



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13805/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th July 2018

Decision & Reasons Promulgated
On 18th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A Tan, Senior Home Office Presenting Officer

For the Respondent: Miss S Tabassum of Broudie Jackson & Canter Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Siddiqi (the judge) of the First-tier Tribunal (the FTT) promulgated on 26th February 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FTT. I will refer to him as the Claimant.

3. The Claimant is a male citizen of Iran born 18th August 1993. He claimed asylum on the basis of his sexuality, on the basis that he is gay, and also because of his religious belief, having converted from Islam to Christianity.
4. The application was refused on 13th December 2017. It was not accepted that the Claimant is gay, nor that he had genuinely converted to Christianity. The Secretary of State did not believe he would be at risk if returned to Iran.
5. The appeal was heard by the FTT on 1st February 2018. After hearing evidence from the Claimant the judge noted that he no longer considered himself to be gay as this was not in accordance with his religious belief as a Christian. The judge found that the Claimant had not had any gay relationship in Iran, and found that he had not established that he is gay or would be treated as gay by potential persecutors in Iran.
6. The judge accepted that the Claimant had genuinely converted to Christianity and would wish to practise his faith openly in Iran, and found that he would face a real risk of persecution if he were to do so. Therefore his appeal was allowed on asylum grounds and with reference to Article 3 of the 1950 European Convention on Human Rights.
7. The Secretary of State applied for permission to appeal to the Upper Tribunal. It was contended that the Claimant had initially made a claim for asylum on the basis of being gay, and then changed his claim to one based upon a conversion to Christianity. The judge made an adverse credibility finding in relation to the Claimant's claim to have been gay while in Iran. The judge had then gone on to find the conversion to Christianity genuine. It was submitted that the judge had failed to take into account her own adverse credibility finding against the Claimant when considering whether his claimed conversion was genuine.
8. In addition it was submitted that mere conversion to Christianity would not necessarily place the Claimant at risk on return and reliance was placed upon AS (Iran) [2017] EWCA Civ 1539. It was submitted that this decision confirms that the Claimant would only be at risk if he were to be proselytising upon return.
9. Permission to appeal was granted by Judge Hodgkinson.
10. Following the grant of permission the Claimant lodged a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended that the judge had not erred in law.
11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

12. Mr Tan relied upon the grounds contained within the application for permission to appeal and submitted that the judge had erred by not considering the appeal holistically. The judge had in effect drawn a line under her adverse conclusions

regarding the claim to be gay, and should have taken her adverse credibility finding on that issue into account when considering the genuineness of conversion to Christianity. Reliance was placed upon AS (Iran) on the basis that this case proved that the Claimant would not be at risk unless he intended to proselytise or act in an evangelical way. It was accepted that this decision was not referred to in the refusal decision or at the hearing before the FTT.

13. On behalf of the Claimant Miss Tabassum emphasised that AS (Iran) had not been relied upon. In any event evidence from the pastor of the Claimant's church confirmed that the church is evangelical, and there was evidence within the Claimant's bundle which showed that he openly wished to practise his faith, as he had made Facebook posts in relation to his Christian belief.
14. It was submitted that in relation to credibility, the judge had made appropriate findings and given sustainable reasons.

My Conclusions and Reasons

15. Dealing first with the challenge to credibility, I find no material error of law. In my view it cannot fairly be said that the judge failed to take into account her own adverse credibility findings. I find no substance to the submission that the judge did not consider the evidence in the round or holistically.
16. The judge was clearly aware of her own adverse credibility findings when considering whether or not the conversion to Christianity was genuine.
17. The judge at paragraph 25 took into account the points made in the refusal decision, in that it was accepted that the Claimant had a basic knowledge of Christianity, but that he did not know when Jesus was born or what religion Jesus was, and he had been unable to provide any information about Luke. He had not yet been baptised.
18. The judge took into account and placed weight upon the evidence from Pastor Grey, who confirmed that the church was cautious about baptism, and that he personally had not baptised anyone who had not been granted leave to remain, and that he did not wish to baptise anyone simply to bolster an asylum claim. However the pastor's opinion of the Claimant, even though he had not been baptised, was that his interest in Christianity is genuine.
19. The judge in fact found the pastor's evidence to be somewhat contradictory, describing the Claimant as genuinely motivated in Christianity on one hand, but on the other hand refusing to baptise him until he had leave to remain, which may indicate some doubt.
20. However the judge also takes into account the Claimant's attendance at church and the length of time that he has been attending, and although he failed to answer some questions in relation to Christianity when interviewed, he was also able to correctly answer a significant number of questions. The judge expressly states that she has considered the evidence in the round and clearly has. I find no material error in her

conclusion that the Claimant has genuinely converted. That is a finding open to her on the evidence. I do not find that it can be described as perverse or irrational.

21. The challenge by the Secretary of State on this issue amounts to a disagreement and does not disclose an error of law.
22. I find no merit in the Secretary of State's reliance upon AS (Iran). It is common ground that there was no reference to this decision when refusing the application for asylum, and there was no reference to this decision before the FTT. I accept the submission made on behalf of the Claimant that it was therefore not surprising that the judge did not refer to AS (Iran) as neither party had made any submissions upon it.
23. I also accept the submission made on behalf of the Claimant that he can in fact be distinguished from the Appellant in AS (Iran) who was found not to evangelise or proselytise and who regarded her religion as a personal matter and who had sought no public expression of her Christianity. At paragraph 42 of AS (Iran) it was found that the situation might be different if the Appellant in that case was a member of a Christian denomination which taught that active evangelising was a duty.
24. The evidence in this case is that the Claimant has joined an evangelical church. This is confirmed by the pastor in his e-mail statement at page 22 of the Claimant's bundle in which he confirms his church as "an Evangelical Reformed Baptist Church." In addition I accept that within the bundle are various Facebook posts, which the Claimant has made, and which refer to his Christian faith and which indicate the evangelical nature of that faith.
25. I conclude that the judge did not materially err in law.

Notice of Decision

The FTT decision does not disclose a material error of law. I do not set aside the FTT decision. The appeal of the Secretary of State is dismissed.

Anonymity

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and is made because the Claimant has made a claim for international protection.

Signed

Date 10th July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

Because the decision of the FTT stands, so does the decision to make a fee award of any fee which has been paid or is payable.

Signed

Date 10th July 2018

Deputy Upper Tribunal Judge M A Hall