Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01495/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th December 2018	On 8th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

EP
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms H Short (Counsel), instructed by Elder Rahimi Solicitors (London)
For the Respondent: Mr J Whitwell (Senior Home Office Presenting Officer)

DECISION AND REASONS

This is an appeal against a determination of First-tier Tribunal Judge Moxon, promulgated on 11th July 2018, following a hearing at Bradford on 3rd July 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

The Appellant is a citizen of Iran, female, and was born on [~] 1988. She appealed against a decision of the Respondent refusing her application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395, in a decision dated 19th January 2018.

The Appellant's Claim

The Appellant's fear of return to Iran is based upon her claim that she has converted to Islam to Christianity, and that she also fears return on account of her imputed political opinion, as well as an infringement of her Article 8 rights to private and family life.

The Judge's Findings

The judge noted how the Appellant had given an account of the treatment of political dissidents and Christian converts in Iran "which is prima facie plausible when considering country evidence. This enhances her credibility" (paragraph 36). The judge also observed how the Appellant had been baptised and attends church (paragraph 38). Furthermore, there was written evidence from Reverend Clarke, and written and oral evidence from Reverend Whalley, and the judge concluded that he "found the evidence from the church leaders to be credible" (paragraph 39).

However, as against this, the judge did not accept that the Appellant became disillusioned with Islam, or that she was approached by her subsequent mother-in-law, whilst working in a shop, and that thereafter the two families arranged for a marriage proposal, which underwent a one year engagement, given that the family that the Appellant married into was "religiously zealous", and it was not credible that the in-laws would have approached this young female whom they did not know, interacted with her family to arrange an engagement, "without learning of her religious convictions" (paragraph 41(a)). Insofar as there were discrepancies in the evidence given, the judge concluded that he would not accept that the discrepancies arose on account of interpreter issues (paragraph 41(d)).

The appeal was dismissed.

Grounds of Application

The grounds of application state that the judge failed to note that there was a distinction between a substantive asylum interview and a screening interview, the latter was not meant to interrogate the reason for applying for asylum, and the judge in the determination had confused the two forms of interview. Moreover, the reasons for not believing the Appellant had converted to Christianity was speculative at best and no consideration was given to the treatment of Christian converts in Iran. On 31st November 2018, permission to appeal was granted by the Tribunal.

Submissions

At the hearing before me on 17th December 2018, Ms Short, appearing as Counsel of the Appellant, submitted that the judge's credibility assessment was central to the Appellant's claim, and the judge had reached an eventual conclusion (at paragraph 42) which was irrational (on the basis of the assessment carried out at paragraph 41).

First, the judge had concluded (at paragraph 39) that "I would expect that the very thought of questioning the faith of someone attending worship and other church activities with apparent enthusiasm would be unpalatable to them" when referring to the evidence of the church ministers, the Reverend Clarke, and the Reverend Whalley. However, the reality was that not only was this speculative, but, in point of fact, Reverend Whalley had explicitly stated that he had questioned the Appellant about her convictions, and he had set out his considerable experience in assessing the genuineness of conversion claims, and had been involved in meetings with the Home Office on this very subject.

Second, the screening interview referred both to the Appellant's fear, on account of her Christian conversion, as well as her fear on account of her imputed political opinion. Nevertheless, there were a number of errors there, which were occasioned by the Appellant, who spoke next to no English at all, having to use an interpreter by phone. Some of these errors do not go either way, but remain as errors nevertheless. For example, the Appellant's date of birth is out by ten years (her real date of birth being 4th January 1988). Her race and ethnicity is wrongly described as Kurdish, when she comes from Shiraz. Given that it was well accepted that the Appellant had struggled with an interpreter on the telephone, the judge was wrong to have said that he did not accept that the discrepancies arose on account of interpreter difficulties.

For his part, Mr Whitwell submitted that the judge had made it quite clear at the outset (at paragraph 10) that he had taken into account of all the evidence. Therefore, no criticism could be made of the judge in terms of failing in the proper evaluation of the evidence.

Second, whereas it is true that Reverend Whalley gave oral evidence and stated that the Appellant was a genuine convert, and that he would not have attended court on her behalf if he had doubted her genuineness, and whereas it was also true that he saw the Appellant regularly and communicated with a true Farsi interpreter (paragraph 33), nevertheless, it was the case that the judge later explained that the church witnesses would have found it "unpalatable" to question the church activities of a witness who had demonstrated such "apparent enthusiasm" (paragraph 39). That was a conclusion open to the judge.

Third, and perhaps most importantly, the judge was entitled to come to the conclusion that the Appellant could not be a genuine convert, because she had married into a family who were "religiously zealous" people, and the suggestion that the family of her marriage had taken to her "without learning of her religious convictions" (paragraph 41(a)) was simply not credible, and the

judge was right to have pointed this out. It was one thing to say, as the Appellant herself was saying, that she was religiously unconcerned, but it was quite a different thing to say that the family that she was marrying into were "religiously zealous", and yet it mattered not to them what the Appellant's own religious views were. At the very least, they would have expected her to be religious in Islamic terms.

In reply, Ms Short submitted that the core evidence of Reverend Whalley shows that, far from it being "unpalatable" for the church ministers to question the Appellant, Reverend Whalley had actually questioned the Appellant on this very point, and to state that the church witnesses could not be given controlling weight in their evidence in this appeal, on a factually incorrect basis of their not having questioned the Appellant, was plainly an error. In the earlier case of **Dorodian** (paragraph 45 of the refusal letter) it was well accepted that the attendance of church ministers would carry considerable weight at a religious conversion hearing. That just goes to show the importance of such witnesses, and they had been wrongly given a reduced weight in the balancing exercise, on account of it being wrongly suggested that they would find it "unpalatable" to question the Appellant, when this had in fact been done.

Error of Law

I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1)) of TCEA 2007 such that I should set aside the decision. My reasons are as follows. I accept that the judge was fully entitled to come to the conclusion that the Appellant lacked in credibility, when she claims to have married into a family that were "religiously zealous." After all, this was on the basis of her mother-in-law simply meeting her in a clothing shop, after which a long one year engagement followed, "without learning of her religious convictions", a matter which does not necessarily amount to speculation, in the way that has been submitted before me. However, I do find that the treatment of the church witnesses has been such that the judge fell into error.

The starting point is the significance to be attached to church witnesses who attend court to vouch for the veracity of a convert who has changed their religion to Christianity. This was a case where Reverend Whalley, who gave oral evidence, in addition to his written evidence, had stated that he would not have attended court on behalf of the Appellant if he had doubted her genuineness. He had stated that he saw her regularly, and communicated with her regularly. (Paragraph 33). On this basis, and in circumstances where the judge found both Reverend Whalley and Reverend Clarke to be entirely credible, for the judge to state that whilst their evidence should be given "significant weight I would expect that the very thought of questioning faith of someone attending worship and other church activities with apparent enthusiasm would be unpalatable to them" (paragraph 39), was factually wrong. The Reverend Whalley actually gave evidence to say that he had questioned the Appellant on this matter and then come to the firm view that the Appellant was a genuine convert. The effect of the judge having approached the evidence of both Reverend Whalley and Reverend Clarke on

the footing that they would have found it "unpalatable" to question the Appellant was to downplay the significance of their evidence in the eventual finding of fact as to whether the Appellant was a bona fide and genuine convert. Second, given that the Appellant had been baptised and attended church (see paragraph 37), the judge failed to consider the legal position in relation to converts returning to Iran, as apostates. That issue needed consideration.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is to be heard by a judge other than Judge Moxon under practice statement 7.2(b).

An anonymity order is made.

The appeal is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date

Deputy Upper Tribunal Judge Juss 4th January 2019