Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14167/2016

THE IMMIGRATION ACTS

Heard at Belfast	**Decision & Reasons Promulgated**
On 29 November 2018	**On 22 January 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

N M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Brennan, solicitor
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Gillespie promulgated on 27 March 2018, dismissing his appeal against the decision made on 28 November 2016 to refuse his asylum and protection claim.

2. The appellant is a citizen of Iran who says he was raised as a Shia Muslim but in 2015 began to get involved with a house church in Iran beginning around 25 December 2015.

3. On 25 March 2016 the police raided the house church but he was able to escape but unfortunately left behind his jacket containing his wallet and ID documents. He decided not to return home and, as he had suspected, the Authorities attended the family home making it clear to the family he had converted to Christianity. The family was warned that he was an apostate and would be killed if apprehended.

4. The family then arranged for him to be taken out of Iran, leaving on 1 April 2016 and travelling via Turkey over land and then to the United Kingdom.

5. Since arriving in Belfast and claiming asylum, the appellant has attended Windsor Presbyterian Church from July 2016. In addition to attending church services he attends Bible study and prayer meetings and has been baptised. He takes part in Outreach Skype Church.

6. The Secretary of State did not accept the appellant's account of membership of a house church or that it was raided or that the Authorities were looking for him.

7. The judge heard evidence from the appellant, as well as [DC], an assistant minister at Windsor Presbyterian Church, [DM] who works with the Irish Church Mission in Dublin and [ND] who is Clerk of Session at Windsor Presbyterian Church. The judge found:-

   (i) that the appellant's account of realising the house church had been raided and escaping onto the roof and across other roofs but leaving behind his jacket with wallet and ID, was a fabrication given his failure to mention it in interview [37] and to provide a proper explanation for this [39] to [40];

   (ii) that he had been inconsistent about what had happened to his family and contact with them [42];

   (iii) that his credibility was damaged by his implausible account of how he had arrived in Northern Ireland but yet been told to travel to Scotland [43];

   (iv) the church witnesses were honourable sincere people but none of them had real knowledge of the circumstances in which he had been forced to leave Iran [48]; and,

   (v) having weighed the approach of the witnesses with the greater body of evidence including what the appelalnt had said in interview, he was not satisfied that the account given by the church witnesses overcame the doubts about the appellant's account;

   (vi) having had regard to the report from Dr Bell, he was not satisfied that the appellant's mental condition was such that a propensity to be forgetful could establish that his ability to give evidence was compromised;

   (vii) the appellant's claim that so far as events of violence is concerned is not experience based and he had not shown a well-founded fear of persecution for a Convention reason if returned there.

8. The appellant sought permission to appeal on the grounds that the judge had erred:-

   (i) In failing to assess whether the appellant was a genuine Christian irrespective of what caused him to leave Iran and had overemphasised the issue of credibility;

   (ii) In failing proper to consider whether on the basis of the church witnesses whom he found to be honourable and sincere people whether, irrespective of what had happened in Iran, the appellant was now a committed Christian;

   (iii) In that at [48] he apparently expected witnesses to have inquired under the circumstances in which he left Iran;

   (iv) in failing to note that there was overwhelming evidence to the genuineness of his conversion to Christianity.

9. On 19 April 2018 First-tier Tribunal Judge L Murray granted permission.

10. Mr Brennan submitted the judge had erred in noting that credibility was not in itself an end. The judge had heard evidence from three different witnesses who believed him to be a genuine committed Christian. The witnesses had explained that there were Protocols in place to prevent the abuse of people seeking asylum and that the appellant had needed to satisfy the judge that he was ready for baptism and was genuine, before becoming a full member of the church.

11. Mr Brennan submitted that although they were not expert witnesses they went as to character and their observations of him were for a period of eighteen months. There is strong evidence of his proper conversion. He submitted that the judge should have considered that the appellant had converted sur place.

12. Mr Duffy submitted that there must be doubt that this was a sur place claim, given that the issue here was the appellant had converted in Iran and what he was seeking to do in the United Kingdom was simply a continuation of that. He submitted that it was evident that the judge had clearly listened to the church witnesses who believed him but that the judge thought that this was simply an extension of the original claim.

13. Mr Duffy submitted that there was no challenge to the findings at the back of credibility and the judge not being satisfied as to the account of what happened in Iran and that in the circumstances these were relevant to the issue of baptism.

14. In reply, Mr Brennan submitted that the judge had at [48] an overemphasis of what had occurred in Iran and that the evidence of character was compelling.

15. The factual matrix of this asylum claim is different from that in TF and MA v SSHD [2018] CSIH 58 where people had claimed a fear of persecution in Iran and had converted to Christianity whilst here. In this case, the

appellant's case is that he had begun to convert to Christianity in Iran and had attended a house church.

16. I bear in mind what the Court of Session said in TF & MA at [48] to [50]:

> [48] The first point is that already mentioned in paragraph [38] above. 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.
>
> [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.
>
> [50] The third point is very familiar in this type of case. It is wrong in principle to form a concluded view of the probable veracity of particular items of evidence and then, from that fixed point, to allow that view to govern the assessment of other evidence in the case. The proper approach is to adopt what is sometimes called an "holistic" approach, considering all the evidence "in the round" before arriving at any concluded view on the facts. The authority usually cited for this proposition is the judgment of Sedley LJ in *Karanakaran* v *Secretary of State for the Home Department* [2000] 3 All ER 449 at 477 (para 16 of his judgment):
>
> > "… a civil judge will not make a discrete assessment of the probable veracity of each item of the evidence; he or she will reach a conclusion on the probable factuality of an alleged event by evaluating *all* the evidence about it *for what it is worth*. Some will be so unreliable as to be worthless; some will amount to no more than straws in the wind; some will be indicative but not, by itself, probative; some may be compelling but contra-indicated by other evidence. It is only at the end-point that, for want of a better yardstick, a probabilistic test is applied. …"

17. Here, it cannot be said that the judge erred in concluding that because the appellant had told lies about some matters his credibility on all matters was fatally undermined. He did take into account the evidence of the church witnesses, and weighed that. Essentially, the grounds are an argument about the weight he attached to that. The judge was not bound by what those witnesses said.

18. I do not consider that it the judge put aside the evidence of the witnesses. On the contrary it is clear from what is written at [49] that he gave it due weight. It was, I consider, on the particular facts of this case appropriate to consider how the church witnesses had considered the appellant's account of what had happened in Iran as this went to the core of his case to be a convert. This was not a *sur place* case; rather it is an intensification, on the appellant's account, of what had begun to occur in Iran, that is his conversion to Christianity. I am not satisfied, however, that the judge did, as the grounds aver, improperly expect the church witnesses to have enquired into what had occurred in Iran. On the facts of this case, it would not, for example, have been inappropriate to ask if the church members had discussed with the appellant if he had begun to attend services and to pray. The judge simply at [48] records what the witnesses said, and directed himself that he had to look at the totality of the evidence.

19. Essentially, this comes down to a matter of weight. The judge did not rule out the evidence of the church but rather considered it as part of the whole and concluded, as it was open to him to do, that the appellant was not a genuine convert despite the evidence of the church witnesses. His reasons for setting that evidence aside are sufficient and sustainable. Accordingly, I am not satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

2. I am satisfied that, given the issues raised in this and as it is a protection case that it is appropriate to make an anonymity direction.

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 him or any member of their 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 10 December 2018

Upper Tribunal Judge Rintoul