



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004607

First-tier Tribunal No: HU/50545/2022
LH/03182/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

RTK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, counsel, instructed by HUMD solicitors.
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 6 December 2023

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any family member. Failure to comply with this order could amount to a contempt of court.

Introduction

1. I preserve the anonymity direction previously made in this appeal.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Jepson dated on 23/09/2023, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 24/11/1979 and is a national of Iran.
4. The appellant entered the UK in November 2006. He claimed asylum in March 2007. The respondent refused the appellant's protection claim in April 2007. The appellant appealed that decision, and his appeal was dismissed on 05/07/2007.
5. The appellant made further submissions in 2010 which the respondent refused under paragraph 353 of the immigration rules on 24/08/2010. The appellant made further submissions on 22/03/2013. The respondent then granted discretionary leave to remain from October 2014 to April 2017.
6. The respondent then extended leave to remain on article 8 family life grounds from September 2017 to March 2020.
7. On 30/03/2020 the appellant sought leave to remain on article 8 ECHR grounds. The respondent refused that application on 29/10/2020. The appellant appealed and the First-tier Tribunal dismissed his appeal on 26/09/2021.
8. On 17/05/2022 the appellant applied for leave to remain in the UK. The respondent refused that application on 30/01/2023. It is against that refusal decision that the appellant appeals.

The Judge's Decision

9. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Jepson ("the Judge") dismissed the Appellant's appeal.
10. Grounds of appeal were lodged by the respondent, and on 13/10/2023 First-tier Tribunal Judge Gumsley gave permission to appeal stating

1. The application appears to have been made in time.

2. The sole ground is that the FtT Judge made perverse or irrational findings on material matters, and relies upon what it is claimed was a flawed approach taken to the consideration of the 'religious' witnesses.

3. Whilst establishing irrationally presents a high hurdle to overcome I am of the view that it is arguable that the FtT Judge failed to adequately reason why the evidence of the unchallenged 'religious' witnesses was not accepted as presenting the objective position, particularly given the passage of time, continued attendance at church, and oral evidence now given, since the previous determination.

4. In the circumstances permission to appeal is granted.

The Hearing

11. For the appellant, Mr Hussain moved the grounds of appeal. He told me that the Judge gave little weight to the evidence of the appellant's Dorodian witnesses, simply because they did not attend the appellant's unsuccessful appeal in 2021. Mr Hussain told me that the appellant's Dorodian witnesses spoke of the appellant's church attendance and to the practice of his faith; the Judge found them to be genuine, sincere, witnesses who believed what they were saying, but rejected their evidence because they did not attend to give oral evidence in 2021. Mr Hussain told me that that is an irrational finding which leaves both the appellant and the objective reader wondering how the Judge reach his conclusion.

12. The grounds of appeal referred to TF & MA v SSHD [2018] CSIH 58. I mentioned the Upper Tribunal decision of MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 (IAC) to Mr Hussain. He told me that the guidance in MH contain nothing which would detract from his argument. He reminded me that in MH the Upper Tribunal said that *Written and oral evidence given by 'church witnesses' is potentially significant in cases of Christian conversion (see TF & MA v SSHD [2018] CSIH 58)*.

13. For the respondent Mr Bates opposed the appeal. He referred to headnote 4 of MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 (IAC), which says

Written and oral evidence given by 'church witnesses' is potentially significant in cases of Christian conversion (see TF & MA v SSHD [2018] CSIH 58). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is for the judicial fact-finder.

14. Mr Bates emphasised that the weight to be attached to the evidence of church witnesses was a question for the Judge. He reminded me that in this case the Devaseelan principles apply. The Judge's starting point was a First-tier Tribunal finding in 2021 that the appellant is not a genuine convert to Christianity. Taking that as a starting point (Mr Bates said) the Judge was correct to treat the evidence of the appellant's church witnesses with caution.

15. Mr Bates reminded me of the Devaseelan principles, and, taking the component parts of those principles one by one, he took me through the Judge's decision telling me that the Judge had taken correct guidance in law, and explained the weight that he felt able to give to the evidence of the appellant's church witnesses. He told me that exercise led the Judge to [80] of the decision, where the Judge felt unable to depart from the First-tier Tribunal decision made 2021.

16. Mr Bates told me that the Judge took correct guidance in law, and reached a conclusion well within the range of reasonable conclusions available to him. Mr Bates told me that the Judge explains why he is unable to rely on the evidence of the appellant's witnesses.

17. Mr Bates asked me to dismiss the appeal and allow the decision to stand.

Analysis

18. The first 26 paragraphs of the Judge's decision deal with procedural and preliminary matters. At [22] of the decision, the Judge correctly identifies that his starting point is a previous finding of the First-tier Tribunal that the appellant is not a genuine convert to Christianity. In the first 26 paragraphs of the decision, the Judge clearly identifies that he is dealing with article 3 and 8 ECHR grounds of appeal. At [30] of the decision, the Judge quotes from the First-tier Tribunal decision made in 2021.

19. The Judge's analysis of the evidence begins and [69]. At [71] the Judge clearly takes guidance from the Devaseelan principles. At [73], the Judge considers the evidence of the appellant's church witnesses, and then explains why he must treat their evidence with circumspection in order to follow the Devaseelan principles.

20. At [74] the Judge takes guidance from MH. At [76] the Judge finds that the appellant's church witnesses are genuine and honest. At [77] and [78], the Judge identifies the determinative question, and explains that he finds the issue a difficult one to determine.

21. At [79] and [80], the Judge gives clear reasons for finding that he cannot depart from the findings of the First-tier Tribunal made in 2021.

22. The grounds of appeal are an irrationality challenge. The grant of permission to appeal incorporates the question of adequacy of reasoning, but adequacy of reasoning is not a ground of appeal and (correctly) it was not argued by Mr Hussain. This appeal focuses on the rationality of the Judge's findings.

23. In Herrera v SSHD [2018] EWCA Civ 412 the Court of Appeal said that appellate tribunals must always guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if first tribunal had the advantage of hearing oral evidence.

24. A fair reading of the Judge's decision makes it clear to the objective reader that, throughout his analysis of the evidence, the Judge wrangles with the weight which should be given to the evidence of church witnesses. The Judge finds that the appellant's witnesses were honest, genuine, witnesses, but that they had been misled by the appellant. The judge confesses that assessing the evidence was not easy, but explains what caused him to reach this conclusion.

25. There is nothing unreasonable in the Judge's analysis. The Judge fully explains how he reached his conclusion. The weight that the Judge gave to each strand of evidence was a question for the Judge. The difference between the weight to be given to evidence and an irrationality challenge is the reason this appeal cannot succeed.

26. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

27. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

28. The appeal is dismissed. The decision of the First-tier Tribunal, dated on 23/09/2023, stands.

Signed **Paul Doyle**
19 December 2023
Deputy Upper Tribunal Judge Doyle

Date