Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13194/2016

THE IMMIGRATION ACTS

Heard At: Manchester Piccadilly	**Decision and Reasons Promulgated**
On: 3rd April 2018	**On: 26th April 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AAA
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: **Mr Brown, Counsel instructed by Duncan Lewis Solicitors**
For the Respondent: **Mr Bates, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Afghanistan born in 1975. He appeals with permission the 3rd July 2017 decision of First-tier Tribunal Ransley to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. The basis of the Appellant's claim for international protection is that he is a former Muslim who has now converted to Christianity and as such would face a real risk of persecution in his home country for reasons of his religious belief.

4. The Respondent did not believe him, and nor did the First-tier Tribunal. In dismissing his appeal the Tribunal states that it has considered all of the material evidence [§11] and the country background reports, including the Respondent's *Country Information and Guidance* [§13]. It notes that the main issue in the appeal is the credibility of the Appellant [§17] and with that in mind embarks on a summary of his immigration history thus far. He arrived in the UK and claimed asylum in August 2002. By September 2003 he was 'appeal rights exhausted', having been found to be untruthful by an adjudicator of the Immigration Appellate Authority (now Judge Coates). The Appellant remained in the country. In July 2016 he made a 'fresh claim' which was now the subject of this appeal. The Tribunal properly directed itself that in those circumstances its starting point, per Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702, was the findings of Judge Coates [§25-28].

5. The determination then turns to consider the evidence of Christian faith. This consisted of the statement of the Appellant himself, a certificate of baptism, a certificate of confirmation (with photographs of the ceremony), a letter from Revd Canon Daniel Burton and letters in support from friends [§31]. The Tribunal finds inconsistency in the Appellant's evidence. At an interview in October 2016 he had said that when he moved to Stoke-on-Trent he had still been a devout Muslim. With that in mind the Tribunal did not find it credible that he would walk into a church "out of curiosity". Nor did it find it credible that he would continue to attend church services in Stoke and Birmingham when on his own evidence he could not understand what was being said. At interview the Appellant had failed to answer questions put to him about

Christianity correctly [§38]. The Appellant gave inconsistent answers about whether he had a court interpreter at a hearing in 2003 [§41], failed to produce a key witness [§43] and gave evasive answers when asked to denounce the Prophet Mohammed [§44].

6. Two *Dorodian* witnesses were produced. The Revd Caroline Hewitt said that she had known the appellant since Autumn 2015. She thought he had been introduced by another member of the congregation but was unable to recall who. She had spoken with him about his life but was unable to recall any details, for instance whether he had won his appeal before a judge in the past or whether he had any family in Afghanistan. Revd Hewitt acknowledged that she did not see the Appellant outside of church and so was unable to say whether he was leading "a Christian life"[§46-49]. Revd Burton said that the knowledge that the Appellant had lied in the past would not change his assessment of whether he is a Christian today. His attendance at church was the 'best test' and people can change. Revd Burton sees the Appellant other than at services only at social events organised by the Church. He said that he does not question the motives of newcomers to the church, even if they are failed asylum seekers [§51-54]. Of this evidence the Tribunal accepted that both Revd Hewitt and Revd Burton had acted in good faith [§56]. It was not however prepared to attach significant weight to their evidence. Revd Hewitt does not know the Appellant well and does not see him outside of church. Their assessments were both based on no more than the fact that he turns up to church.

7. Taking all of the evidence in the round and applying the lower standard of proof the Tribunal rejected the appellant's claim to be a genuine Christian and the appeal is dismissed [§58]. It appears to be implicitly accepted that the Appellant has been attending church as claimed, and that he has been baptised and confirmed.

8. The Appellant now appeals on the following grounds:

    i) The Tribunal failed to make findings on a specific submission made, namely that the Appellant would face a real risk of harm even if he is not a genuine Christian;

    ii) Failure to take material evidence into account in the context of the credibility assessment;

    iii) Failure to apply the guidance in Dorodian (01/TH/1537).

9. I note that the written grounds were not drafted by Mr Brown, who made helpful and sensible submissions at the hearing before me.

10. I was not provided with a written response from the Secretary of State but at the hearing Mr Bates defended the decision of the First-tier Tribunal on all grounds.

Discussion and Findings

Ground (i)

11. The written grounds submit that the First-tier Tribunal was asked to consider whether the Appellant would be at risk in Afghanistan simply by virtue of having attended Church in Stoke and Birmingham and having been baptised and confirmed. It is submitted that those facts gave rise to a real risk of the Appellant being *perceived* to be a Christian.

12. In pursuing this ground Mr Brown faced a number of difficulties. The first was that he could not demonstrate that the submission had been made at all, since there was no written evidence of it (for instance in the form of a skeleton argument) and he himself had not been counsel before the First-tier Tribunal. It does not feature in the determination or, as far as I could see, the record of proceedings. Setting that to one side and accepting for the sake of argument that it is a *Robinson* obvious point which should perhaps have been considered in the global appraisal of risk, I find that there are other, more significant obstacles for Mr Brown.

13. The argument rests on the Appellant having to reveal when questioned that he had been attending church. The written grounds refer to "country material" confirming that those who have been absent from Afghanistan a long time being asked about their lives abroad. Mr Brown did not know what country material the writer may have been referring to. Whilst the First-tier Tribunal refers to having read the country background reports including a CIG, there are no documents at all in the court file that might answer that description. I have looked at the Respondent's website listing the various 'Country Information and Guidance' reports. Of the eight listed the only one with potential relevance was the January 2018 Country Policy and Information Note *Afghanistan: Afghans perceived as 'Westernised'* (version 1.0). I could find no reference therein to people being questioned about the details of their lives abroad, nor to any perceived Christianity.

14. I can only conclude that there was no evidence before the First-tier Tribunal to the effect that the Appellant would be reasonably likely to be examined about the details of his life in the UK. He has lived in this country for many years. Presumably he has done other things than attending church. If asked about what the UK was like there would be no compulsion upon him to disclose that he had attended church: he can talk about all the other things he has done. If he is not genuine, this would not be a *HJ (Iran)* situation, since he would not be

compelled to conceal something fundamental to his identity. Nor is it akin to the position of Iranian returnees, since the evidence in those cases is that on arrival in Tehran they are specifically asked about their asylum claim.

15. Ground (i) therefore fails. It has not been shown that the argument was put to the Tribunal, but even if it was it was not an argument supported by the country material or law.

Ground (ii)

16. There are two planks to the second ground advanced.

17. First, it is submitted that in reaching its finding that it is not credible that this man would enter a church simply "out of curiosity" the Tribunal failed to take specific evidence into account. That evidence was that the Appellant had been destitute and reliant on charity at the time. Because he had no outstanding claims he was not being provided with NASS support. He said that he had been invited into the church where he had been given new clothes. That was why he went.

18. I have read the evidence on this point. At Q20 of his interview the Appellant says:

> "I was in NASS accommodation. Opposite the college was a church. I went there one day, I was so welcomed by people in the church I was so surprised. People were so kind"

At Q21-22 the interviewer asks why he chose to go into a church and the Appellant replies:

> "I went in there to see what it was like, everyone is curious when they see something they don't know anything about"

19. In his witness statement at paragraph 6 the Appellant says this:

> "When I was in Stoke there was a Church opposite my college, and one day, I was invited to go in by the people there. It was approaching Christmas. I went in, having seen lots of people go in, so I was interested to go in"

20. It is quite evident from this evidence that ground (ii) is not only without merit, it is positively misleading. The Appellant did not claim that he went into the church in order to receive charity. He was not, on his evidence, destitute. He was living in NASS accommodation. Moreover his evidence was, just as Judge Ransley characterised it, that he went into the church because he was "curious".

21. The second part of ground (ii) is that the Tribunal failed to weigh in the balance any of the Appellant's evidence. It is submitted that the Tribunal simply

adopted the position taken by the Respondent in her 'reasons for refusal' letter, and did not appear to consider any of the evidence offered by the Appellant to rebut the analysis therein. It is submitted "there is a clear discrepancy here between the standing of the parties which goes to the heart of the determination…the lack of equal consideration of the parties goes to the fairness of the outcome". In terms of particulars the grounds point to the Appellant's evidence in his witness statement about the problems he encountered with an interpreter.

22. I assume that the passage to which the grounds refer is paragraph 5 of the Appellant's 5th April 2017 witness statement in which he explains that the interpreter at the asylum interview was of Pashto origin and so was unfamiliar with the terms used by the Appellant in Dari. Although the Appellant had left the interview confident that they had understood each other, when he received the refusal letter he saw that some of the things he said had not been interpreted properly:

> "I think the issues are that there are some religious talk, he spoke about the Muslim way, rather than the Christian way. He didn't understand Bible terms, as these are Farsi. A lot of Christian terms I know, I am familiar with in Farsi, which is similar to Dari"

At paragraph 15 the Appellant adds:

> "The question on the 10 commandments, is one where there was some difficulties in the translation of Bible terms. He couldn't understand the 'commandments' aspect, which is a religious term".

23. It is true that this evidence does not feature in the determination. Although paragraphs 33 and 39 make specific reference to the Appellant's rebuttal statement it is not apparent that this specific passage was taken into account. I am not satisfied that this was a material omission, because the Appellant's difficulties in answering questions is not a matter that appears to have attracted much weight in the overall balancing exercise, meriting only brief mention at paragraph 38. The point made there is that after having attended bible classes for some time the Appellant was not able to answer 'basic' questions. No examples are given by the Tribunal but I see from the refusal letter that this included the Appellant's suggestion that the gifts bestowed upon Jesus by the three wise men may have included sheep, but he "wasn't sure". I would further note that the Appellant and his *Dorodian* witnesses, in particular Revd Burton, had all emphasised that 'textbook' knowledge of the Bible was not of particular relevance in the assessment of 'true' faith. It is therefore difficult to see how this one omission could have made much difference to the outcome of the appeal.

Ground (iii)

24. Ground (iii) was, quite sensibly, the only one pursued by any vigour by Mr Brown. The point is made that the Appellant produced, in accordance with Dorodian, two ordained ministers who were able to speak, without contradiction, to the Appellant's regular attendance at church. What the Tribunal did with this evidence was to accept at face value the honesty of Revd Burton and Revd Hewitt, but to diminish the weight to be attached to their assessment of the Appellant's faith on the grounds that neither knew him particularly well. Mr Brown submitted this to be an impermissible extension of Dorodian. He asked rhetorically whether ministers are expected to follow all of their congregants home to check that they are living "Christian" lives. In his submission it placed an unreasonable burden on Christian ministers.

25. I agree with Mr Brown that it would be wrong if the Tribunal sought to introduce a new test to the effect that Dorodian witnesses must know the appellant they support particularly well. Their function is simply to attest to his attendance at Christian worship in Church. I am not however satisfied that this was what the First-tier Tribunal in this case sought to do.

26. The case of Dorodian is now of some vintage, but it remains good law. The principles set out in that Iranian conversion case are simple and well-known. A person who has declared themselves to be a Christian should be expected to evidence this by his regular attendance at church, and that attendance should be confirmed before the Tribunal by the attendance at court of one or more ordained ministers of a church of this country. The reason that this is important is because in the context of Iran in 2001 it was "church membership, rather than mere belief, which may lead to risk". As already discussed in ground (i) there was no evidence that simply having attended church in this country would place the Appellant at risk of persecution in Afghanistan today. In order to succeed he had to demonstrate that he was *actually* a Christian. The Dorodian 'guidelines' read as follows:

> a) no-one should be regarded as a committed Christian who is not vouched for as such by a minister of some church established in this country: as we have said, it is church membership, rather than mere belief, which may lead to risk;
>
> b) no adjudicator should again be put in the position faced by Mr Poole in this case: a statement or letter, giving the full designation of the minister, should be sent to the Home Office at least a fortnight before the hearing of any appeal, which should give them time for at least a basic check on his existence and standing;
>
> c) unless the Home Office have accepted the appellant as a committed church member in writing in advance of the hearing, the minister should invariably be called to give oral evidence before the

adjudicator: while witness summonses are available, adjudicators may reasonably expect willingness to do so in a genuine case;

d) if any doubt remains, there is no objection to adjudicators themselves testing the religious knowledge of the appellant: judicial notice may be taken of the main beliefs and prayers of the Church.

27. These guidelines are frequently misquoted. The suggestion is often made that the production of an ordained witness must compel the conclusion that the appellant in question is in fact a Christian. That is not what they say. The effect of (a) is that *as a minimum* the appellant who wishes to assert conversion to Christianity should produce such a witness. He who fails to do this will not be able to demonstrate that he is practising Christianity. It is clear from (d) that the evidence of the witness cannot itself be determinative. It is for the Judge to make that final analysis.

28. In this case Judge Ransley had before her an appellant who had already been found to be profoundly untruthful by an earlier Tribunal. He gave what she considered to be inconsistent and implausible evidence about his claimed conversion and when asked to denounce the Prophet Muhammad had "ducked the question". She did not doubt the evidence of the Dorodian witnesses that the Appellant had been attending church, or that he had been baptised and confirmed, but was not persuaded that they could speak to any more than that. Had the witnesses been able to say that they had spent any significant period of time with the Appellant outside of formal services or lessons, she would have been able to attach greater weight to their faith in his.

Decisions

29. The decision of the First-tier Tribunal is upheld.

30. There is an order for anonymity.

Upper Tribunal Judge Bruce
24th April 2018