



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

Appeal Number: PA/03757/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 21st January 2020**

**Decision & Reasons
Promulgated
On 5th February 2020**

Before

**UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

Between

**M F
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs H Masih of Counsel instructed by Braitch Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge O'Hagan (the judge) of the First-tier Tribunal (the FtT) promulgated on 1st July 2019. The

Appellant is an Iranian citizen who arrived in the UK on 12th October 2018 and claimed asylum. The Appellant's wife is a dependant in the asylum claim.

2. The asylum claim was made on the basis that the Appellant had converted to Christianity in Iran. The Appellant had been attending a house church which was raided by the authorities. The Appellant and his wife fled. His family later told him that the authorities had been to the family home searching for him. His parents had been arrested and interrogated before being released. The Appellant and his wife left Iran with the assistance of an agent on 24th September 2018. Since his arrival in the UK the Appellant has been active within the Christian church and he and his wife have been baptised. The Appellant has opened a Facebook account which he has used to post Christian material online.
3. The asylum and human rights claim was refused by the Respondent on 15th March 2019.

The First-tier Tribunal Hearing

4. The appeal was heard on 26th June 2019. The judge heard evidence from the Appellant and Mr Baillie, a representative of the church attended by the Appellant. The judge accepted that the Appellant and his wife had been baptised, and that Facebook posts had been made by the Appellant.
5. Having considered the evidence in the round the judge did not attach weight to the opinion of Mr Baillie that the Appellant was a genuine Christian convert, and the judge did not find the Appellant had given a credible account. The conclusion was that the Appellant had not established that he and his wife are Christian converts.
6. The judge found that the Appellant would not be at risk if returned to Iran and the appeal was dismissed on all grounds.

The Application for Permission to Appeal

7. In summary it was contended that the judge had made mistakes of fact, failed to consider material evidence, and misdirected himself in law by failing to properly apply the guidance in HB (Kurds) Iran CG [2018] UKUT 430 (IAC).
8. It was submitted that there was considerable evidence from third parties confirming that the Appellant had genuinely converted to Christianity, and this evidence was contained within the Appellant's bundle, but the judge had made no reference to it. It was submitted that this was a material error of law as it appeared that the judge had failed to analyse relevant evidence.
9. It was submitted that the judge had not adequately considered the guidance in HB (Iran) in relation to the risk to the Appellant if he was

returned, as his Facebook posts promoting Christianity would be discovered by the authorities.

Permission to Appeal

10. Permission to appeal was granted by Judge Loke in the following terms;

“2. It is arguable that the judge erred in his assessment of credibility at [56] and [58]. It is also arguable that the judge erred in concluding at [65(i)] that there was a risk the authorities would be aware of the Appellant’s Facebook posts, and failing to consider the fact that this in itself would clearly create the perception that he is a Christian.”

11. Following the grant of permission to appeal, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

Our Analysis and Conclusions

12. At the oral hearing Mrs Masih relied and expanded upon the grounds upon which permission to appeal had been granted.

13. The challenge to the FtT decision was put on two main grounds. Firstly, it was contended that the judge had not taken into account material evidence. Secondly it was contended that the judge had erred by not considering the guidance in HB (Iran) in relation to the Facebook posts promoting Christianity and the risk that this would cause on return.

14. Mrs Aboni conceded that the judge had materially erred in law on both grounds.

15. We found that although the decision had clearly been prepared with care, the judge erred by not demonstrating that all material evidence had been considered when considering whether the Appellant’s conversion to Christianity was genuine.

16. The judge at paragraph 47 made reference to documentary evidence, referring specifically to photographs of baptism, and Facebook activity. At paragraphs 48 – 52 the judge considered the oral evidence of Mr Baillie who had attended the hearing. The Appellant’s own evidence on conversion was considered at paragraphs 53 – 60, the judge concluding that the account was not credible and the Appellant and his wife were not genuine Christian converts. At paragraph 69 the judge made a finding that the Appellant had fabricated his claim.

17. There is no reference by the judge to a letter dated 31st January 2019 at pages 38 – 39 of the Appellant’s bundle from Adam Martin, church leader with the church attended by the Appellant. This letter indicates that the

Appellant and his wife “are both genuine followers of Jesus and their understanding has been growing week by week.”

18. There is a letter from another church leader, Ben Rook dated 23rd February 2019 at A(1) – A(2) of the Appellant’s bundle which gives the opinion that the Appellant and his wife are both genuine followers of Jesus and that their understanding has been growing significantly week by week.
19. At pages 45 – 46 of the Appellant’s bundle there is a further letter from Adam Martin dated 12th June 2019 detailing the attendance of the Appellant and his wife at church, which led them to being accepted for baptism and again reiterated the view that they were regarded as genuine followers of Jesus Christ. The letter also stated that another asylum seeker and his son had joined the church as a result of conversations with the Appellant and his wife.
20. At page 77 of the Appellant’s bundle is a copy of an email sent by an individual who introduced the Appellant to the church where he was subsequently baptised. At page 80 there is a letter from an individual confirming that he started attending church as a result of what he was told by the Appellant and his wife.
21. At page 82 is a note from Janeen Martin dated 15th April 2019 confirming that she serves within a Christian Mission Agency and she works with Iranian asylum seekers and refugees. She confirms the Appellant and his wife are regular attenders at church and attend various meetings and gives the opinion that they are both genuine believers and followers of Jesus, having spent time with them both within and outside their home.
22. The judge is not expected to refer to each individual page of evidence contained within a bundle of documents. However in our view, as accepted by Mrs Aboni, there is considerable evidence vouching for the Appellant as a genuine convert, to which the judge has made no specific reference. If that evidence was to be given no weight, the judge needed to explain why no weight was attached to it. It is accepted that the authors of the letters referred to above did not attend the hearing, but it could be said that their evidence supported the views expressed by Mr Baillie at the hearing, and we find the lack of any consideration of that evidence to be a material error of law.
23. We also find, again as accepted by Mrs Aboni, that the judge erred when considering risk on return in relation to the Facebook posts made by the Appellant. The Facebook posts indicated that the Appellant is a Christian. The judge considered this evidence at paragraph 65, accepting that the Appellant had posted material on Facebook. The judge found that the authorities may become aware of the Facebook posts. The judge did not however find that these posts would put the Appellant at risk, as it was not accepted that the Appellant was a genuine Christian. The judge found at paragraph 65(iv) that it was “likely that the opportunistic nature of those activities would be apparent in Iran.”

24. The judge did make reference to HB (Iran), setting out the headnote. The judge did not however refer to paragraph 97 of that decision in which it is found that a returnee without a passport is likely to be questioned on return. At paragraph 114 it was found that part of the routine process on return would be to look at an internet profile, Facebook and emails of a returnee. A person would be asked whether they had a Facebook page and that would be checked. When a person returns they will be asked to log onto their Facebook and email accounts.
25. We find that the judge did not adequately consider this point and failure to do so, taken together with the failure to consider all material evidence, amounts to a material error of law. It is our view that Mrs Aboni was correct to concede that such was the case. The decision of the FtT is set aside with no findings preserved. We considered paragraph 7 of the Senior President's Practice Statements, and with the agreement of both representatives took the view that the appropriate course is to remit the appeal back to the FtT, because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
26. The appeal will be heard at the Birmingham Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge O'Hagan. An interpreter in Farsi will be required.
27. Mrs Masih pointed out that the Appellant and his wife now have a child and this amounts to a new matter not previously considered by the Respondent.
28. We observed that this was not a matter for us, and expressed no view as to whether or not the Respondent should consent to the new matter being considered by the FtT. It may be appropriate for the Appellant's representatives to contact the Respondent in advance of the FtT hearing to ascertain whether consent will be given.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

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 his family. This direction applies both to the Appellant and to the Respondent. This direction is made because the Appellant has made a claim for international protection. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 27th January 2020

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

We make no fee award. The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 27th January 2020

Deputy Upper Tribunal Judge M A Hall