Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09952/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons promulgated**
On 8 April 2019	**On 10 April 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RAMTIN [M]
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Greer instructed by Elder Rahimi Solicitors
For the Respondent: Mrs Pettersen – Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of Resident Judge Zucker promulgated on 16 October 2018 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Iran born on 5 November 1991.

3. The basis of the protection claim is an assertion that whilst in Iran the appellant converted from Islam to Zoroastrianism. The appellant flew from Tehran to Paris before, with the assistance of an agent, entering the United Kingdom by lorry. The appellant claims his conversion to Zoroastrianism became known to the authorities in Iran and that if he was to be returned he will be killed. The appellant claimed he started practising his faith between 2009 and 2017 but accepted the new faith, according to another response, on 17 March 2017.

4. The Judge at [4] sets out the issues agreed with the representatives as being at large in relation to the appeal which are:

    I. Has the Appellant converted to Zoroastrianism?

    II. Is he already of interest to the authorities in Iran?

    III. If not, how would he conduct himself in Iran?

    IV. Why would he conduct himself in that manner?

5. There is no error in the Judge focusing on determine the merits of the case by reference to the agreed issues which properly represent the questions to be considered in a case of this nature following HJ (Iran).

6. The Judge had the benefit of not only the written evidence but seeing and hearing the appellant give his oral evidence. Findings of fact are set out from [22-30] in the following terms:

> "22. I note the various documents in the Appellant's bundle including his membership card from the World Zoroastrian Organisation. I note too, the contents of the letter of 21 June 2018 written by Revd. Vafadari which makes reference to the Appellant attending for devotional prayers, though I note also that there is no letterhead to that letter, but I attached little weight to any criticism of the evidence on this basis.
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> 23. I found the Appellant's evidence lacking. The Appellant gave answers to questions put an interview concerning Zoroastrians. The point was well made by Ms Smith that where criticism was made in the refusal letter that answers are vague, the Refusal Letter did not address what the answers should have been.
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> 24. However if I proceed on the basis that the Appellant was entirely correct in all his assertions about the Zoroastrian faith, that tells me that he knows about the Zoroastrian faith. It is of course some evidence that he is an adherence to it but the fact that somebody knows about another faith does not of itself establish that they are a member of it. I repeat that I fully aware that it is the lower standard of proof that is to be applied. However, that corroboration is not required does not mean that sufficient evidence is not required.

25. Although in my view the Appellant could so easily have obtained evidence of his commitment even in the short period whilst he was in the United Kingdom, either the Revd or the other person by way of witness statement, the absence of the same, in my judgement, was not adequately explained by the illness.

26. The Appellant has had representatives throughout and a witness statement might easily have been obtained and certainly something rather more than the letter of 21 June 2018, all the more so when I am told it is only about a month ago (August) that this person became ill, and yet the hearing before me is September. I note also there was no application to adjourn. The case of **TK (Burundi)** supplies some guidance as to the view that the Tribunal should take when there is evidence that one might have more easily obtained but is not forthcoming.

27. I also bear in mind in this case that the Appellant did not know of the communities in Birmingham and Manchester; in particular all the more so when Manchester is not that far from Huddersfield nor that there were at the very least Zoroastrians in Huddersfield even if no temple or organised community events.

28. Ms Smith submitted to me that that this was a matter that I ought not to take into account because there was no evidence that the Appellant ought to have been aware of them. However, the Appellant had given evidence that he had looked on the Internet and not found anything, I find it frankly totally beyond belief that the Appellant who was concerned enough apparently to want to move closer to London, and was in communication with the religious leader in London, and indeed the Association from whom he obtained his membership card, was not aware, or advised, or interested enough, to establish that he could join in community with those nearer to where he lived or indeed be aware that they existed.

29. That lack of commitment is in my judgement wholly inconsistent with a person who contends that were they to be returned to Iran they would be unable to hide their faith; indeed, I am not satisfied, even to the lower standard, that the Appellant is committed in any way to the Zoroastrian faith. It seems to me that the Appellant is motivated by a desire to be in the United Kingdom for whatever reason.

30. The Appellant did not persuade me to the lower standard that he was a reliable witness. He has not therefore established his case to the lower standard and in those circumstances his appeal fails."

7. The appellant sought permission to appeal asserting the Judge's analysis is fatally undermined by a failure to provide sufficient or sustainable reasons for the adverse credibility findings. The grounds assert the Judge erred by placing undue weight on the absence of

corroboration when it is claimed the appellant did provide a reasonable explanation for the absence of an intended witness who was elderly and ill, and in failing to consider the appellant's credibility on the basis of the reasonably available evidence. The grounds assert that as the appellant displayed a good knowledge of his faith and had a membership card for his faith he had discharged the burden upon him and that it was reasonably likely that the appellant is a member of the Zoroastrian faith. The grounds also assert the Judge erred in basing adverse credibility finding on the appellant's failure to find other Zoroastrians with whom to worship near his home in Huddersfield as he was only aware of the main temple in Harrow. The grounds assert a further Internet search undertaken by the appellant's solicitors after the hearing reveals the website for the North West Zoroastrian community is inactive with no useful information and there was nothing to suggest any current activity by any Zoroastrian group in Birmingham; making the Judge's assessment of this evidence materially flawed.

8. Permission to appeal was initially refused by Upper Tribunal Judge Martin sitting as a judge of the First-Tier Tribunal on 15 November 2018 and renewed to the Upper Tribunal directly where permission was granted by Upper Tribunal Judge Kamara on 19 December 2018 on the basis it is said to be arguable that the Judge's adverse credibility findings were insufficient and that he had erred in his analysis of the appellant's evidence.

Error of law

9. On behalf of the appellant Mr Greer sought to rely upon the pleaded grounds but also asserted the Judge had failed to consider the evidence regarding the appellant's claim regarding what happened to him in Iran where he states that as a result of persecution he had left Iran, which it was claimed is relevant to assessing the appellant's credibility. It was argued that there was evidence of elevated attendance and knowledge of other issues such as the scriptures. The grounds argue the Judge gave weight to immaterial factors such as the non-attendance of a witness. In relation to the Internet research point, the grounds argue the Judge's findings regarding the website are wrong as it should be asked whether it was rational to conclude as the Judge did and that the Judge had imposed his own views and found an error regarding the same infecting the conclusion that the burden of proof had not been discharged, which was not warranted.

10. Mrs Pettersen argued that Mr Greer had gone beyond the points pleaded in the grounds in relation to which permission had been granted. Although this is not a Christian conversion case the principles are similar and were applied by the Judge. It is argued the Judge considered all relevant aspects before concluding that he was not satisfied the appellant is a genuine convert.

11. There are aspects of the submissions made on the appellant's behalf by Mr Greer which strayed beyond the grounds on which permission to appeal was sought and granted. It is also the case the assertion made regarding the status of Internet sites referred to by the Judge arises as a result of post hearing research undertaken by the appellant solicitors. The comments made in such submissions regarding the weight to be given to the internet evidence were not made in such terms to the Judge even though there was ample opportunity at the hearing for the appellant's representative to have done so.

12. This is not a case of the Judge undertaking post hearing research on the Internet of which the parties had no knowledge or notice. The Judge clearly notes in the decision at [11] that it was with the permission of the representatives that he looked the evidence up online in court and that although he did not find a temple outside London, per se, he found evidence of communities meeting in Manchester and Birmingham. The grounds do not challenge that this is what the Judge found but try to argue that the weight the Judge gave to this element is somehow irrational. The key point noted by the Judge is that recorded at [12] that the appellant in his evidence stated he was not aware of the existence of these communities which are much nearer to Huddersfield than Harrow in London. The Judge's findings at [27] and [28] regarding lack of knowledge is further evidence of the lack of credibility in the appellant's account and has not been shown to be infected by arguable legal error.

13. It is not made out the Judge failed to consider all the evidence with the required degree of anxious scrutiny. The issue of the appellant's conversion was clearly the first of the questions the Judge directed his mind to which required consideration of the appellant's claim that he had converted in Iran. The Judge had the benefit of the interview together with witness statements and, more importantly, the ability to see and hear the appellant give his oral evidence and to factor the same into the assessment process. The assertion in the grounds the Judge placed undue weight on the absence of corroboration has no arguable merit and misrepresents the findings made. It is important to read the decision as a whole to see how the separate pieces of the jigsaw are interlinked. The Judge clearly considered the written evidence of the Revd. Vafadari [22]. The Judge does not reduce the weight to be given to the evidence as a result of lack of corroboration but assesses whether the evidence the Judge received and was able to assess was sufficient. This is clear from [23] in which the Judge found the appellant's own evidence to be lacking. The Judge at [24] confirms that even if he proceeded on the basis the appellant was correct in all his assertions regarding the Zoroastrian faith that only proved that he had knowledge of it not that he was a genuine convert or follower of the faith. That has not been shown to be an arguably irrational finding.

14. The Judge identifies the fact that the appellant could have obtained further evidence but that he had failed to do so. This is, again, not an adverse finding being made on the basis of corroboration per se, but a finding in light of the guidance provided in TK (Burundi) as referred to by the Judge at [26].

15. The task of the Judge was to assess the evidence provided, in the round, to ascertain whether the lower standard applicable to an appeal of this nature had been met and the appellant discharged the burden of proof upon him to establish that what he was saying was reasonably likely to be true. The Judge's finding that the appellant is not in any way committed to the Zoroastrian faith and that the appellant is motivated by a desire to be in the United Kingdom, and had not established his case to the lower standard, is clearly a finding that the appellant had not proved what he claims to have occurred had occurred, that he is not a genuine convert, and that he had not made out he will face a real risk as a result on return to Iran.

16. Although it is claimed the alleged failings in the judge Judge's analysis are not mere disagreement with his conclusions it is arguable that that is exactly what they are. It has not been made out the Judges findings are outside the range of those reasonably available to the Judge, irrational, or that he applied too high a standard of proof. It is not made out the findings are not within the range of those reasonably available to the Judge having exercised his judgement in relation to the weight that could be given to the evidence.

17. The appellant failed to establish any real risk on return in relation to either his claim conversion or for any other reason.

Decision

18. There is no material error of law in the Judge's decision. The determination shall stand.

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 9 April 2019