



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03931/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**Decision & Reasons**

**On 30 November 2017**

**Promulgated**

**On 19 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**RS**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr. D. Paxton, Counsel instructed by Migrant Legal Project

For the Respondent: Mr. I. Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Barcello, promulgated on 25 May 2017, in which he refused the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction.
3. Permission to appeal was granted as follows:

“Pastor Rees is dismissed (29(iv)) as having scant knowledge of the appellant other than what he is told whereas (14) Pastor Rees is recorded as knowing the appellant as a three times a week church attender plus Tuesday evangelism expeditions plus helping with the food bank, a total amounting to almost daily engagement. No account is taken of the longevity of the relationship with the church house friend. Guidance is drawn from the extensive citation of the obsolete country guidance report at (24). Arguably errors of law have thereby arisen.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

### **Submissions**

5. Mr. Paxton relied on his skeleton argument. In addition he submitted in relation to Ground 3 - irrationality, findings on plausibility - that there were two strands. The first was in relation to the assumptions made by the Judge regarding what would be expected of a house church in Iran, that the Appellant would be allowed to attend despite his family background, and being out of touch with his friend, and in relation to the house church not moving around. This was supposition.
6. Secondly the Judge had not considered the evidence before him when considering implausibility. Contrary to his finding at [29(ii)] the religious literature and notes were not stored casually, but under the carpet in a locked room. It was a very close friend who had invited him to church, and this had not been taken into account when plausibility had been considered. The circumstances were not implausible.
7. In relation to Ground 2 and the Country Information and Guidance, it was accepted that this would not make a difference as the risk on return to the Appellant if he were found not to be a Christian was not changed by the new guidance.
8. Mr. Richards submitted that the Judge had taken full account of the evidence of Pastor Rees. At [29] he had carefully analysed his evidence. He was wholly entitled to give limited weight to the evidence of Pastor Rees. He did not reject it out of hand, but carefully analysed it. It was for the Judge to decide what weight to give to his evidence and there was no error of law in his approach.
9. In relation to Ground 2, the 2015 report had been submitted by the Appellant's representatives in the Appellant's bundle before the First-tier Tribunal. He submitted that legal representatives could not submit evidence which they wanted the Judge to take into account, and then allege legal error when the Judge did take it into account. In any event, the background evidence was not crucial to the credibility findings.
10. In relation to Ground 3, the Judge had been informed that Christian converts in Iran were at grave risk. Having accepted that, he was entitled to find that those who attended house churches in Iran would, on any

common sense appreciation of the evidence, take all reasonable precautions in respect of security. He was wholly entitled to take that matter into account.

11. The Judge had taken account of all of the relevant evidence. He had come to a conclusion properly open to him on the basis of that evidence. He had not found the Appellant to be a witness of truth, and he had given adequate reasons for that. There was no error of law in the decision.
12. In response Mr. Paxton submitted in relation to Ground 1 that the issue was that the Judge had characterised the pastor as saying one thing, but had put limited reliance on him as a witness. At 29(iv) he had found that the pastor had little direct knowledge of the Appellant, but this was contradicted by the evidence of Pastor Rees. In relation to Ground 3, the Judge had discounted plausible explanations and in doing so had acted irrationally.

### **Error of Law**

#### *Ground 2 - failure to consider relevant evidence*

13. I will deal with this ground first as it was accepted by Mr. Paxton at the hearing that, given that the risk on return to an Iranian who was not a Christian was not changed by the more recent guidance from the Respondent, there was no material error in the consideration of this report. I find that this is the case. Even had the Judge considered the more recent guidance, it would not have made a difference had he found the Appellant to be a Christian or, as he found, that the Appellant was not a Christian. Further, it had been agreed at the hearing that if the Appellant was found to be Christian, he would not be able to return to Iran.
14. In relation to whether the Respondent's representative should have drawn the Judge's attention to this guidance, as stated in the skeleton argument, it had been referred to in the reasons for refusal letter [25] and so had been brought to the Judge's attention by the Respondent. It was the Appellant's representatives who had provided the 2015 guidance as part of their bundle.
15. Although the Judge referred to 2015 rather than 2017 guidance, there is no material error of law in his doing so.

#### *Ground 1 - failure to give proper weight to the evidence of Pastor Rees*

16. I have carefully considered the Judge's treatment of the evidence of Pastor Rees. It is submitted that insufficient weight was given to his evidence. At paragraph 29(iv) the judge states:

"I do not doubt the sincerity of Pastor Rees. Based upon the information available to him he considers the Appellant to be a genuine adherent to the Christian faith. I have significant concerns however about the basis upon which he reached this conclusion:

-The Pastor has little insight as to the Appellant's history and has very little direct knowledge of the Appellant other than that which he is told by other leaders of the church and seeing him at Bible study sessions.

- The Pastor did not make the assessment that the Appellant was ready to be baptised and relied entirely what he was told by others as to the Appellant's character and conduct within the church. I can place only limited weight on such evidence.

- The safeguard which the Pastor suggests protects the church from supporting people who are insincere does little to achieve that aim. In essence, it is based upon the expectation that a person who has a genuine faith will be prepared to undertake a number of ministries for the church. That may well be correct. However, nothing precludes those who do not share their faith from performing the same activities.

-I note that although the Appellant's actions are clearly consistent with a legitimate adherent of the faith, they are not inconsistent with those of a person committed to perpetrating a fraud. Pastor Rees himself acknowledged that the benefit of a settled immigration status is a powerful motivation and that there are instances where people have attempted to use the church for that gain. In my view, this is one such instance."

17. I have also considered the evidence of Pastor Rees as set out by the Judge. It is not submitted that there is any error in his account of Pastor Rees' evidence. I do not need to set it all out, but only those relevant parts, all contained in paragraph 14.

"He knows Mr. S. as someone who attends the church faithfully on Sundays and at study meetings on Wednesday and Friday. He also goes out with the evangelism group on Tuesdays and helps at the food bank also."

18. When asked about how it is decided who is to be baptised, his evidence was:

"I was previously in charge, but relinquished role. In the hands of the leadership to speak to the individuals. They make value judgments on the people all the time. He was spoken to about his faith. It also comes out in the ministries in which he participates. He goes with 2 deacons of the church. They would have seen a lot of him and happy he is sincere. No comments were made as to why he shouldn't be baptised."

19. In relation to his direct involvement with the Appellant:

"I would be preaching on the day. I also have control over if they make wrong decision can interfere and stop it. On the day of his baptism I would have been preaching about the importance of baptism. I believe he is sincere. I look forward that if he remain in Cardiff he will become a member of the church."

20. When asked how often "he directly talks" to him:

“on a Wednesday, Friday and Sunday I would see him. I am either preaching or teaching. Also sometimes on a Tuesday. [...] He has come many times on a Tuesday as the evangelism group comes in around that time.”

21. I have also considered the account of cross-examination of Pastor Rees set out at [14] on page 8.
22. Given this evidence, I find that the Judge was entitled to place limited weight on the evidence of Pastor Rees. It is submitted in the skeleton that the finding that the pastor had “very little direct knowledge of the Appellant” was contrary to the evidence given how much the pastor saw him. However it has not been submitted that the Judge was wrong in finding that he “saw” him, and when asked about how much he “talked” to the Appellant, his answer was that he “saw” him. He did not say that he “talked” to him at all. The Judge refers to the pastor seeing him at Bible study sessions, which is the evidence before him.
23. The Judge is correct in stating that the assessment as to whether the Appellant was ready for baptism was made by someone else, following the evidence of Pastor Rees. The fact that he could stop the baptism does not contradict the finding that it was not him who made the assessment. Further, the grounds point to the fact that the pastor said that he saw the Appellant, but I have stated above that there is no more here than that he “saw” the Appellant. The pastor did not refer to discussions with the Appellant.
24. The finding about the safeguards at the church was open to the Judge. This is based on the evidence before him, including the cross examination of the pastor.
25. Considering the account of the evidence of the pastor as set out which, as I have stated, has not been challenged, the Judge has not erred in his assessment and analysis of Pastor Rees’ evidence. The Judge is aware of the Appellant’s frequent attendance at church, but his finding that the pastor has “very little direct knowledge” of the Appellant based on the pastor merely seeing him at the church was open to him. He has not erred in giving little weight to the evidence of Pastor Rees.
26. What lies behind ground 1 is an assertion that the Judge should have attached such weight to the evidence of Pastor Rees so as to find, based on his evidence, that the Appellant was a genuine convert to Christianity. The skeleton states that the evidence of the pastor was capable of being decisive. However, it is for the Judge to decide the weight to be given to the evidence before him. He has not materially misstated the oral evidence. He has analysed the evidence of Pastor Rees, and there is no error of law in his giving limited weight to his evidence.

### *Ground 3 – Irrationality – Findings on Plausibility*

27. The grounds submit that the Judge has failed to take into account relevant evidence as to plausibility. At [29(ii)] the Judge set out “Examples of Implausible aspects of his accounts”. He states:

“a) Having not seen Sa for 3 years, despite Sa knowing that his parents were involved in the police and military, the Appellant’s account would suggest a significant departure from the sort of security measures a house church might be expected to undertake both in relation to the Appellant himself (invited to the house after 2 weeks, no surveillance or discussion about parents), and

b) to the way the church was run (meetings on the same time on same day at same place each week).

c) The Appellant’s claimed actions run contrary to the care that could be expected of him, he being someone very aware of the risk of becoming involved with Christianity. As examples, him catching a private car to the venue and the manner in which he casually kept religious literature and notes in his bedroom that could easily be found by family, let alone security personnel if he came under suspicion.”

28. I have considered the account of the evidence of the Appellant as set out at [13]. As stated above, there has been no challenge to the account of the evidence. The Appellant said that he “met Sa when registering for a class, he had not seen him for 3 months, but had known him from primary school for 8 years or so”.

“Asked how hiding religious documents in bedroom in a draw (sic) or under carpet is inaccessible, he said the door was locked to prevent his brother from entering the room.

He agreed that secret service could obtain access, but questioned where else could have hidden them.”

“Asked why Sa carried out no checks or surveillance, he replied that Sa knew his parent’s work but he was a believer and his duty was to look for the lost sheep, people like me. They had known each other for 8 years and were like brothers.”

29. The Judge has stated in his findings that the Appellant had not seen his friend for three years, whereas in the account of the evidence it states three months. However, I have considered the asylum interview where the Appellant was asked if Sa had converted to Christianity and when, Q62. His response is “It was during the period which I did not see him. It was three to three and a half years.” There is no error of fact here.

30. It was submitted that the Judge ignored the evidence of the closeness of their relationship, but this runs counter to the evidence that they had not seen each other for a period of three to three and a half years.

31. In relation to the religious literature, the Appellant said that he locked his bedroom. However, he was challenged in oral evidence as to how keeping the literature in a drawer or under a carpet could be described as

“inaccessible”, and he agreed that the secret service could obtain access and asked where else he could have hidden them. The Judge states that the Appellant “casually” kept religious literature in his room. It is arguable that the use of the word “casually” is not correct, but equally the evidence of the Appellant was that he was keeping religious literature at home, in his bedroom, where it could have been found by security personnel. He stated that he locked his bedroom, but arguably to keep such literature at home at all, given his parents’ work, and given his admission that it could be found by security personnel, was casual.

32. In any event, even if the judge has erred by characterising the manner in which the Appellant kept religious literature at home, given the rest of the Judge’s findings, this is not material.
33. Regarding the submission that the Judge has made a speculative finding in relation to the way that house churches operated, given the Appellant’s awareness of the risk of becoming involved in Christianity, and the risk to those involved with house churches, the Judge was entitled to make findings regarding the Appellant’s own conduct in relation to the house church, including the fact that Sa, who had not seen him for three years, and who knew that his parents worked in the police and the defence ministry, invited him to the house church after only two weeks. He was entitled to find that it was implausible that the house church would meet at the same place and time each week. The Judge was entitled to find that the Appellant’s account of the way in which he was invited to the house church, and his account of how the house church was run, was not plausible given the Appellant’s evidence as to the danger of being involved with Christianity. The Judge was entitled to find it implausible that Sa would have invited the Appellant along after two weeks, having not seen him for over three years, and knowing what his parents did.
34. Again, even if the Judge has speculated on the operation of house churches and, given a common sense approach to the claim before him, I do not find that he has, his findings need to be considered in the round. I find, considering the evidence in the round that this is not material. At 29(i) he found with reasons that he did not accept the Appellant’s motivation for leaving Iran. This has not been challenged. The Judge found that the Appellant had “lied about the motivation for leaving” Iran, with reference to his immigration history, and his claimed journey to the UK.
35. At 29(ii) he first set out inconsistencies in his evidence. There has been no challenge to the significant inconsistency in the Appellant’s evidence of when Sa introduced him to the house church. Similarly, there has been no challenge to the finding of inconsistency in the Appellant’s evidence of his mode of travel to the house church. The Judge finds this particularly significant given the context in which he was being asked. He states that he found the context of his answers important, given that it “came at a time when the Appellant was being challenged about an apparent lack of security measures for the house church”. The Judge is entitled to come to this finding, and to take into account the context in which the

inconsistency occurred. At (d) he makes the important and unchallenged finding relating to the change in the Appellant's evidence as to whether the secret service were aware of him being involved in Christianity. At 29(iii) the Judge finds that the Appellant was "deliberately evasive and argumentative during his evidence when challenged on matters of apparent inconsistency or implausibility". He found him to be deliberately evasive.

36. At 29(iv) he considered the evidence of Pastor Rees, and I have found that there is no error of law in this consideration.
37. Accordingly I find that if there is any error of law in the findings relating to implausibility, and for the reasons given above, I do not find that there is, it is not material. It is clear that the Judge did not find the Appellant to be a credible witness for reasons fully set out. He gave proper reasons for not giving more weight to the evidence of Pastor Rees. The Judge did not find the Appellant's account not credible "largely on the basis that he considered aspects of his account to be implausible" as stated in the grounds, but he found him not to be credible having considered all of the evidence in the round. The grounds do not challenge all of the findings. The grounds amount to no more than a disagreement with the findings of the Judge, and a disagreement as to the weight he has placed on the evidence of the witness.

### **Notice of Decision**

38. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set the decision aside. The decision of the First-tier Tribunal stands.

### **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

Date 18 December 2017

Deputy Upper Tribunal Judge Chamberlain