



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02924/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre

**Decision & Reasons
Promulgated**

On 15th January 2019

On 6 February 2019

**Typed, corrected, signed and sent to
promulgation on 31st January 2019**

Before

Upper Tribunal Judge Chalkley

Between

**[M R]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dixon of Counsel instructed by Braitch RB Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iran who appeals against the decision of the Secretary of State made on 18th February 2018 to refuse his claim for asylum and humanitarian protection and to give directions for his removal from the United Kingdom.

2. The appellant was born on [~] 1984. He was born in Iran and is of Kurdish ethnicity. He was raised in the tradition and faith of Islam and he was married. He worked as a kolber working and transferring goods on the border. He claims that whilst living in Iran he was involved with the Komala Party and began to help them three to four years ago. He claims that he would be at risk on return as a result. In the alternative, he was not particularly involved with the party, but sought to help all Kurds and would likewise be at risk of harm on return.
3. From about the age of 25, the appellant claims that he began to feel increasingly disillusioned with Islam. A friend of his, [N], talked to him about Christianity. Whilst still in Iran the appellant decided to embrace Christianity. This was about a year and nine months before the appellant was interviewed in connection with his asylum claim in the United Kingdom. That interview was conducted at the end of January 2018 and so it would have been about the end of April 2016 that the appellant decided to embrace Islam.
4. The appellant left Iran for two reasons. First his former wife threatened to report his political activities to the authorities, and secondly he felt he had to leave because of his Christian faith. He entered the United Kingdom clandestinely on 22nd August 2017 and claimed asylum on the same day.
5. The appellant appealed the decision of the Secretary of State of 18th February 2018 to the First-tier Tribunal and his appeal was heard at Sheldon Court, Birmingham on 3rd April 2018 by First-tier Tribunal Judge O'Hagan. The judge concluded that he could not be satisfied on the evidence adduced before him that the appellant has established that he is a Christian convert. He was not satisfied that the appellant had discharged the burden of proving that he faces a substantial risk of serious harm in his home country. The judge dismissed the appellant's appeal on asylum, human rights and humanitarian protection grounds and under the Immigration Rules.
6. Dissatisfied with that decision the appellant decided to appeal. In granting permission to appeal First-tier Tribunal Judge Hodgkinson said this:-
 - "2. The grounds argue that the judge erred as follows: in his assessment of the evidence of a pastor in relation to the appellant's claimed Christian conversion: in concluding that little by way of checks were undertaken, the judge misunderstanding the extent of the appellant's contact with the pastor and the fact that the appellant had been attending baptismal classes; when considering that baptismal classes were insufficient in terms of checks, in failing to provide the pastor with the opportunity to comment upon this (procedural unfairness); in concluding that the conversions between the pastor and the appellant were necessarily limited, due to the need for an interpreter, and in failing to explore this at the hearing; in making certain findings based upon assumption/speculation, which involved procedural unfairness; in making assumptions as to how Christians are treated in modern day Britain; in making no allowance for the appellant's nervousness and forgetfulness at interview.

3. Whilst the judge's decision is, as always with this judge, carefully written, it is arguable that he has failed adequately or satisfactorily to consider the evidence of the pastor who attended the hearing and that there are elements of arguable procedural unfairness, for the reasons set out in the grounds. Permission is granted on all grounds pleaded although some of the grounds are arguably stronger than others".
7. I was ably assisted by submissions made on behalf of the appellant by Mr Dixon. He went through his grounds of challenge with me at some length and in detail.
8. The first challenge was the failure to have regard to a relevant consideration when considering the evidence of Pastor Hooper. Mr Dixon submitted that the evidence of the pastor was that he was very accustomed to the danger of false claimants, who saw the Christian faith as a means of staying in the United Kingdom. This was all the more so because the church has around 80% asylum seekers (with by obvious implication, at least a proportion of those being claimed Iranian converts). The First-tier Tribunal Judge accepted the pastor as having credible evidence but, for the reasons given did not accept the pastor's assessment of the genuineness of the appellant's faith was well-founded. In fact, however, the First-tier Tribunal Judge failed to have regard to a material consideration; namely the pastor's sensitivity to the particular need to be astute to false claimants. This was bound to have influenced the pastor's approach and assessment and means that his assessment is capable (for that ignored reason) of being reliable in an enhanced way. Where the First-tier Tribunal finds that the "church carries out little by way of checks before baptising people" (paragraph 42) he has done so failing to have regard to the sensitivity factor.
9. The difficulty with this submission is that it was the judge's job to decide, on the basis of the evidence before him, whether the appellant's claimed conversion was genuine or not. The fact that Pastor Hooper is satisfied is, of course very relevant, but not, with respect, decisive. The First Tier Tribunal Judge carefully examined the evidence of the Reverend Hooper who said that he had been a Christian for some 50 years and had been involved in founding his church some twenty years ago. Prior to that he was part of a Baptist church in Selly Park and then in Balsall Heath. The Reverend Hooper had said that his church follows the beliefs and doctrines of the traditional church but is far less rigid than normal. The determination records that Mr Dixon, in asking questions evidence-in-chief asked how the appellant's baptism on 12th November 2018 came about and the Reverend Hooper said that the church's regular baptismal classes cover the main beliefs of repentance and faith. The opportunity is given for people to decide and to ask questions. He said that he had also met with the appellant to whom he spoke with the assistance of an interpreter. This was in addition to the Bible classes. The other leaders involved with him were Graham who leads the Bible studies and Jenny who is a longstanding church member. The judge carefully noted that the Reverend Hooper said that his church had up to 100 regular attendees and in terms of the appellant's attendance, he did not believe that the

appellant had missed a Sunday service or a Thursday Bible study since September.

10. When asked how he knew the appellant to be a Christian, Mr Hooper acknowledged that it is always difficult. He said that he had to deal with so many people that he felt he could recognise someone genuine. He acknowledged that so many people are just after a visa. He looked at whether someone had been living a new life outside the old religion. Many people are attracted to the good news, and it is a life changing experience. He said that he does not personally attend the Bible classes. He told the judge that Graham does personally attend the Bible classes and that he also does a lot of teaching. The judge recorded that returning to the risk of people just wanting a visa, particularly as the church is close to the hostel, Counsel asked the Reverend Hooper whether the church had a system.
11. The Reverend Hooper was recorded by the judge as saying that the church welcomes anyone, including those who are not genuine. Many come along wanting visas, but become Christians. Asked whether he had refused to baptise people, the Reverend Hooper said that he had, but very rarely. He acknowledged the possibility that he had baptised people who were not genuine. It was, he said, difficult to prove. In the New Testament people believe and are baptised, often the proof comes after when he sees the change in people's lives. For the people with whom he comes to court, often the change is seen after. Finally the judge recorded at paragraph 26 of the determination that the Reverend Hooper was asked in examination-in-chief by Counsel if he could comment on how the appellant interacts in the Bible studies led by Graham. The Reverend Hooper said that he could not as he had not asked; he added that Graham believes the appellant to be genuine.
12. The judge noted cross-examination of the Reverend Hooper when he said that he had attended dozens of hearings over the past five years and estimated that 80% of his congregation are asylum seekers. He explained that the congregation is very transient, many are dispersed post-hearing although many return to say how they are getting on. He reiterated what he had said about being able to tell if someone is genuine after baptism.
13. I have concluded that there is no merit in this challenge. The judge simply did not fail to have regard to a relevant consideration; he carefully considered all the relevant oral evidence and reached a conclusion that was open to him. He specifically reminded himself that the Reverend Hooper believed that he was able to tell if someone was genuine after baptism, but the judge had a duty to make his own decision based on the evidence and this he has done.
14. The next criticism alleges a failure to have regard to the extent of contact and baptismal classes. At paragraph 42 of the determination the judge said that the church carried out little in the way of checks before baptising

people. Mr Dixon told me that, in actual fact, it was the Reverend Hooper who said that the church carries out little in the way of checks before baptising people. Nonetheless, it is asserted that the judge has made an error as to the evidence. The evidence of the pastor was that he had met the appellant on a number of occasions (four or five) on a one-to-one basis with the benefit of an interpreter in addition to baptismal classes which had been held. The appellant had therefore had more contact with the pastor than the First-tier Tribunal Judge appears to have understood, submitted Mr Dixon. Moreover and in any event, the First-tier Tribunal Judge appears to have left out of the count the fact that the appellant had been attending baptismal classes. The First-tier Tribunal Judge mentions these at paragraph 48 so it is difficult to see what his asserting of “little checks” being made before baptism is based on. The evidence was that baptismal classes were undertaken and there is no suggestion that baptismal classes were deficient or superficial. It is part of his determination where he refers to little by way of checks being undertaken, therefore the judge appears to have overlooked the evidence of baptismal classes urged Counsel.

15. I am satisfied from perusing the determination that this is simply not the case. This appellant started attending this church on 7th September 2017. Some two months later on 12th November 2017 he was baptised. He was invited to be baptised and he said that he had been chosen. The Reverend Hooper was asked by Mr Dixon how the baptism came about and the judge recorded his evidence at paragraph 23 of the determination. Reverend Hooper explained that the church’s regular baptismal classes cover the main benefits of repentance and faith. The opportunity is given for people to decide and to ask questions. He said that he had also met with the appellant to whom he had spoken with the assistance of an interpreter. This was in addition to Bible classes.
16. It is quite clear to me from reading the determination that the judge was perfectly well aware that the appellant had been undertaking baptismal classes as well as attending Bible classes and regular services. The reference to the church carrying out little in the way of checks before baptising people actually came directly from the Reverend Hooper’s own oral evidence. At paragraph 25 the judge records this:-

“Returning to the risk of people just wanting a visa, particularly as the church is close to the hostel, Mr Dixon asked whether the church has a system. Reverend Hooper said that the church welcomes anyone, including those who are not genuine. He told me that many come along wanting visas, but become Christians. Asked whether he had ever refused to baptise people, he said he had but very rarely. He acknowledged the possibility that he had baptised people who were not genuine. It was he said difficult to prove. In the New Testament people are believed and are baptised often the proof comes after when he sees the change in people’s lives. For people with whom he comes to court often the change was seen after”.

The judge did at paragraph 42 in referring to the Reverend Hooper’s evidence say *“I noted that, on his own account, his church carries out little in the way of checks*

before baptising people". That was the judge commenting on the evidence of the Reverend Hooper.

17. The next challenge suggests procedural unfairness on the part of the First Tier Tribunal Judge. It suggests that if the judge regarded the baptismal classes as insufficient or potentially so, then he should have given the pastor an opportunity to comment on those classes and what was covered in them. With very great respect, the judge very carefully considered the evidence of the pastor and decided the appeal on the basis of that evidence. To suggest that he should have cross-examined the Reverend Hooper himself misunderstands the judge's role. The judge was not expressing concern at the content of the classes, but simply the speed with which the appellant had been baptised, having only first attended church on 7th September. It may very well have been of course that the church's service was conducted with the assistance of interpreters so that the appellant understood everything that was going on and similarly, that the baptismal classes and the Bible classes were conducted with interpreters to enable everyone attending to understand what was going on. The point the judge was making was that although Reverend Hooper was clear that he believed the appellant, the reality was that he did not know him particularly well. He may well have met the appellant on a one-to-one basis on four or five occasions with the aid of an interpreter and he may well have met him too at Bible classes, at the weekly service and at baptismal classes, but even so during the course of two months or so the judge did not believe that the Reverend Hooper could know the appellant particularly well. It is suggested that the judge should have put his concerns to the Reverend Hooper and invite him to comment on them. With very great respect, the judge's role is to hear the evidence and then to decide what he makes of it. He cannot be expected to put every single point which he may take against an appellant to a witness.
18. The grounds speak of further procedural unfairness concerning a failure to give an opportunity to comment relating to what is recorded at paragraph 44 of the determination. There, it is asserted that the judge makes assumptions as to the degree to which the pastor was able to speak to the appellant "they could not communicate directly since they do not speak the same language. Although Reverend Hooper told me he had spoken to the appellant with the help of an interpreter that would necessarily have been limited". It follows that if there were only four or five meetings between the Reverend Hooper and the appellant when the appellant met the Reverend Hooper in addition to the baptismal classes, then with very great respect their conversations would have been limited.
19. The last challenge is I believe based on a genuine misunderstanding by Counsel. At paragraph 42 the judge said this:-

"I turn to the supporting witness from whom I heard, Reverend Hooper. The impression he conveyed was of a sincerely devout man. I do not doubt that he himself believes the appellant to be a genuine convert. Given that he is an experienced pastor that carries weight. Whilst I give due weight to that there were features of the evidence that cause me

concern. I note that on his own account his church carries out little in the way of checks before baptising people. He explained this in the context of the New Testament teaching on baptism. The difficulty with that is that teaching in the Pauline epistles was written at a time when the church was persecuted. In that context, to profess Christianity carried risks and no worldly benefit. At the risk of being obvious, that is not the case for people in the position of the appellant in 20th century Britain”.

20. Criticism is made in the grounds that in the context of a persecuted church one can be fairly sure that a Christian is a genuine believer because otherwise it would not be reasonable to risk so much on the basis that the Christian church in the United Kingdom today is not persecuted. This is not the case. It is highly arguable however that in this respect the judge has erred it is suggested. With very great respect, I do not believe that that is what the judge was saying. I think he was pointing out the difference between life as it was and life as it is today but I can detect no error in the judge’s determination.
21. I agree with the submissions made by Mrs Aboni. The judge has very carefully recorded the evidence he heard and made clear, logical and properly reasoned findings on that evidence. There is nothing, I would suggest, to indicate that he has in any way misunderstood anything that he was told. He noted that the Reverend Hooper was an experienced pastor and that by itself carried weight. I believe that he did very properly assess the evidence of the Reverend Hooper and was entitled to find as he did.
22. The judge very carefully examined the evidence of the appellant. He noted that at interview the appellant was unable to explain the meaning and significance of Easter. In giving evidence the appellant was able to explain Easter to the judge, but that was given in the knowledge that the point was raised in the refusal letter and so was likely to be raised at the hearing. However, the appellant’s evidence was still somewhat confused, because he described Easter as being a Christian festival which celebrates that one day Christ will come back to life. As the judge puts it, that rather fundamentally misses the point that Christians believe that Christ arose from death on the Sunday after the crucifixion and is alive now.
23. I have concluded that the determination of Judge R A O’Hagan did not involve the making of an error on a point of law and I uphold his determination. The appellant’s appeals are dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley