



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14031/2016

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre

Decision & Reasons Promulgated

On: 17th August 2018

On: 16th October 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

Respondent

Fawad [A]

(no anonymity direction made)

For the Appellant:

Mr Bates, Senior Home Office Presenting Officer

For the Respondent:

Ms Butler, Counsel instructed by Islington Law Centre

DETERMINATION AND REASONS

1. The Respondent is a national of Afghanistan date of birth 1st August 1993. On the 2nd December 2017 the First-tier Tribunal (Judge Povey) allowed, on protection and human rights grounds, his appeal against a decision to deport him from the United Kingdom. The First-tier Tribunal accepted, *inter alia*, that Mr [A] is a committed Christian who had rebutted the presumption that as a 'serious criminal' he continues to pose a danger to the community. The Secretary of State now has permission to appeal against the First-tier Tribunal decision.

2. The primary ground of appeal is that the First-tier Tribunal's findings on Mr [A]'s Christian beliefs are flawed for:
 - a) A failure to apply the Dorodian¹ guidelines; *and*
 - b) A failure to give reasons; *and*
 - c) A failure to take into account the *Devaseelan* findings of an earlier Tribunal; *and/or*
 - d) Irrationality
3. The second, related, ground of appeal is that the findings on s72 must also be irrational, predicated as they are on the finding that Mr [A] is now a committed Christian. Before me Mr Bates accepted that this ground stands and falls with the first.

Discussion and Findings

4. The Home Office Presenting Officer at the hearing before the First-tier Tribunal expressly accepted that Mr [A] would face a real risk of serious harm in Afghanistan if he were in fact a genuine Christian [§7.2]. That is because Mr [A] was previously a Muslim and his conversion to a different faith would be classed as apostasy, a crime punishable by death according to the operative Islamic law in Afghanistan. The question before the Tribunal was therefore one of simple fact. Had Mr [A] converted as he claimed?
5. The First-tier Tribunal sets out its reasoning at paragraphs 27-31 of its determination. The Tribunal records the reasons why the Secretary of State did not accept that this was a genuine conversion. It then notes that various chaplains within the prison service had come forward to testify to their belief that Mr [A] had truly become a Christian. The determination records the procedural history of the appeal, stating that the case had been adjourned on several occasions whilst enquiries were made as to whether any or all of these chaplains would be permitted by their employer – the Home Office – to come to court and testify on Mr [A]'s behalf. Ultimately, none were permitted to do so. The Tribunal directed itself to the guidance in Dorodian but found that the expectation that an ordained minister attend court was not in this case applicable: “the chaplains’ non-attendance before the Tribunal has a very plausible and reasonable explanation, which does not adversely reflect on the Appellant” [§28]. The Tribunal was prepared to attach weight to the written evidence of the chaplains, even in their physical absence from court. The determination goes on [§30]:

¹ Ali Dorodian v Secretary of State for the Home Department (01/TH/01537)

“I also found the Appellant’s own evidence regarding his path to Christianity consistent, cogent and plausible. His imprisonment, becoming a father and the risk of deportation were all factors which led him, whilst in prison, to explore Christianity. Since his release from detention he has been attending his local Baptist church. Whilst the timing does appear convenient (linked as it is to the deportation proceedings) that does not sufficiently explain either the Appellant’s own evidence or the opinion of those who have had first-hand experience of his faith. If anything, his failure to raise his faith in December 2014 in response to the intention to deport serves to bolster, not diminish, the Appellant’s credibility. If, as claimed, his conversion was mere convenience to avoid deportation, why not deploy it at the earliest opportunity? In the alternative the Appellant could have claimed that his interest in Christianity post-dated the notice of intention to deport. He resisted that temptation and remained consistent regarding the reasons for and timing of his developing faith”.

The Tribunal thereby accepted that Mr [A] was a genuine Christian, and in light of the HOPO’s concession, allowed the appeal on protection grounds.

Dorodian

6. The Secretary of State submits that the First-tier Tribunal clearly failed to apply the Dorodian guidelines. Even if there was a reasonable explanation as to why the prison chaplains had been unable to testify, Mr [A] had claimed to have continued to attend church since he left prison. The Tribunal had overlooked the obvious point that he could have called clergy from that church to attend court.
7. In this case Mr [A] had asserted that he had been attending services on a regular basis whilst in prison; he claimed to have undergone a ceremony of baptism whilst in HMP Maidstone. That this was so does not appear to have been contested. The First-tier Tribunal had before it the certificate of baptism issued by the Reverend Alison Francis at the Church of the Good Shepherd in HMP Maidstone (6th April 2016), a letter from prison chaplain David Blackman (19th July 2016) confirming that the Appellant had been attending services and study sessions on a regular basis, and a series of ‘prisoner movement’ slips indicating that Mr [A] had been permitted to regularly leave the ‘brickshop’ in order to attend church and bible study groups. This evidence appears in Mr [A]’s trial bundle which was lodged in accordance with directions. None of this evidence was challenged by the HOPO, nor, as far as I have been made aware, was any issue taken with its service. That is perhaps unsurprising given that the witnesses in question are employees of the Secretary of State’s own department.

8. Ms Butler submitted the Secretary of State was now seeking to take a point that he had not taken before the First-tier Tribunal. Counsel's note recorded that the HOPO on the day had expressly accepted that the prison-service chaplains could not attend, and had agreed that there was little point in calling the minister from the Baptist Church in Stockport, since he had, by the date of hearing, only known Mr [A] for 11 days: he had been released from prison on the 31st October 2017, attended the church for the first time on the 5th November 2017, the letter had been written on the 15th and the appeal hearing was the following day.
9. I have had regard to the Record of Proceedings, and to the letter from Revd. Stephen Hough of the Stockport Baptist Church. I accept that the chronology was as Ms Butler submits. The Secretary of State had expressly accepted that none of the prison chaplains could attend court, since their terms of employment prevented them from so doing. There was therefore no arguable error in the Judge's finding that the Dorodian guidelines did not apply to them. So too was it agreed that the minister from Stockport could add very little, he having had such a short acquaintance with the Appellant.
10. I would add that the point of Dorodian witnesses is to confirm church attendance, and that where such attendance is accepted, there can be no error in a judge accepting written evidence in lieu of physical attendance of the clergy at court. When Upper Tribunal Judge Freeman gave his instructions on matters of evidence in Christian conversions cases the matter in issue was not whether Mr Dorodian had actually accepted Jesus Christ to be the son of God, but whether, as he claimed, he had been regularly worshipping at churches in this country. This was important because at that time it was the Home Office position that Christians who worshipped in private, at home, would not be at risk in Iran. Judge Freeman said this:
- a) no-one should be regarded as a committed Christian who is not vouched for as such by a minister of some church established in this country: **as we have said, it is church membership, rather than mere belief, which may lead to risk;**
 - b) no adjudicator should again be put in the position faced by Mr Poole in this case: a statement or letter, giving the full designation of the minister, should be sent to the Home Office at least a fortnight before the hearing of any appeal, which should give them time for at least a basic check on his existence and standing;
 - c) unless the Home Office have accepted the appellant as a committed church member in writing in advance of the hearing, the minister should invariably be called to give oral evidence before the adjudicator: while witness summonses are available, adjudicators may reasonably expect willingness to do so in a genuine case;
 - d) if any doubt remains, there is no objection to adjudicators themselves testing the religious knowledge of the appellant: judicial notice may be taken of the main beliefs and prayers of the Church.

11. Since in this case it was agreed that Mr [A] had been attending church regularly and indeed had been baptised, there was no need for any of the ministers involved to attend the hearing in order to confirm the same. Furthermore the HOPO on the day had accepted that the Dorodian guidelines were not applicable in this case. I am satisfied that this limb of the Secretary of State's challenge is not made out.

Reasons and rationality

12. For reasons that will become clear the remaining limbs of the challenge are best considered together.
13. I am not satisfied that there can be any irrationality in the Judge accepting that evidence that is "consistent, cogent and plausible" is sufficient to discharge the burden of proof, particularly where the lower standard of 'reasonable likelihood' applies, as it does in this case. Before me Mr Bates accepted that he could not argue with the finding that Mr [A]'s evidence had been consistent. Nor was he in a position to say that it was implausible, or that it was anything less than cogent. The Secretary of State's real complaint, upon consideration, is that in reaching the findings that it did the First-tier Tribunal failed to weigh in the balance relevant factors, including the fact that Mr [A] had had an appeal dismissed in the past, the fact that he had committed what was a terrible crime and that there was an obvious litigation advantage in him claiming to have converted to Christianity. In respect of that last matter Mr Bates suggested that the more obvious choice for Mr [A], if he needed spiritual solace, was in the faith of his birth, parents and country, namely Islam.
14. I have given careful consideration to the submissions made on behalf of the Secretary of State.
15. First, I am unable to say that the First-tier Tribunal overlooked the fact that Mr [A] had had an earlier appeal dismissed: that matter is expressly recorded at paragraph 20 of its determination. As Ms Butler rightly submits, the *Devaseelan* principles had little or no application here. No part of that earlier determination, promulgated in May 2013, was concerned with Mr [A]'s spirituality or religious beliefs. Nor, contrary to the suggestion in the grounds, did that Tribunal make markedly adverse credibility findings about Mr [A] such that might arguably be relevant today. The case then put was that Mr [A] fled Afghanistan as a 14 year-old because his family were afraid that he would be harmed in a blood feud. The Judge (Judge McIntosh) found [at his 44] that although there were some discrepancies the "principal basis of the appellant's claim had remained consistent throughout". The claim was ultimately dismissed for want of evidence that there was an actual blood feud (as opposed to an account that Mr [A] had, as a child, been given by his family). Even if

Judge Povey had had more detailed regard to Judge McIntosh's decision, I am not satisfied that they would have had any material impact on his findings.

16. Second, it cannot be said that the Tribunal overlooked the fact that Mr [A] is a serious criminal. That was the point of the hearing. Reference is made to the criminality or the sentence at paragraphs 3, 7, 10, 13, 21, 23, 24, 25, 27, 28, 30, 34, 35, and 36. Whilst it might be argued that the nature of the crime – an isolated but extremely serious assault on another man – would militate against a finding that Mr [A] is a Christian this too is of very limited weight given the Tribunal's express acceptance that it was the fact of his conviction and imprisonment that led him to God in the first place.
17. Third, the Secretary of State contends that the First-tier Tribunal failed to consider that Mr [A] might be lying: there was an advantage to him in pretending to be a Christian, and if he really wanted to turn to God the most obvious path for him was Islam. Whilst those points would befit a Presenting Officer in the First-tier Tribunal, they have considerably less merit here. It is not an error of law to believe a witness. Nor is there any support for the contention that the First-tier Tribunal overlooked the point of the entire appeal hearing: to determine whether Mr [A] was telling the truth.
18. Having read the determination as a whole I cannot be satisfied that the Tribunal failed to give reasons for its finding that Mr [A] is a Christian, that it overlooked material facts or that it otherwise reached an irrational conclusion. What it did was reach a conclusion contrary to that reached by the Secretary of State. That is not an error of law.

Decisions and Directions

19. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.
20. There is no order for anonymity.

Upper Tribunal Judge Bruce
20th September 2018