



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

Appeal Number: PA/09138/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 31 July 2019**

**Decision & Reasons Promulgated
On 22 August 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**M R H
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Kajambala, Solicitor

For the Respondent: Mr Turfan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 1998. He appealed against a decision of the respondent made on 8 July 2018 to refuse his claim for asylum.
2. The basis of his claim is that he fears return because of his religion. He was Muslim by birth but became disillusioned. He was introduced by a friend to Christianity in April 2016. He started attending a house church

and was converted. He was then encouraged to start a web blog to evangelise people to Christianity. In July 2017 some who attended the house church were arrested by the authorities. He learned of this and went into hiding. A summons was issued against him and the family home raided. He left Iran clandestinely in October 2017 arriving in the UK in January 2018 when he claimed asylum. Following arrival in the UK he began attending, in January 2018, the Jesus Fellowship Church. He also set up a Facebook page to blog about his interest in Christianity.

3. The respondent rejected the appellant's entire claim, finding his motivation and reasons for his claimed conversion to be vague and inconsistent. It was not accepted that he was of adverse interest to the authorities.
4. He appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 28 March 2019 Judge of the First-tier Tribunal O'Garro dismissed the appeal.
6. Her findings are at paragraph 35ff. In summary, she found against the appellant that he had not given any strong motivation for his decision to convert particularly taking into account the risks; also the speed with which he claimed he had converted. Further, it was not credible that church members would have gathered together at a meeting knowing they were likely being monitored and could be arrested.
7. In further adverse findings the judge did not accept the claim that the appellant was sent an email warning about his blogging followed by a summons; he would have been arbitrarily arrested. Moreover, there was a lack of evidence about his claimed blogging in Iran. She, in addition, placed no weight on the claimed summons.
8. Turning to the appellant's activities in the UK she did not believe these to be of a genuine convert.

Error of law hearing

9. The appellant sought permission to appeal which was refused but granted on 1 July 2019 on re-application to the Upper Tribunal.
10. The crux of the grounds was that the judge erred by analysing the appellant's claimed conversion through the lens of her own subjective expectations of conversion from Islam to Christianity. Similarly, concerning the speed of the claimed conversion she again imposed her own subjective expectations on the appellant's narrative without substantiating her reasons which, it was submitted, would be difficult to do given the highly personal nature of faith and conversion. Further, she

failed to give adequate consideration to the evidence of the church witness, Pastor Bird, who attended the hearing and spoke of the appellant's activities and commitment.

11. Mr Turfan conceded that the submissions had merit such that the case would need to be heard again.
12. I agreed with the parties.
13. In the circumstances it suffices to deal with the last ground.
14. In her decision the judge, dealing with the UK church activities, said this (at [52], [53] and 54)):-

"52. I accept as factually correct the observations of Pastor Bird about the appellant's attendance at church, his activities and his positive interactions with other churchgoers. I have no doubt that the appellant is an active and keen participant in church life as described by Pastor Bird in his two letters. They are all positives and a huge tribute to the work the church is doing.

53. I find that Pastor Bird has given sincere evidence about his impressions of the appellant's genuineness. However, faith being something ultimately unprovable because it is irrational and internal, I do not find the witness evidence proves anything other than that the appellant attends church as he says, is baptised and behaves in a way that has the appearance of being a Christian. If the appellant was an accomplished actor, seeking to act out a fraudulent conversion, it is still possible Pastor Bird might give the same evidence of being convinced of his faith. So, for all his conviction that the appellant is genuine, the Pastor's evidence alone does not persuade me to the lower standard of proof, that the appellant is a genuine Christian.

54. I do of course assess Pastor Bird's evidence in the round with all the other evidence and I have not viewed it in isolation. However, when I have regard to my concerns about that evidence alongside my concerns about the appellant's account of his conversion in Iran, I find that the appellant is unable to establish even to the lower standard that he is a genuine convert to Christianity."

15. The problem is that the judge failed to have regard to the guidance given in **TF and MA (Iran) v SSHD [2018] CSIH 58** which stated (at [39]):-

"... the appellant's case has to be considered in the round, not only on the basis of the appellant's own evidence, which may or may not be accepted as credible, but also on the basis of other evidence that may be available. It does not follow from the fact that the appellant himself is disbelieved, even on very large parts of his story, that other evidence in support of his case cannot be relied upon. Much will depend, of course, on what that

other evidence is. If, for example, that other evidence comes from some wholly independent source and is, on the face of it, impartial and objective, it is difficult to see how a finding that the appellant himself is dishonest can materially affect the weight to be attached to it. If, on the other hand, the third party evidence simply comprises information based entirely upon what the appellant has previously told the witness, then in assessing what weight to give to that third party evidence it may be legitimate for the tribunal to take account of its findings about the credibility of the appellant, on the basis that it has found the appellant to be a liar and capable of making up a story, fabricating an account and spreading that account amongst others as part of a web of deception. But much would depend on the time and circumstances in which the third party witness was given that information by the appellant, as well as the credibility of the third party witness himself - and it would not be right for a tribunal to dismiss that evidence as having no weight simply on the basis that it amounted to a repetition of what the appellant had said without having regard to those other considerations."

And also (at [48]): "... Any court or tribunal must be very careful not to dismiss an appeal just because an appellant has told lies. For reasons we have already set out, the judge should not jump too readily to the conclusion that because the appellant has told lies about some matters then his credibility on all matters is fatally undermined."

And [49]: "The second point is that even if the FTT judge concludes that the witness's evidence on the critical matters is undermined by a finding that he is generally incredible and not to be relied on, that has the limited effect that the appellant's (disbelieved) evidence is disregarded or put to one side: it does not somehow become evidence to the opposite effect, to be used against the appellant in contradiction of other independent evidence on which he relies. That again reflects the standard direction in criminal cases in Scotland and applies in civil cases too, including cases before tribunals. The judge should not allow his adverse finding about the credibility of the appellant to sway his assessment of the credibility and relevance of other independent evidence bearing upon the issue before him. So here, where the FTT judges have disbelieved the appellants' evidence that they are genuine converts to Christianity, their evidence to that effect will be put to one side, given no weight. But the rejection of their evidence on this point does not become evidence that their conversion is not genuine, to be set against other, independent, evidence from which the genuineness of their conversion can be inferred. That other evidence requires to be assessed on its merits, without any a priori assumption derived from the complainer's own false evidence that it is in some way suspect or of little value."

16. The court also found that church witnesses who were in positions of responsibility within the church who had observed an appellant's activities at church and expressed their views on the genuine nature of the appellant's conversion based on their experience were giving expert evidence.
17. In this case the judge stated that she assessed the pastor's "*evidence in the round ...*" However, it is not apparent that she has done so. Rather, what she did was take into account all the material showing, to her mind, that the appellant was not a truthful witness; and she has then carried that finding through in her discussion of the other evidence, written and oral, from the church witness so as to reach a conclusion that the appellant is not telling the truth about being a genuine convert. What she ought to have done was to look at all the evidence in the case, including the evidence from the church witness, on its own merits, before forming a concluded view as to the veracity of the appellant. In failing to do so she materially erred.
18. As agreed by parties the case must be remitted for a fresh hearing.

Decision

The decision of the First-tier Tribunal shows material error of law. It is set aside. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge O'Garro.

Anonymity Order

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 order applies both to the appellant and to the respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway

19 August 2019