



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

Appeal Number: PA/12957/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2020**

**Decision & Reasons
Promulgated
On 27 February 2020**

Before

**THE HON. MR JUSTICE CHAMBERLAIN
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
and
UPPER TRIBUNAL JUDGE BLUM**

Between

**OS (Iran)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Keith Gayle, Solicitor

For the Respondent: Mr C. Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of Judge Alis ('the judge'), sitting in the First-tier Tribunal. In the decision, promulgated on 22 August 2019, the judge dismissed OS's appeal against the Secretary of State's decision of 16 October 2017 to refuse his human rights claim and to give notice of a decision to deport him.

Background

2. OS is a national of Iran. He was born on 1 January 1992. He entered the UK in 2008 and claimed asylum. His asylum claim was refused on 1 May 2009, but he was granted leave to remain as a minor until 1 July 2009. On 12 June 2009, he applied for further leave to remain. On 10 February 2011 his application for discretionary leave on humanitarian protection grounds was refused with an in-country right of appeal. He appealed and his appeal was dismissed on 20 April 2011. A further appeal to the Upper Tribunal was successful on human rights grounds only on 13 May 2013 (his asylum appeal was dismissed). He was granted discretionary leave until 23 November 2015. On 20 November 2015, OS Applied for further leave to remain on humanitarian protection grounds.
3. Before that application could be determined, OS engaged in a course of criminal conduct. Between 4 November 2015 and 26 July 2016 OS was convicted six times of 13 offences. Four of these were for breach of a non-molestation order imposed on him by the Family Court following a contested hearing on 7 July 2015. That order prevented any contact between him and his former partner and prevented him from attending at her address. OS breached this order on four occasions. On the first he was sentenced to a community order. On the second, a suspended custodial sentence was imposed. On 26 July 2016, at Maidstone Crown Court, he was convicted of the third and fourth breaches, assaulting a constable and assaulting a person assisting a constable, for which he was sentenced to a total of 17 months' imprisonment and made subject to a restraining order under the Protection from Harassment Act 1997.
4. On 2 November 2016 OS was served with a stage 1 notice of decision to deport giving him 20 days to provide reasons why he should not be deported from the UK. On 30 November 2016 submissions were made by solicitors acting on his behalf, raising Article 8 grounds and indicating that he continued to fear persecution on return to Iran on the ground of his religious faith. On 4 January 2017, he was detained under immigration powers. He was released on 2 March 2017 pursuant to the Secretary of State's policy on adults at risk. On 16 October 2017 a decision was made to refuse OS's human rights claim and further submissions. That decision attracted an in-country right of appeal.

The decision of the First-tier Tribunal

5. The judge summarised OS's claim at [26]-[34] of the decision. It was as follows. His mother belonged to the Baha'i faith but until 2018, OS himself had never considered converting. He first became interested in converting on 28 April 2018 after his friend encouraged him to do so because he thought it might help OS with his personal problems and drug issues. He could not remember where he had gone for his first meeting, but there were about 30 people present. Since then he has attended numerous

gatherings, which take place at private houses. He has read four of the 10 core books of the faith and has received a welcome email and membership card from the organisation. He maintained that he would be at risk on return for two reasons. First, his mother, who lived in Iran, was a member of the Baha'i faith. Second, he would have to disclose his conversion when questioned.

6. Under cross-examination, he explained that no one from the Baha'i organisation could attend to give evidence on his behalf. Although there were witness statements from three witnesses he had not told any of them about the hearing until the previous week, when he tried to contact them. They were all working and none could attend.
7. At [45], the judge set out relevant extracts dealing with the position of the Baha'i from the Secretary of State's country information document on Iran, published in November 2016. That document details widespread discrimination against Baha'i by the Iranian government. It provides as follows:

'Decision-makers should no longer continue to follow the guidance contained in the Country Guidance (CG) case of *SH (Baha'is) Iran CG* [2006] UKAIT 00041 which found that the Baha'is are not at general risk of persecution in Iran, but that a Baha'i will be able to demonstrate a well-founded fear of persecution if, on the facts of the case, he or she is reasonably likely to be targeted by the Iranians authorities (or their agents) for religious reasons (para 81). Since *SH* was promulgated 10 years ago, however, the situation in Iran has deteriorated for religious minorities in general and for the Baha'i in particular.

In general, a person is likely to face a real risk of persecution or serious harm from the state on the basis of their Baha'i faith and the grant of asylum will usually be appropriate.'

8. At [46], the judge directed himself that, if OS was a genuine convert, he would be at risk of persecution and would be entitled to protection under the refugee Convention. If, however, he was not a genuine convert, then he would be returnable to Iran following the decisions of this Tribunal in *SSH and HR (Illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 00308 (IAC) and *HB (Kurds) CG* [2018] UKUT 430 (IAC).
9. At [47], the judge noted that OS's claim that he would be at risk because of his mother's Baha'i faith had been considered and rejected by Upper Tribunal Judge Goldstein in his decision of 8 May 2013.
10. The judge's findings about OS's claim to conversion were as follows. At [50], he accepted that OS had been 'accepted into the Baha'i faith', but noted that he had 'only sought to convert after he received the deportation papers'. At [51], he noted that OS had called no one from the

organisation to corroborate his conversion. The email 'simply welcomes him' and was 'akin to joining a gym and nothing more'. The membership card 'simply confirms he joined'. Neither was evidence that he is 'a genuine member of the organisation or a genuine follower of the faith'. At [52], the judge observed that the email contained three contacts to whom OS could have turned. At [53], the judge made the point that any of these could have confirmed this to OS's involvement in the faith but no evidence had been adduced from any of them. At [54], the judge noted that OS had been vague about the location of the meetings he had attended and found that if he had told anyone attending those meetings that he was at risk of removal, someone would have attended to give evidence in his support. At [55]-[57], the judge held as follows:

'55. I am not satisfied the appellant is a genuine convert and consequently I am not satisfied he is a follower of the Baha'i faith. Whilst he is not required to lie under questioning, I find he has nothing to lie about because he is not a genuine follower. I am not satisfied he has been to meetings as he claimed or played any role within the organisation.

56. Even if his mother was a follower there is no evidence about her or that he would be at risk simply because she was a follower.

57. Based on him having no adverse profile and following the guidance issued in *SSH and HR* and *HB (Kurds)*, I find returning him would not place him at risk of persecution or serious harm.'

11. The judge therefore upheld the deportation order and dismissed OS's human rights appeal.

Submissions on behalf of OS

12. On behalf of OS, Mr Gayle emphasised that the appeal ultimately heard by the judge on 13 August 2019 had previously been adjourned. At a hearing on 9 November 2018 OS attended with two witnesses prepared to attest to the genuineness of his conversion. Further substantive hearings listed for 11 December 2018, 22 March 2019 and 24 April 2019 were each adjourned. It was unclear whether the hearing on 13 August 2019 would proceed. We asked Mr Gayle whether any application had been made at that hearing for an adjournment. He confirmed that no such application had been made.
13. Mr Gayle submitted that the judge materially misrepresented the findings of Upper Tribunal Judge Goldstein in the previous appeal. Contrary to the judge's understanding, Judge Goldstein had entertained no doubt that OS's mother was a Baha'i. This, he said, fatally undermined the judge's assessment of risk on return to Iran.

14. Mr Gayle criticised the judge's findings about the significance of the email and membership card as 'perverse'. Contrary to his findings, these documents were 'compelling' evidence of the genuineness of OS's conversion. He submitted that the judge had erred by applying the approach recommended in Christian conversion cases to a Baha'i conversion. Reliance was placed on the decision of the Inner House of the Court of Session in **TF and MA v Secretary of State for the Home Department** [2018] CSIH 58.
15. In oral submissions, Mr Gayle said that OS was entitled to succeed even if his conversion was not genuine. This was because, on the judge's findings, OS had been formally accepted into the faith and this formal acceptance was something he would have to mention if he gave honest answers when questioned on return. Since it was likely that any failed asylum seeker would be questioned about his activities in the UK, and in particular any non-Islamic religious activities, and it was a general principle that returnees should not be expected to lie, it was inevitable that OS would have to disclose the fact of his acceptance into the Baha'i faith. This would render him liable to persecution even if the reason for his application and acceptance into the faith was to bolster his claim to stay in the UK, rather than because of a genuine conversion.

Discussion

16. We consider first the judge's rejection of the genuineness of OS's conversion. The language used by the judge, in likening the email from the National Spiritual Assembly to the kind of email that might be received on joining a gym, was in our view not helpful or appropriate. But the question for us is whether the judge erred in law. That depends on a consideration of the substance of the point he was making, not just the language in which it was couched. The point being made was that the email and membership card were of little evidential value on their own given that they were not accompanied by evidence from members of the Baha'i community attesting to the genuineness of OS's conversion.
17. In our view, that conclusion was clearly open to the judge. We have ourselves considered that email and the accompanying membership card. The judge did not doubt the authenticity of these documents; and nor do we. But neither of them explains the basis or evidence upon which it was issued. It may well be that documents such as this would not be issued unless the issuer believed that the person concerned was a genuine convert. But the documents themselves say nothing about the basis of the issuer's belief or the process followed in that regard. The judge was in our view entitled to find that, on their own, the documents proved nothing, other than OS's formal reception into the Baha'i faith.
18. Mr Gayle's oral submission before us was it was 'well known' that the National Spiritual Assembly was careful in issuing such documents only to genuine converts. The difficulty with that submission (as indeed with any

submission which takes as its starting point that something is 'well known') is that it invites a conclusion based on something other than evidence in the case. There are limited circumstances in which a court or tribunal is entitled to take 'judicial notice' of a fact that is not established by evidence in the case. The procedure and substantive conditions for the issue of documents of the kind seen here by the National Spiritual Assembly are certainly not, in our view, matters of which judicial notice can properly be taken. It cannot, therefore, be said that the judge acted perversely in concluding that the documents themselves did not show that OS was a genuine convert.

19. We turn next to the submission that the judge's conclusion was inconsistent with the approach of the Extra Division of the Inner House of the Court of Session in **TF (Iran) v Secretary of State for the Home Department** [2018] CSIH 58, 2019 SC 81. In that case, there was an issue about the genuineness of a claimed conversion to Christianity. Lord Glennie (speaking for himself, Lady Paton and Lord Drummond Young) noted at [44] that it was not possible to 'open windows on to men's souls', borrowing the aphorism generally attributed to Elizabeth I. It was therefore necessary, in determining the genuineness of a conversion, to draw inferences from more easily ascertainable and concrete facts, such as regular attendance at religious services. Active participation in a Christian church was not conclusive evidence of the genuineness of a claimed conversion, but it was 'likely to be a very powerful consideration, to be assessed alongside any other evidence pointing to the sincerity or otherwise of the claimed conversion to Christianity'.
20. The remainder of the Opinion was concerned with the type of evidence that would be admissible to support the genuineness of a conversion to Christianity. At [58], the Court disapproved the suggestion of the Immigration Appeal Tribunal in **Dorodian v Secretary of State for the Home Department**, 01/TH/01537, 23 August 2001, at [8(b)], that a Christian conversion must be supported by evidence from a minister of a relevant church. Because different churches followed different traditions, it was wrong to say that the evidence had to come from someone at a particular level in the hierarchy (if any) of the church. What mattered was that the evidence came from individuals with

'sufficient knowledge of the practices of the church of which they are a member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities.'

21. In **TF**, there had been independent evidence, including oral evidence from one witness, to support the genuineness of the appellant's conversion. This evidence was detailed and extensive, as can be seen from [9]-[16] of the Opinion. It was the failure of the First-tier Tribunal to engage with this evidence which justified the decision to the Court of Session to allow the appeal and remit the matter to that tribunal: see [62] and [65].
22. We do not detect in the judge's reasoning in the present case any reliance on the approach in [8(b)] of **Dorodian**, which the Court of Session disapproved. The judge did not suggest that the only acceptable evidence was that of a minister (or equivalent) in the Baha'i faith. The problem here was that there was *no* independent evidence of the kind which impressed the Court of Session in **TF**. OS had called 'no one from the organisation to support his conversion' or who could 'vouch for his attendance and work within the faith'. Unlike **TF**, this was not a case where the appellant had been actively participating in religious activities, but the judge sought to 'open a window on to [his] soul' by questioning his motives for doing so. Here, the judge did not accept that OS was an active participant at all.
23. We have considered with care the reasoning underpinning this conclusion, at [50]-[55]. The judge noted that the witnesses that OS had wished to call (but who were not present on the day the hearing took place) were not even members of the faith: [54]. They would not, therefore, have satisfied the conditions set out at [58] of **TF**. Equally importantly, as the judge noted at [52], the membership email gave three contacts, any of whom could have been called to support OS's case. None of them was in fact called; and no application was made for an adjournment. In those circumstances, it was, in our judgment, open to the judge to conclude that the claimed conversion - which post-dated the decision to deport and coincided with the appeal proceedings - was not genuine. We detect no error of law in this part of the judge's decision.
24. We turn now to Mr Gayle's submission that, even if the conversion was not genuine, the fact of his reception as a member of the faith (as evidenced by the email and membership card) was enough to generate a well-founded fear of persecution or a real risk of ill-treatment contrary to Article 3 ECHR. Mr Gayle's argument proceeded in three steps. First, he said that OS would, like any returnee, be questioned on return to Iran about his activities in the UK - and in particular any non-Islamic religious activities. In his case, the prospect of questioning about religious activities was even more likely than in other cases, because his mother is Baha'i. Second, he should not be expected to lie and, if he told the truth, would have to explain the fact of his reception into the Baha'i faith. Third, even if his conversion was in fact not genuine, the Iranian authorities might either (i) not believe that and so regard him as an apostate or (ii) take his false claim of conversion as an insult to their country and/or religion and, in either case, subject him to ill-treatment as a result.

25. **SSH (Illegal exit: failed asylum seekers) Iran CG** [2016] UKUT 00308 (IAC) establishes that those returning to Iran on a *laissez passer* (as opposed to a passport) are likely to be questioned on return. We are prepared to accept that it is likely that a person in OS's position would be questioned in general terms about his activities in the UK; and that it is possible that the fact (if it be a fact) of his mother's Baha'i faith may (perhaps) be known to the authorities and may prompt specific questioning of him. We have much more difficulty with the remainder of the argument. On the judge's findings, which we consider he was entitled to make, OS's conversion was not genuine. He is not, in any real or substantial sense, a member of the Baha'i faith or community. If asked whether he has converted to the Baha'i faith, the honest answer would be 'No'.
26. **HJ (Iran) v Secretary of State for the Home Department** [2010] UKSC 10, [2011] AC 596 was an important decision. It established that gay men and women who would otherwise be open about their sexuality, but would be forced to hide it to avoid persecution, were entitled to refugee status. The key question in the case of a particular gay asylum applicant was whether he or she would be discreet anyway (in which case there would be no well-founded fear of persecution on the ground of sexuality if the authorities would not discover his sexuality) or would otherwise have been open about his or her sexuality, but would hide it because of a well-founded fear of persecution (in which case the claim would succeed): see esp. [82]-[83] (Lord Rodger, with whom Lord Walker, Lord Collins and Lord Dyson agreed). The same approach has been applied to political opinion in **RT (Zimbabwe) v Secretary of State for the Home Department** [2012] UKSC, [2013] 1 AC 152 and to religious belief in **WA (Pakistan) v Secretary of State for the Home Department** [2019] EWCA Civ 302. If an individual on return would otherwise engage in overt conduct which manifests his or her religious belief, but would refrain from that conduct out of a well-founded fear of persecution, he or she is entitled to refugee status.
27. The present situation seems to us very far from engaging any principle that can be derived from these cases. On the findings of the judge, there is no question of OS having to suppress any overt conduct which manifests his Baha'i religious beliefs, because he has no such beliefs. There is nothing in any of the cases we have referred to, or otherwise as far as we are aware, to suggest that a person who has falsely claimed to have converted must, on return to his country of origin, declare that he has made such a false claim, or that he has been received into a faith community as part of a fraudulent attempt to bolster his asylum claim in the UK, to the authorities there. The judge did not, therefore, err in law when he concluded that OS has 'nothing to lie about because he is not a genuine follower'.
28. We can accept that there may be situations where the fact of reception into a particular faith would give rise to a well-founded fear of persecution,

even if the claim to have converted is false. But there would have to be evidence to support the risk of persecution, or of ill-treatment contrary to the Convention, in such a case. We have seen nothing to support the suggestion that the Iranian authorities have access to the National Spiritual Assembly's records or would otherwise know that OS has been received as a member of the Baha'i faith. Even if they did have such access, or if OS disclosed it to them in interview, we see no reason to suppose that they would not accept the truth, as the judge found it to be: that the claim to have converted to the Baha'i faith was manufactured to support his asylum claim. In this respect, we note the findings of the Swiss authorities, referred to by the European Court of Human Rights in **A v Switzerland** App. No. 02342/16, judgment 19 December 2017, at [20] and [43], that the Iranian authorities are well aware (and take into account) that applicants often falsely claim that they have undergone *sur place* conversions in order to bolster their asylum claims. The suggestion that the Iranian authorities would regard such false claims as an insult to their country or religion and visit ill-treatment on returnees as a result was not supported by any evidence. It was no more than speculation.

29. For these reasons, we dismiss this appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The appeal is dismissed.

Martin Chamberlain
The Hon. Mr Justice Chamberlain

2 February 2020