting officer and it was not clear why none of the various pastors were available to attend. The parties had been advised of the hearing on 28 November 2017 and there had been a case management review on the papers on 20 December 2017 and the adjournment application was made on the day of hearing. There was still an absence of witness statements from the pastors or any definite information as to when they would be able to attend even as of today's date.
9. I have had regard to what was said in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). The President, The Hon. Mr Justice McCloskey there indicated if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to consider all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is

challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? In SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284 Lord Justice Moses said the test was not whether the decision was properly open to the judge or was Wednesbury unreasonable or perverse. The test and sole test was whether it was unfair.

10. The appellant's claim conversion to Christianity was at the heart of his claim. His credibility was an issue and whilst the respondent accepted he attended a church did not believe his conversion was genuine. In this context the evidence of members of the church to express an opinion as to his attendance and commitment and lifestyle was highly relevant. The judge indicated significant weight was being attached to the absence of any witnesses from the church in line with the decision of Dorodian 01/TH 01537.
11. In the circumstances my conclusion it was unfair to the appellant to proceed with the appeal rather than adjourn and give him a further opportunity to present relevant witnesses. The fact the proposed witnesses had not produced statements in advance was not determinative. There had been earlier correspondence from the church and the respondent in fact had sought further information from the church. The appellant indicated it was only at the last minute that he learned of their unavailability. I accept that dealing with adjournments can be difficult particularly when made at the last minute. The judge will have to balance the reason given for the adjournment against its relevance to the case and the overriding principle of fairness. In the circumstances I find that the failure to adjourn in the circumstances did amount to a material error of law and fairness requires the appellant be given another opportunity to present his appeal.

Decision.

The decision of First-tier Tribunal judge Siddiqi materially errs in law and is set aside for a de novo hearing.

Francis J Farrelly

Deputy Upper Tribunal Judge

Dated 13 August 2018

Directions

1. Relist for a de novo hearing in Manchester in the First-tier Tribunal excluding First-tier Tribunal judge Siddiqi.
2. A hearing time of not more than 2 ½ hours is anticipated.
3. A Farsi interpreter will be required unless the appellant's representatives advise to the contrary.
4. The appellant's representatives are to prepare witness statements of any members of the church who will be attending. Those witnesses should set out details of their identity and what they prove. They should give dates when it would be extremely difficult for them to attend. If there are any difficulties, then the appellant's representative should advise listing immediately.
5. It would be helpful if witnesses from the church could prepare some statistical information about the church itself including any affiliation; the size of congregation; the attendances and the breakdown of nationalities. Information about members of the congregation who are Asylum seekers should be provided as well as any statistics on their ongoing commitment subsequent to their asylum decision. Information about special arrangements to overcome linguistic or cultural differences would be helpful.
6. The appellant's representatives are to prepare updated bundles for service not later than 2 weeks of the appeal hearing.
7. The appellant has been treated as a vulnerable witness in the original hearing. His representative should advise if this remains a position and what special adjustments, if any, are required are required in line with the Joint Presidential guidance. Generally it is considered beneficial if the specific areas in dispute can be identified and the hearing as focused as possible.

Francis J Farrelly
Deputy Upper Tribunal Judge

dated 13 August 2018