



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08452/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 30th November 2018

Determination & Reasons Promulgated
On 31st January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

KAMAN [N]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Mynott (LR)

For the Respondent: Mr A McVeety (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A. R. Hudson, promulgated on 31st October 2018, following a hearing at Manchester on 15th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 6th November 1966. He appealed against the decision of the Respondent dated 21st June 2018, refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has a well-founded fear of persecution on account of his conversion from the Islamic faith to Christianity. He claims that he had told his friend, Bahman, about his dissatisfaction with Islam, whilst still in Iran. He wished to convert. He became a Christian six months later. In November 2017 he was arrested and detained overnight before being released upon the payment of a bribe in Iran. He then left the country. He arrived in the UK in December 2017 and has been a practising Christian ever since.

The Judge's Findings

4. Judge A. R. Hudson, found that the Appellant's knowledge of Christianity was vague and his account of his conversion and detention in Iran was implausible (paragraph 10). She did not accept that the Appellant was a Christian convert. At the hearing, Judge Hudson heard evidence from the Reverend Spittle and Shephard, and from Mrs Currey and Mrs Smye-Rumsby. The judge observed how the Appellant was baptised on 25th March 2018 in the UK within three months of his attendance at church here. The Reverend Spittle accepted that this was earlier than the church would ordinarily consider an applicant ready for baptism (paragraph 25). Mrs Currey had been to court to support Iranian asylum seekers on many other occasions and had only refused once (paragraph 30). Mrs Smye-Rumsby was a part-time caseworker for the local authority, and he had also been to court some twenty times to support asylum seekers (paragraph 30). In addition to this, the judge found that the Appellant's evidence was such that "he gave the appearance of being thoroughly evasive" (paragraph 18).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that, notwithstanding her reservations, the judge had accepted the evidence of Mrs Currey and Mrs Smye-Rumsby, and found the latter's evidence to be "considerable" (paragraph 30). Indeed, the judge had said in relation to the church witnesses that these witnesses have a "wealth of experience speaking to Iranian Christian-converts and they are thoroughly convinced of Mr [N]'s assertions". This being so, the judge held that, "I place a great deal of weight on their evidence" (paragraph 33).
7. Second, it is clear that the judge had also found that the Appellant holds "significant theological knowledge" of Christianity, "suggesting a significant commitment to that study" (paragraph 26). In these circumstances, the decision to reject the Appellant's claim of a well-founded fear of persecution on the basis of his Christian conversion was not sustainable.

8. Permission to appeal was granted on 20th September 2018 on the basis that the judge arguably failed to give sufficient reasons relating to his rejection of the Appellant's genuine conversion to Christianity in the United Kingdom and his church activities whilst here. It was also arguable that the judge failed to consider the evidence of the four witnesses in the round, instead relying on earlier findings connected to the events claimed in Iran.

Submissions

9. At the hearing before me on 30th November 2018, Mr Mynott, appearing on behalf of the Appellant, handed up the recent decision of the Scottish Court of Session in **TF and MA [2018] CSIH 58**, which stated that, "the judge should not allow his adverse finding about the credibility of the Appellant to sway his assessment of the credibility and relevance of other independent evidence bearing upon the issue before him. So here, where the FtT Judges have disbelieved the Appellant's evidence that they are genuine converts to Christianity, their evidence to that effect will be put to one side, given no weight. But the rejection of their evidence on this point does not become evidence that their conversion is not genuine, to be set against other, independent, evidence from which the genuineness of their conversion can be inferred. That other evidence requires to be assessed on its merits, without any a priori assumption derived from the complainer's own false evidence that it is in some way suspect or of little value" (paragraph 49).
10. Mr Mynott went on to explain that in **TF and MA [2018] CSIH 58**, the Court of Session looked at the evidence as falling into three specific categories, as it explained, at the basic level, it consists of factual evidence about what the Appellants themselves did and said in relation to their attendance at the church. At the second level, it consists of evidence explaining the practices of the church itself. At the third level, it consists of opinion evidence given by individuals in positions of responsibility within the church, who have observed the Appellants in their activities at the church (see paragraph 52).
11. Mr Mynott explained that what the Court of Session determined on this basis was that, the evidence at the second and third level, "is expert evidence" (paragraph 54). When there is evidence from the church about the mission of the church and its structures and its approach to individuals from other traditions who come to the church to learn all about Christianity with a view to baptism, and where there is evidence of Bible study groups and other courses designed to assist such individuals, this is to be described as "expert evidence of fact". Indeed,
- "In cases where the court does not have sufficient knowledge of its own - and despite what is said about judicial notice in **Dorodian** (at paragraph 8(d)), it might not always be possible for a judge to be confident that he knows and understands all the relevant detail of what happens at a particular church or within a particular tradition - such evidence can help 'to illuminate the court's understanding of matters [which may be] outwith its knowledge'" (at paragraph 54).
12. On the basis of this, Mr Mynott submitted that, in this case what the Appellant had said happened to him in Iran, in terms of his conversion and subsequent detention,

had not been accepted by the judge in this country, and this was not being challenged. However, what was being challenged was the fact that four witnesses turned up from the church in this country, whose evidence the judge had accepted, but which evidence was taken in the context of the disbelief of the Appellant, rather than being treated distinctly, where such evidence effectively amounted to “expert evidence”. Insofar as the evidence of the church witnesses was actually rejected, it is not clear (see paragraph 33), why that evidence is rejected. The judge had earlier accepted that, if the Appellant was a genuine Christian convert, then “he could not return to Iran and no opportunity to safely seek protection from the state or internally relocate would arise” (paragraph 10). Given that this was the case, it was important to properly evaluate the evidence of the church witnesses. If the judge had stated that, “I place a great deal of weight on their evidence” (paragraph 33), it was not clear why their evidence that the Appellant was a genuine Christian convert was being rejected.

13. For his part, Mr McVeety submitted that the Scottish Court of Session judgment in **TF and MA [2018] CSIH 58** is not binding upon Tribunals in the United Kingdom. It was well established in the jurisprudence in this country that experts cannot pronounce upon the credibility of a claim, which lay within the province of the judicial Tribunal, and yet the case of **TF** appeared to be suggesting just as much. In the same way, insofar as **TF and MA** suggests that the Appellant’s disbelieved evidence cannot stand in contradiction of other independent evidence on which he relies, it is mistaken in then stating that this again “reflects the standard direction in criminal cases in Scotland and applies in civil cases too, including cases before Tribunals” (paragraph 49), because that is not the approach taken in this country. In any event, in **TF and MA**, the evidence before the Tribunal was consistent in that it was accepted that the Appellant had been politically active. In the instant case, the Appellant’s claim had been that he had been at risk in Iran for having converted to Christianity, and this was roundly rejected by the judge. The core basis of his claim was rejected.
14. In reply, Mr Mynott submitted that what **TF and MA** actually addresses is the specific interaction between a claimant and the church witnesses attending on his behalf. It was relevant, because in this case the same scenario had arisen, and the judge had rejected the Appellant’s evidence, and then not explained why the evidence of the witnesses had not been found compelling when the judge had concluded that, “I place a great deal of weight on their evidence” (paragraph 33).

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
16. First, the judge directed herself on the basis that,

“I find that it turns upon the credibility of his claim to be at risk of persecution within Iran due to his religion. I have carefully considered the documents and evidence provided in this case and find that the account provided by the Appellant is not credible” (paragraph 14).

17. The judge had also correctly stated that, “I also bear in mind that if I conclude that Mr [N] has lied about one aspect of his claim, that does not necessarily mean that he has lied about others” (paragraph 33). However, the judge fails, against that background, to explain why the Appellant has not converted to Christianity since arriving in the UK given the evidence before her.
18. Second, the judge had accepted that the Appellant had demonstrated his commitment to his faith, such that the leadership team at his church felt that he could be baptised after only three months because they “were convinced of Mr [N]’s faith, he has in fact demonstrated a very short period of commitment to the church” (paragraph 29).
19. Third, and most importantly, there was the evidence of the Reverend Shephard, which was described as “compelling” (paragraph 29), by the judge. There was the evidence of Mrs Currey and Mrs Smye-Rumsby, whereby the latter’s evidence was regarded to be “considerable” (paragraph 30). The judge’s view was that these witnesses have a “wealth of experience speaking to Iranian Christian-converts” (paragraph 33). The Appellant himself had “significant theological knowledge” of Christianity, such that the judge’s view was that this suggested “a significant commitment to that study” (paragraph 26).
20. In the circumstances, it is simply not clear from paragraph 33 of the determination why the judge did not find the Appellant to have been a genuine convert in the United Kingdom, particularly given her observation that, were the Appellant to be able to show that this was the case then “he could not return to Iran” (paragraph 10). To this extent, the strictures in **TF and MA [2018] CSIH 58** are relevant in that the interaction between the church witnesses and the Appellant, together with an analysis of their church practices, should be considered. The manner in which the three different levels of evidence, outlined by the Scottish Court of Session in that case, is something that cannot be ignored. The matter needs to be remitted back to the First-tier Tribunal where this can now be done.

Notice of Decision

21. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. I remake the decision on the basis of the decision of the original judge, the evidence before her, and the submissions that I have heard today. This appeal will be remitted back to the First-tier Tribunal under practice statement 7.2(b) to be determined by a judge other than Judge A R Hudson.
22. No anonymity direction is made.
23. This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

15th January 2019