



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00504/2020

THE IMMIGRATION ACTS

Heard remotely via Teams
On 23 June 2021

Decision & Reasons Promulgated
On 13 July 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

BM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rogers, Immigration Advice Centre Ltd
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS
(Given ex tempore)

1. The appellant has appealed against a decision of the First-tier Tribunal ('FtT') promulgated on 29 December 2020, in which it dismissed his appeal on international protection and human rights grounds.

Background

2. The appellant is a citizen of Iran who claimed asylum in 2015. This was based upon his claim involving smuggling of goods between Iran and Iraq, which included Kurdish materials. His appeal against was dismissed on international protection grounds, following a hearing on 16 May 2017.
3. In 2019 the appellant made further submissions based upon his claimed conversion to Christianity. The respondent interviewed him about this and accepted his claim to be a fresh claim, albeit refused his claim on the basis that he was not a genuine convert to Christianity. The matter then came before FtT Judge Fisher on 10 December 2020.

FtT decision

4. In a detailed decision that was for the most part carefully drafted the FtT comprehensively recorded the evidence before it. This included the bundles from the appellant and the respondent, as well as witness statements from the appellant and two witnesses. One was his friend, a Mr Gohari, and another was a colleague from the church that he attended, St Cuthbert's Church in Darlington, a Ms Forth. The FtT set out the evidence of the witnesses in considerable detail at paragraphs 5 to 21. Having considered all of the evidence, the FtT said this at paragraph 34:

"Furthermore, having considered the evidence in the round, I am not persuaded that the appellant has shown even to the lower standard that he is now a genuine Christian. I base that on the fact that he was not honest with the Tribunal in relying on his previous discounted account as true, his assertion that he was not aware of the fact that conversion might provide the foundation for a fresh claim until a late stage, the lack of evidence that he conducts himself as a Christian throughout his life rather than merely attending church on a Sunday and his lack of knowledge of the faith. I have found that his knowledge was so limited that he would not have been able to make an informed decision to follow it. I have no doubt that he finds the congregation at St Cuthbert's to be warm and welcoming. That in itself would be attractive but it cannot be equated with a genuine conversion."

That paragraph came after the FtT's more detailed consideration of the evidence available and its assessment of various issues that were said to either detract from the appellant's credibility or which the FtT regarded to not undermine the appellant's credibility. I turn to those paragraphs now.

5. At paragraph 26 the FtT correctly directed itself to the Devaseelan principles and said specifically: "I accept the point made by Ms Rogers that even if the appellant has shown to have lied in his original asylum claim and appeal that

does not necessarily indicate that he is not now telling the truth". At paragraph 27 the FtT summarised the previous asylum claim and the findings made by the previous FtT but was concerned that in maintaining that his previous account was true after it had been dismissed by the previous judge and notwithstanding his representative's confirmation at the start of the hearing and in earlier case management hearings that no reliance was being placed on that previous claim the appellant's continued reliance upon it detracted from his overall credibility. The FtT also expressed concern as to the timing of the appellant's alleged conversion, saying he could not disregard that it came sometime after his original appeal was dismissed. At paragraph 28 the FtT indicated its satisfaction that the appellant was not being candid regarding his knowledge as to the likely prospective risk that conversion to Christianity might lead to in Iran.

6. At paragraph 29 the FtT rejected a submission made on behalf of the respondent that there should be adverse inferences drawn from the appellant's reliance upon a very brief appeal witness statement. At paragraph 30 the FtT noted that although much of cross-examination was directed to the extent of the appellant's knowledge of Christian faith and whilst that was relevant, the real issue was whether the appellant believed in the faith and perhaps more importantly whether he conducted himself as a Christian in day-to-day life. The FtT also made it clear that it was not prepared to make an adverse finding on the submission that the appellant had not attended every one of the Tuesday preparation sessions for his baptism. Similarly, the FtT made no adverse finding on the basis that the appellant may have missed some Sunday morning services.
7. The FtT then returned to matters undermining the credibility of the genuineness of the appellant's claimed conversion. At paragraph 31 the FtT found that the appellant's knowledge of the Christian faith was "*extremely limited*". At paragraph 32 the FtT undertook a careful examination of the evidence on the part of colleagues who attended the appellant's church. The FtT noted that there was some written support from two individuals but they did not attend the hearing and in any event offered no explanation in their letters for their belief that the appellant's conversion was genuine. The FtT considered Ms Forth to be a very sincere witness who was mindful of the possibility of being 'used' when giving her evidence. However, the FtT found that for reasons outside of Ms Forth's control she had not been able to meet with the appellant since March 2020 and had in any event no real conversations with him, given the language barrier. The FtT observed, and this is not disputed, that she was not involved in the appellant's baptism preparation.
8. The FtT also observed that the Reverend who had led the congregation had left the parish but provided a carefully worded letter dated 29 June 2019, in which he did not assert that the appellant was a genuine Christian. The FtT concluded that it had no satisfactory evidence as to how the appellant persuaded Reverend Firth that he was ready for baptism. The FtT also found that there

was no satisfactory evidence as to how the appellant conducted himself away from the short periods when he could be observed on a Sunday morning and no evidence was adduced by Ms Rogers or from the witness Mr Gohari to explain why he believed the appellant to be a genuine Christian.

9. The FtT then at paragraph 33 took the appellant's account that he was a member of the Kaka'i faith at its highest and observed that there was no evidence to show that conversion to Christianity from the Kaka'i faith would lead to a real risk of persecution, before then reaching his conclusion on the credibility of the appellant's conversion at paragraph 34, which I have already read out in full above. At paragraph 35 the FtT indicated that it had considered the Facebook posts submitted but very few of them were translated and some of them were duplicated. The FtT did not consider that these posts would lead to a real risk of persecution for a number of reasons including he was not a genuine convert, the post could be deleted, he gave information he was from Middlesbrough and that he would not be linked to the posts. The FtT concluded that the appellant therefore had no profile which would render him of any real interest to the authorities.

Appeal to the Upper Tribunal ('UT')

10. The appellant appealed against the FtT's decision relying upon three grounds of appeal.
 - (1) The FtT failed to apply the principles set out in the decision of TF and MA v SSHD [2018] CSIH 58.
 - (2) The FtT was wrong to accept that the appellant was of the Kaka'i faith, when the previous Tribunal had found that he was not.
 - (3) The FtT failed to apply the country guidance in PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC) when assessing his risk as a person who had not been accepted to be a genuine Christian.
11. Permission to appeal was granted by UT Judge Kamara in a decision dated 15 March 2021. She observed that it is at least arguable that the judge's finding that the appellant was of the Kaka'i faith was inadequately reasoned and was further inconsistent with the findings of the previous judge who had determined that the appellant did not follow the said faith.
12. In a Rule 24 notice dated 15 April 2021 the respondent opposed the appellant's appeal and invited the UT to uphold the decision of the FtT.
13. At the hearing before me Ms Rogers relied upon the three grounds of appeal and made short submissions expanding on each of those. Mr Tan responded to each of the grounds and I now turn to the submissions that were made in relation to each ground.

Ground 1

14. Ground 1 asserts that the FtT failed to apply the principles set out in TF and MA (supra) but regrettably failed to outline what those principles are said to be. During the course of her oral submissions, Ms Rogers did not take me to TF and MA and did not outline the principles the FtT was said to have failed to take into account.
15. TF and MA is a decision of the Court of Session in which each of the appellants had led evidence from individuals in positions of responsibility within the church as part of their evidence before the FtT. The Court of Session allowed the appellants' appeal, concluding that both the UT and the FtT had erred in law by failing properly to take account of the independent evidence relating to the genuineness of the appellants' conversions to Christianity and failing to give adequate reasons for effectively disregarding it.
16. The Court of Session said that the proper approach was to consider all the evidence in the round. However, in that case the FtT had taken into account material which allegedly demonstrated that the appellant was not a truthful witness and it carried that finding through in the discussion of the other evidence adduced. The Court of Session observed that the FtT ought to have looked at all the evidence on its own merits before forming a concluded view as to the appellant's veracity.
17. Ground 1 makes three specific points, which I deal with in turn. The first point is that the FtT is said to have disregarded the appellant's evidence of conversion by reference to previous adverse findings. I am not entirely sure what is meant by that, however, the submission seems to be that the FtT was wrong to take into account that the appellant had been regarded to be incredible by a previous FtT. As Mr Tan pointed out during the course of his submissions, the FtT expressly reminded itself at paragraph 26 that merely because the appellant may have been shown to have lied in his original asylum claim, that did not necessarily indicate that he was not telling the truth.
18. I note that the Court of Session made it clear at [50] that 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. When the FtT's decision is read as a whole, it seems to me that it reached no concluded view of the appellant's evidence until after it had considered all the relevant evidence and that concluded view is based upon having considered the evidence in the round as expressly stated at paragraph 34. Indeed, over the course of paragraphs 26 to 35 (as summarised above), the FtT considered that certain matters detracted from the appellant's credibility and other matters could not be taken against the appellant. It was only after considering all the evidence in

the round that the FtT reached the conclusion it did on the genuineness of conversion and for that reason, the FtT has not erred in law in structuring the decision in the manner that it has.

19. The second limb to ground 1 is that the FtT preferred its own assessment of the genuineness of the appellant's conversion to that of a person from the church who knew him well, Ms Forth. During the course of her submissions, Ms Rogers submitted that Miss Forth's evidence was rejected solely because she was not a pastor. I do not accept that criticism of the FtT's decision. As Mr Tan submitted, the FtT reminded itself that an important part of assessing the genuineness of conversion was to look at how a person conducts himself in day-to-day life (see paragraph 30). The FtT was clearly concerned that there was an absence of cogent evidence from anyone regarding this aspect. The FtT was also entitled to be concerned that Ms Forth may have been a very sincere witness but she was not in a position to cogently assess the genuineness of the appellant's conversion given the language barrier and the limited time together.
20. In TF and MA the Court of Session drew attention to the caution to be applied when deciding that a person in effect lived a lie by attending church services. Here, however, the FtT did not simply reject the appellant's genuineness of conversion by reference to the witnesses or his own evidence but also by reference to his own extremely limited knowledge of the Christian faith and all the matters considered in the round.
21. I now turn to the third limb of ground 1, in which it was submitted that the lack of evidence from a minister from the church was irrelevant in the light of the witness evidence from other church members. As Mr Tan submitted, the FtT was fully aware that there was evidence from other church members in the form of written letters of support, the evidence of Ms Forth and the evidence of Mr Gohari. The FtT addressed each of those pieces of evidence and gave that evidence the weight it considered appropriate. As to the absence of a minister, there is nothing to indicate that the FtT did not accept the church witnesses merely because they were not ministers or pastors. Rather, the FtT made the point that the evidence that it did have from Reverend Firth was of limited assistance, bearing in mind the careful way in which he worded his letter and the paucity of evidence as to what persuaded Reverend Firth that the appellant was ready for baptism.
22. I am therefore satisfied that although the FtT may not have referred to TF and MA specifically during the course of its decision, the findings of fact that were reached were entirely open to it and do not betray any of the principles set out therein.

Ground 2

23. Ground 2 submits that the FtT was not entitled to make a finding of fact that the appellant was of the Kaka'i faith when a previous FtT had already determined that he was not. I explained to Ms Rogers that it seemed to me that a proper

reading of paragraph 33 indicated that the FtT was merely taking the appellant's original account vis-à-vis his religion at its highest and assumed that there was a reasonable likelihood that he was a follower of the Kaka'i faith when assessing prospective risk. Ms Rogers merely disagreed without offering an alternative explanation for paragraph 33.

24. When paragraph 33 is read together with the rest of the decision it seems clear to me that the FtT was merely dealing with prospective risk and not the credibility of the appellant's conversion to Christianity. Indeed, if paragraph 33 was put after paragraph 34 and before paragraph 35, Ms Rogers would have no basis to complain. In my judgment paragraph 33 has merely been put in the wrong place and ground 2 contains no material error of law.
25. I invited Ms Rogers to take me to a part of paragraph 33 in which the FtT made a clear finding that this appellant was of the Kaka'i faith. She invited me to find that when paragraph 33 is read as a whole that must be the case. I disagree. As I have already indicated, paragraph 33 took the appellant's account of his past religion 'at its highest' vis a vis prospective risk only. This played no material role in the FtT's overall assessment of the credibility of the claimed conversion to Christianity.

Ground 3

26. I now turn to the final ground of appeal, which submits that the FtT failed to apply the country guidance in PS regarding the appellant's Facebook posts. Ground 3 submits that the FtT failed to take into account what would happen to the appellant as a disingenuous Christian convert, see in particular [116] of PS. Headnote 4 of PS says this:

“In cases where the claimant is found to be insincere in his or her claimed conversion there is not a real risk of persecution in country. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nonetheless consider the possible risks arising at the pinch point of arrival:

- (i) All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum.
- (ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning.
- (iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment.
- (iv) If there are any reasons why the detention becomes prolonged the risk of ill-treatment will correspondingly rise. Factors that could result in

prolonged detention must be determined on a case-by-case basis. They could include but are not limited to:

- (a) Previous adverse contact with the Iranian security services;
- (b) Connection to persons of interest to the Iranian authorities;
- (c) Attendance at a church with perceived connection to Iranian house churches;
- (d) Overt social media content indicating that the individual concerned has actively promoted Christianity.”

27. I accept that headnote 4 taken together with [116] of PS demanded that the FtT addressed the prospective risk to this appellant at the pinch point of arrival on the basis that he was not a genuine Christian. I invited Ms Rogers to deal with the materiality of any error of law insofar as it was asserted that the FtT failed to undertake the analysis that headnote 4 requires. She accepted that the factors set out at (iv)(a) to (c) were not applicable in this case but that (d) was and the FtT failed to consider whether there was a risk of prolonged detention based upon the Facebook posts that the appellant relied upon. Mr Tan invited me to note that the FtT made clear findings on these Facebook posts. It found that very few of the Facebook posts were translated, some of them were duplicated and that they could in any event be deleted.
28. I invited Ms Rogers to take me to the Facebook post that were said to give rise to an indication that this was an appellant who may be actively promoting Christianity. She told me that the Facebook posts that were in the appellant’s bundle were numerous and could be found at pages 22 to 140. She accepted, however, that the text said to include religious statements had not been translated. She also accepted that the appellant’s witness statement omitted to refer to or explain what was said in Facebook posts. She submitted that it was obvious from merely observing the Facebook posts that the religious imagery promoted Christianity.
29. I am of the view that if the appellant sought to place clear reliance upon overt social media content indicating that he actively promoted Christianity, that needed to be made clear in some way. The mere submission of untranslated and unexplained, duplicated Facebook posts with Christian imagery does little to advance any meaningful case. It cannot be inferred that merely because the appellant’s name appears next to Christian imagery that he was actively promoting Christianity. He may have been denouncing aspects of Christianity – we simply cannot tell.
30. Whilst I accept it would have been preferable for the FtT to have gone through the steps that are set out within PS, I am satisfied that had the FtT considered the untranslated and unexplained evidence in this manner, it would have inevitably reached the same conclusion. Although the standard of proof is low the burden remained upon the appellant.

Final points

31. I note in this regard that the UT has recently heard an appeal dealing with Facebook posts in the context of Iran and this may be something that the appellant and his representatives may wish to reflect upon should if considering any future application. I need say no more about that at this stage.
32. It follows that the grounds have not been made out and I dismiss the appellant's appeal.

Notice of decision

33. The appeal is dismissed.

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *UTJ Melanie Plimmer*

Date *1 July 2021*

Upper Tribunal Judge Plimmer