



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08648/2013

THE IMMIGRATION ACTS

Heard at Field House
On 24 March 2014 and 13 June 2014

Determination Promulgated

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

N H (IRAN)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Vaughan, Counsel instructed by Legal Rights Partnership
Solicitors

For the Respondent: Mr E Tufan, Specialist Appeals Team

DETERMINATION AND REASONS

1. Pursuant to Rule 14(1) of the Upper Tribunal Procedure Rules, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant has successfully appealed on error of law grounds from the decision of the First-tier Tribunal dismissing her appeal against the decision by the Secretary of State to refuse to recognise her as a refugee. The scope of this determination is how the decision should be re-made.

Relevant Legal Principles

The Geneva Convention

3. Article 1 of the 1951 Geneva Convention defines a refugee as someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.

Asylum under the Immigration Rules

4. Under paragraph 334 of the Immigration Rules an asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied inter alia that he is a refugee as defined by the Geneva Convention.

Grant of Humanitarian Protection under the Immigration Rules

5. Paragraph 339C of the Immigration Rules provides that a person be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied inter alia that he does not qualify as a refugee, but that substantial grounds have been shown for believing that the person concerned, if he is returned to the country of return, would face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling to avail himself of the protection of that country.

The Burden and Standard of Proof

6. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

Past Persecution or Serious Harm

7. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

Duty to Substantiate Claim for International Protection

8. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary

or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (1) The person has made a genuine effort to substantiate his claim;
- (2) All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (3) The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
- (4) The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;
- (5) The general credibility of the person is established.

The Appellant's Material History

9. The appellant is a national of Iran, whose date of birth is 23 March 1978. She left Iran on 1 or 2 September 2012 and travelled to Turkey. She spent 28 days in Turkey, where she was reunited with her daughter. She then flew with her daughter to Malaga in Spain. On 5 October 2012 they boarded a plane in Malaga, using fraudulently obtained Swedish passports, and flew direct to the United Kingdom.
10. The appellant claimed asylum on entry to the United Kingdom on 6 October 2012, with her daughter as her dependant. In her screening interview, she said she was a Christian. Her daughter M had been born in Iran in 2006. Her reason for coming to the UK was she had changed her religion to Christianity. At a gathering in Iran, the police came to arrest them, and she escaped. She had come to England, because England was the best country. She had last seen her spouse/partner in Turkey three to four days ago. He was currently in Iran. Altogether they had three children, and she had last seen her other children five days ago.
11. The appellant was interviewed about her asylum claim on 3 June 2013. She had been married twice. Her first marriage had ended in divorce, and she had remarried in the summer of 2004.
12. At the beginning of the interview, she handed over baptism certificates for herself and her daughter. She acknowledged that she had previously tried to obtain a medical visa for M. She had wanted to see a doctor in the UK to see if it was possible for her to be given a prosthetic arm. She had got a prosthetic arm for her in Iran, but it kept sliding down. M no longer needed a prosthetic. As she grew up, she realised that M did not need it. M was capable of taking care and looking after herself without a prosthetic arm.
13. She was asked to explain what had happened to her in Iran which meant she could not return. She answered she became a Christian, and at her house there was a Christian gathering one day. After the last of her friends left, she went and stood next to the window and starting smoking. She suddenly noticed there were two ladies in full hijab and chador, and they had dragged her friend R to the corner. She tried to call R on her mobile telephone, but she did not answer. She tried to call

another friend of hers, N, and she also did not answer. She became scared, so she fled through the back door.

14. She went to her grandmother's house by taxi. She removed her SIM card, as she was in total fear. She called her husband around the time that he was due to close up his shop. He told her not to worry, he was going to go home and find out what had happened and let her know.
15. She expected to get a call from him between 9 and 9.30. But she still had not heard from him at midnight. So she called her brother. Her brother H phoned her back, and said he would go and investigate at the house. H called her about one to two hours later to tell her that her husband, D, had been arrested. Also the Bible and cross had been taken from the house. The following evening her brother came to take her to Karaj, as he said it was not safe for her to remain in Tehran.
16. Her husband was subsequently bailed by H, who put up security of 150 toman. D called her that evening and told her the situation on her file was poor. He said she should try to be away from Iran until the situation had calmed down. There had been raids on two to three churches, and the priests were being taken to court. Home based churches and alpha classes were being discovered.
17. She was asked how she had become a Christian. She said after her daughter was born, she suffered from acute depression. She used to take M with her to the gym, and a lady, R, who worked at the gym's coffee shop befriended her. Their friendship developed, and one day she told her that she was a Christian. She asked if it was possible to talk about Christianity to her, and every time she saw her R read her a verse or prayer from Jesus. After six to seven months, R asked her to take part in the services, as she could trust her. She used to participate at these services, and she felt Jesus' miracles with her own. She had begun participating in these church services exactly five to six months before the incident at her house. The woman who had introduced her to Christianity was R, and she had met R in October or November 2010.
18. The appellant was asked further questions about the incident. Her daughter was at her mum's house. Her son was at his grandmother's house, he was not very close to her. Her other child P was 2½ years old when she separated from her first husband, and P lived with his dad.
19. Her husband had been arrested on a Sunday, and released the following Thursday. He was arrested because he lived at the house. When they realised he was innocent, he was released. They accepted his explanation that he had nothing to do with the meeting, and that all the people who had come to the house were ladies. She later said that there were outstanding charges against her husband, and that was why he was still on bail. The charge was for allowing these kind of gatherings to take place in his house. But he was not accused of being a Christian. He was also accused of facilitating her flight from the country.
20. She was asked whether he had been to court and convicted of anything. She answered that he had not discussed these issues with her. She talked to her brother,

and her brother said everything was OK. She knew her brother was lying to her. They were wealthy in Iran. She was a hairdresser, and did not have a lot of savings, but her husband was wealthy.

21. She was asked if there was any reason for her husband not sending money to her in the UK. She said she could not talk about money to him now. Because his standing and reputation were being questioned, she thought that if he saw her he would cut her in half. She was asked why her husband would help her escape from Iran, but not now support her financially. She answered he did not say whether he would support her or not. Her arrangement with him was that after a while she would return to Turkey. She was not supposed to come to the United Kingdom.

The Reasons for Refusal

22. On 30 June 2013 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee, as otherwise requiring international protection. It was not accepted that she was introduced to Christianity by a fellow believer named R, or that she had attended house churches in Iran in order to practice Christianity, or that she had escaped from the Iranian security services Ettala'at via the back door of her property after they had arrested all the other members of her house church when they left the property on 26 August 2012.
23. The Secretary of State's reasoning was that when questioned about her Christian faith in the asylum interview, she did not know the correct answers to the most basic of questions in relation to the Christian religion. The limited knowledge she had displayed, coupled with her inability to provide a letter confirming her continued attendance at a church in the UK, negated the weight that could be placed upon her baptismal certificate. She had also been internally inconsistent in her explanation as to how she was the only person from the house church service that was not arrested by Ettala'at. Furthermore, the apparent ease with which she managed to escape from Ettala'at was considered inconsistent when viewed in connection with the background evidence on this security force.

The Decision of the First-tier Tribunal

24. The appellant's appeal came before Judge Fox sitting in the First-tier Tribunal at North Shields on 15 October 2013. The judge received oral evidence from the appellant and from supporting witnesses. The judge went on to find that the core of her account of persecution lacked credibility, and that it was a fabrication designed to gain access to the United Kingdom.

The Application for Permission to Appeal

25. The appellant applied for permission to appeal to the Upper Tribunal, raising four grounds:

- (1) the judge failed to make a clear finding regarding her conversion to Christianity in the UK;

- (2) the judge's findings about the evidence of the clerics who attended the hearing were unsafe;
- (3) the judge committed an error of fact that had caused unfairness, by stating the appellant's daughter had not been baptised into Christianity;
- (4) there had been a failure properly to consider risk upon return as a Christian convert and/or as a person who had evangelised in the past.

The Error of Law Ruling

26. Following a grant of permission to appeal by First-tier Tribunal Judge Sharp, an error of law hearing took place before Deputy Upper Tribunal Judge Plimmer at Field House on 28 January 2014.
27. In a decision promulgated on 29 January 2014, Judge Plimmer gave her reasons for finding that the decision of the First-tier Tribunal was vitiated by a material error of law such that it should be set aside, and re-heard de novo.
28. Judge Plimmer observed that Judge Fox had made a very clear finding that the appellant did not convert to Christianity when in Iran. He appeared to accept that she had converted to Christianity whilst in the UK, but he seemed not to regard the conversion to be genuine. Judge Fox had wrongly attached particular significance to the fact that the appellant's daughter did not appear to have been introduced in any way to Christianity. The judge had overlooked the evidence relevant to the daughter's baptism within the appellant's bundle. It was clear that Judge Fox regarded the absence of evidence regarding the daughter's conversion as significant and impacting upon the approach to the appellant's credibility generally. It could not be said that Judge Fox would have reached the same conclusion without the error.

The Remaking of the Decision - Evidence at the Hearing on 24 March 2014

29. At this hearing, the appellant adopted as her evidence-in-chief the witness statements that she had relied on before the First-tier Tribunal, and she was cross-examined by Mr Tufan. She was questioned extensively about an allegation of domestic violence which she had made to the Reverend Mark Miller. She was also asked about her activities in the UK. She had not converted anyone to Christianity. She had taken some Iranian friends to church. She also did not try to convert anybody in Iran. She said that if a person was willing, she would help her.
30. In re-examination, she confirmed that her husband had physically abused her. She was asked why she had not mentioned this before. She said that she had felt more at ease with the Reverend Miller.
31. On further questioning by Mr Tufan, the appellant explained that the arrangement was for her to go to Turkey, and to wait there while things calmed down. The plan was for her then to go back to Iran. She did not return to Iran because of the bad

news she had received. She had not left Iran because she was trying to get away from her husband. He did not torture her. Her husband abused her by being indifferent.

32. She was asked what had happened to R. She said she did not know. She was asked whether she had tried to find out what had happened to R. She said she had used Facebook, and had thereby established that R had been arrested. She tried calling R and her other friends, but the number did not answer.
33. Mr Vaughan renewed an earlier request to adjourn the hearing so that expert evidence could be obtained on the issue of risk on return for an ordinary convert to the Protestant faith. I acceded to this request, and adjourned the hearing part heard.

The Remaking of the Decision - Evidence at the Hearing on 13 June 2014

34. At the resumed hearing, my attention was directed to a supplementary bundle containing an expert report of Dr Anna Enayat, and a letter from the Reverend Neil Warwick dated 20 March 2014. The expert report of Dr Enayat was not specific to the appellant, but had been prepared for a pending country guidance hearing which had been listed for three days. With Dr Enayat's permission, this report dated 6 November 2013 was being deployed for the appellant's case.
35. There is reference to the report being updated on 7 May 2014, which I understand relates to the addition of some footnotes and the blanking out of pages 67 to 69 in order to preserve the confidentiality of the appellant or appellants in the pending country guidance case.
36. The appellant adopted as her evidence-in-chief a supplementary witness statement signed by her on 5 June 2014. If she was returned to Iran, she would continue to practice Christianity. She could easily read the bible and tell her close friends and family how peaceful the Christian religion was and how much love and peace you could get through Christianity. If she was returned to Iran, she would be forced to do this secretly, like she had done in the past, by holding house churches. She had held a house church in her house twice whilst in Iran, and the last time it had led to her attempted arrest. Though she would like to, she could not talk about Christianity freely and openly in Iran as she would be arrested by the authorities. She considered herself to be Christian, although of no particular denomination.
37. In cross-examination, Mr Tufan asked her what she meant by no particular denomination. She said she did not understand the question. She was just a Christian. In answer to a question for clarification purposes from me, she said that she thought the church she was attending in the UK was a Catholic church, but she was not sure.

Discussion and Findings

38. The appellant and her daughter were baptised at Stockton Parish Church. In a letter dated 8 October 2013 the Reverend Mark Miller of Stockton Parish Church says as follows:

My own observations of [H] suggest that she does indeed believe in trusting God the Father, the Son and the Holy Spirit. Her participation in Sunday services is not passive, but active. She joyfully sings, she listens intently to the words in the service and she participates in the prayers. This level of participation is greater than many who attend Church of England services and is a characteristic of someone with a living, active faith.

39. He goes on to say that he is convinced that her conversion to Christianity is genuine. He believes that her life has been transformed by the faith that she now places in Jesus. She is passionate about her faith. She has told others and he believes she will continue to tell others about her experience and invitation to know more about her faith. She also encouraged her to explore a more formal role within church leadership.
40. In a letter dated 20 March 2014 the Reverend Neil Warwick of St Nicholas Earley Church in the Diocese of Oxford confirms that the appellant has been a regular and most welcome part of their worshipping community in recent months. Attending with her daughter, she has made friends with some members of the congregation and is most sincere in her engagement with the worship and the sacrament of Holy Communion.
41. In a letter dated 7 June 2013, the Reverend Canon Alan Farish, priest in charge of Stockton Parish Church, addresses the point raised in the refusal letter about the knowledge of Christianity displayed by the appellant in interview. He says:

As [H] is in the early stages of the Christian faith it would be unfair to expect her to have an extensive understanding of the Bible at this stage, which I believe the Home Officer interviewer expected. What she can testify to with integrity at the present time, is her faith in Jesus Christ, a love for him and a desire to follow him for the rest of her life. I see her doing this at the moment, three and half months after her baptism, by still attending worship regularly on a Sunday with her daughter, by still attending their weekly Wednesday discipleship group also with her daughter, and by having regular fellowship with her Christian friends in Stockton and Middlesbrough.

42. The genuineness of the appellant's conversion is also attested to by Pouya Heidari, assistant minister of Stockton Parish Church. The cumulative weight of this supporting evidence persuades me to the lower standard of proof that the appellant is a genuine Christian convert. Her faith is a simple one, and so I do not find that her ignorance of different Christian denominations is fatal to her credibility. Not only does the Reverend Mark Miller credibly attest to the appellant's faith, but he also provides a credible explanation as to why the appellant was receptive to Christianity in Iran. At the age of 11, her father died, leaving her bereft and lacking a loving fatherly influence. Her view of Islam was very negative, primarily through the hypocritical lifestyle of the religious people, or Muslims who surrounded her. The hypocrisy was drinking alcohol despite Islam prohibiting this, and giving to the poor whilst having no compassion for their situation. She married at an early age, 17 or 18, and she was subjected to domestic violence. She experienced love, kindness and respect from Christian neighbours in the midst of her marital troubles. Her daughter's disability was blamed on sins committed by her and she developed a

friendship with a lady called R who, she later discovered, was a Christian and part of an illegal house church. This lady demonstrated kindness, love and acceptance of the appellant and her disabled daughter.

43. In her asylum interview, the appellant was not able to list the Ten Commandments. But she was able to identify the three elements of the Trinity (Father, Son and Holy Ghost) and she displayed some knowledge of the New Testament. Of particular significance was her answer, when asked to tell the interviewer some of the religious celebrations in Christianity. She referred to "Eid e Fatir", which she said was when Jesus gathered disciples around him and cut bread to pieces and gave wine and asked him to follow his tradition; and to "pesak ceremony", which she said was a gathering where believers preached to newcomers. Neither of these celebrations corresponds precisely to anything in the Anglican faith, and so she could only have come across such celebrations through worship in Iran.
44. In the refusal letter, the Secretary of State recognised that the appellant's account of the development of her faith through her friendship with R was internally consistent. Where the Secretary of State challenged the appellant's account was in respect of the alleged arrest of fellow worshippers following a meeting held at her house. Her initial explanation in interview as to why she was not arrested was that Ettala'at needed to wait for people to exit the apartment (which was in a block) to establish who was the host. When it was put to her that the authorities in Iran worked with virtual impunity, and could do what they like, she said it must have been her good luck that she was not arrested. I do not consider this exchange materially undermines the appellant's credibility with regard to the claimed incident. Her initial explanation is in line with her description of what occurred, which was witnessing one of the attendees being ushered away by two women who were waiting outside. The appellant's description of how events unfolded is detailed and vivid, and I find it to be credible. The fact that Ettala'at could arguably have conducted the raid in a more direct manner, by coming to the door, does not make the appellant's version of events implausible. Similarly, the fact that Ettala'at could have taken greater steps to ensure that no-one escaped from the building does not render the appellant's account implausible or incredible.
45. In her overview of the current situation at the beginning of her report, Dr Enayat says at paragraph 6:

[F]or some years now house churches have provided the main framework of worship for new converts. They meet in secret, are illegal, and for the past four to five years have been a focus of government and security force interest with reported incidents increasing very substantially since the spring of 2008 and coming to a new crescendo in December 2010/January 2011.

46. She goes on to say that the reports indicate that raids on house churches have involved short term detentions of ordinary members and long detentions for those described as organisers or hosts. There have also been frequent reports of ordinary Christians summoned by the security police for interrogation, sometimes described as harsh.

47. At paragraph 12, she says that most house church organisers whose arrest is reported appear to be charged with evangelising, whether or not their group is made up of converts, and whether or not the house church is actively seeking new members.
48. At paragraph 13, she says that in the context of small house church groups, which often rotate their meeting place, it is very easy to step over the line between being an ordinary and active Christian; for example, by offering to host the house church, or agreeing to look after Bibles.
49. The appellant's general credibility is potentially called into question by the evidence she gave at the previous hearing on the subject of domestic violence. As pointed out by Mr Tufan, she had never mentioned this claim before, except apparently to the Reverend Mark Miller. Mr Tufan introduced the topic of domestic violence immediately after the appellant had said in cross-examination that she had a good life in Iran, because her husband gave her a lot of freedom.
50. Having reviewed the evidence, I consider that the allegation of domestic violence mentioned by the Reverend Mark Miller was an allegation directed by the appellant against her first husband, not against her second husband. This explains why, on further questioning, the appellant did not maintain the allegation against her second and current husband. So I find that there are not substantial grounds for believing that the appellant left Iran in order to escape domestic violence at the hands of her current husband.
51. The judge below reasonably attached considerable weight to the fact that the appellant had not claimed asylum in Turkey, where she was safe, but had entered the United Kingdom illegally. While I accept that this damages the appellant's credibility, I do not consider that it fatally undermines it.
52. The judge also pondered whether the appellant's true motive in coming to the United Kingdom was to obtain medical treatment for her daughter, but answered this question in the negative. I make the same finding.
53. In conclusion, for the reasons I have given above, I find the appellant has discharged the burden of proving that the core of her claim is true. I find that she fled Iran because she had come to the adverse attention of the authorities on account of having hosted an illegal church service at her house. So even under the current country guidance, she would be at an enhanced risk of ill-treatment on return. She would not be returning as an ordinary Christian convert in the eyes of the Iranian authorities, but as someone who had already been marked out as an evangeliser. I find therefore that she qualifies the recognition as a refugee. By the same token, there are substantial grounds for believing that on return to Iran she would face a risk of ill-treatment of such severity as to cross the threshold of Article 3 of the ECHR.

Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: the first appellant's appeal is allowed on asylum and human rights (Article 3) grounds, and the second appellant's appeal is allowed in line with that of her mother.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date

Deputy Upper Tribunal Judge Monson