



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13797/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 24 July 2018

Decision & Reasons Promulgated
On 2 August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEHDI [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Bates, Home Office Presenting Officer

For the Respondent: Mr M Karnick, Counsel, instructed by Bankfield Heath Solicitors

DECISION AND DIRECTIONS

1. The respondent (hereafter the claimant) is a national of Iran. On 8 December 2017 the appellant (hereafter the Secretary of State or SSHD) refused his asylum application. Upon appeal, in a decision sent on 19 February 2018, Judge A Davies of the First-tier Tribunal (FtT) allowed his appeal. The SSHD has permission to challenge that decision. He does so on two grounds. It is first of all submitted that the judge erred

in failing to make a finding on the crucial issue in the appeal which was whether the claimant was in fact a genuine Christian convert and secondly failed to properly apply the **Dorodian** (01/TH/1537) guidelines to the evidence and done so taking account of his adverse findings on the claimant's claim to have converted in Iran. In what is effectively a third ground, the SSHD takes issue with the judge's finding that if the claimant is questioned on return to Iran he is likely to reveal that he has been attending church and has been baptised. The SSHD points out that the claimant has not yet been baptised and if not genuine, may not do so and whether his conversion is genuine or not is highly relevant to how he is likely to respond under questioning: "For example, if simply asked what his religion is and he has not genuinely converted he would have no reason to mention his church activities at all".

2. I am grateful to both representatives for their excellent submissions. Mr Bates amplified the SSHD's written submissions. Mr Karnick submitted that the grounds amount to no more than a disagreement with the judge's positive findings. The judge carefully weighed all of the evidence and it was clear that he had found the claimant was a genuine Christian convert. The judge clearly considered whether the lack of credibility in the claimant's account of his conversion in Iran meant he should not be believed about this conversion in the UK. He submitted that the judge correctly applied the **Dorodian** guidelines.
3. I have concluded that the judge erred in law.
4. First of all, the judge failed to make clear findings on whether the claimant was a genuine Christian convert. Juxtaposed to paragraphs 23-40, wherein the judge makes very detailed and clear findings (that the claimant's account of conversion to Christianity in Iran and being subject to an arrest warrant was untrue), his treatment at paragraphs 41-52 of the issue of whether the claimant genuinely converted to Christianity in the UK is very different in character. Most of these latter paragraphs are taken up with a summary of the witness evidence together with findings, on the basis of this evidence, that (i) the claimant had been attending church from at least June 2017 (possibly longer); and (ii) he is shortly to be baptised (paragraphs 49 and 56). The judge then completes his treatment of this issue as follows:

"50. I do have concerns as to whether the Appellant's conversion to Christianity is genuine. However, I did have regard to the comments of the judge in **SA (Iran) v SSHD [2012] EWHC 2575 (Admin)**. That case concerned the question of whether an appellant's asylum and other claims were clearly unfounded and therefore capable of being certified under section 94(2) of the 2002 Act. The judge considered it to be a dangerous practice for a judge to peer into a person's soul in order to assess whether faith was genuinely held. He was at a loss to understand how that could be tested other than by considering whether a person was an active participant in his church.

51. In that respect I have considered the **Dorodian** guidelines. It was held that *'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 leave (sic) to risk.'

52. The judge in **SA (Iran)** highlighted that aspect of risk. He held: *'There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy.'*
 53. That takes me to the third aspect of the case that I must consider, namely the question of risk on return."
5. Nowhere in those paragraphs does the judge state clearly that he accepts that the claimant is a genuine convert.
 6. That said, I accept Mr Karnick's submission that the purport of these paragraphs must be to make such a finding.
 7. However, the judge's reasons for his findings (such as they are) cannot withstand scrutiny. It would appear from what is said in paragraph 50 that the judge considered that because he could not "peer into a person's soul" he should limit his assessment of whether a person is a genuine Christian convert to "whether a person is an active participant in his church". Such reductionism finds no support either in case law on conversion or in Tribunal country guidance in Iran. Nor does it find any support in **Dorodian**, a case on which the judge appeared to place strong reliance. Even if this proposition was one enunciated in **SA (Iran)** (which is not my own reading of it) **SA (Iran)** is not a country guidance case and in common sense the mere fact of active participation in a church cannot be determinative of whether that participation is genuine or contrived.
 8. To the extent that the judge sought to rely for this reductionism on **Dorodian** the passage he cited from that decision is concerned with the need for the fact of (committed) Christian belief to be evidenced by church membership. It does not argue that church membership is determinative.
 9. Further it is hard to see that the witnesses called come within the **Dorodian** guidelines, as they were not church leaders.
 10. Further, by virtue of reducing the issue of genuine conversion to church attendance (plus imminent baptism), the judge effectively excised his "concerns as to whether the appellant's conversion to Christianity is genuine" (paragraph 50) from his assessment, taking no account especially of the relevance for the issue of genuineness of the earlier adverse findings made on the claimant's claim to have converted in Iran (where he claimed, inter alia, to have attended house churches).
 11. Whilst Mr Karnick did not quite put matters this way, his submissions do ventilate a fall-back argument that even if the judge had decided the appellant was not a genuine

convert, his assessment still entitled him to allow the appeal, on the basis that on return the claimant could not be expected to lie. Mr Karnick pointed out what the judge stated at paragraph 52:

“52. The judge in **SA (Iran)** highlighted that aspect of risk. He held: *‘There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy.’*”

coupled with paragraphs 54-56:

“54. The likely scenario on return to Iran is that the Appellant will be questioned on arrival in Tehran. It is clear from the evidence given and accepted in **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC)** that the Appellant as a failed asylum seeker would be questioned on return to Iran. The Appellant would not be expected to lie: **HJ (Iran) and HT (Cameroon) [2010] UKSC 31**. The receiving officer would be likely to discover that the Appellant had been a church attender and had been baptised.

55. At paragraph 23 of **SSH** the Tribunal held: *‘In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment.’*

56. An admission by the Appellant that he had converted to Christianity in the UK, that he had been baptised and that he regularly attended church is in my view reasonably likely to lead to further questioning with the risk of detention and ill-treatment. Such an admission would be prima facie an admission of apostasy, which is a capital offence in Iran. On that basis, particularly as I accept the evidence that the Appellant has regularly attended church and is shortly due to be baptised, I am satisfied that he would be at real risk on return to Iran.”

12. However, whilst I do not seek here to exclude this type of argument regarding risk on return, it is by no means certain that the judge allowed the appeal on this basis or that he would have allowed it if he had concluded the claimant was not a genuine Christian convert.
13. For the above reasons I conclude that the judge’s treatment of the issue of whether the claimant would be at risk on return based on his claim to be a genuine Christian convert was irrational and that his decision should be set aside.

14. Whilst I have set aside the decision of the judge, I see no reason not to preserve his findings that the claimant has been attending church from at least June 2017 and that at the date of hearing there were plans for him to be baptised shortly. Even so, it is clear that the next hearing may need to hear evidence (certainly from church members who have known him) relating to whether his conversion is genuine and to appraise that afresh. Accordingly I conclude that pursuant to the Senior President's Practice Statement, it should be remitted to the FtT (not before Judge A Davies).
15. It is a matter for the next Tribunal, but it is surprising to me that FtT judges should continue to attach central importance to the Dorodian case, since it was not a country guidance case and long pre-dates important case law regarding issues of religious belief (e.g. the CJEU case C-199/12 of X, Y and Z). A recent account of the deliberations of a number of European judges on this issue has been published by the International Journal of Refugee Law and may or may not be of assistance: see "Credibility Assessment in Claims Based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach" (Uwe Berlit, Harald Doerig and Hugo Storey), IJRL 27 2015 pp. 649-666.
16. No anonymity direction is made.

Signed:

Date: 29 July 2018



Dr H H Storey
Judge of the Upper Tribunal