



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006646

First-tier Tribunal No: PA/50981/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th January 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

FM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Stuart-King, of Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 23 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court. I make this order due to the risk of serious harm to the appellant if her identity is known given the content of her asylum claim.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran born in September 1961. She arrived in the UK on 1st October 2018. She applied for asylum on 8th November 2018. The application was refused on 28th July 2020. Her appeal against the decision was dismissed by First-tier Tribunal Judge Hussain after a hearing on the 21st July 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly on 5th December 2022 on the basis that it was arguable that the First-tier judge had erred in law with respect for the second and third grounds. In summary it was found to be arguable that the First-tier Tribunal failed to explain why some of the appellant's explanations for matters found to count against her credibility were not sufficient; and that the First-tier Tribunal failed to explain why there would be readily available corroborative evidence of her being reported by her husband to the Iranian authorities for adultery.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so if any such error is material and thus whether or not the decision of the First-tier Tribunal should be set aside.

Submissions – Error of Law

4. In the second ground it is argued in the grounds of appeal and in oral submissions from Ms Stuart-King for the appellant, in summary, as follows. It is contended that the First-tier Tribunal Judge failed to take into account material matters when assessing whether the appellant is genuinely a Christian by making a materially flawed analysis of credibility of apostacy in the following ways.
5. There was a failure to direct itself properly in line with the decision in SA (Iran) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin). The starting point should have been the appellant's four year regular attendance at church, and other church activities including helping with Sunday school.
6. The appellant had given an explanation for her having joined a Christian church soon after arrival in her asylum interview, namely that the person she had an elicit relationship with an Iran with a man who was born a Christian, which whilst recounted in the decision is not given proper consideration. The appellant had not been uncertain whether she was a Christian convert at the point of time of the hearing, as found by the First-tier Tribunal; this was only something she had said at her first asylum interview, and time had moved on and she was now, as per her own evidence and her supporting documents, a committed Christian.

7. The appellant's contended failure to be able describe the significance of Easter at interview is explained in her appeal statement as a misunderstanding in relation to the book of Esther, and that taken together with her asylum interview, which demonstrates a very detailed knowledge of the Bible and Christian celebrations including Easter and Christmas, and reasoning for her faith relating to feelings of love, calm, acceptance and being uplifted, was not adequately considered when making the decision.
8. Further, it is argued, there was a failure to consider that the appellant's church had provided a baptism certificate within the letter from Reverend M, which it would not normally issue, because of an explicit request of the Home Office made at the asylum interview, and therefore the appellant's evidence is not inconsistent on this point. In any case it is clear that the appellant has been baptised and this is a factor which deserved weight. Further it is argued that there is no/ no adequate reasoning for questioning the evidence of the church witnesses Reverend M and K A that she was a genuine Christian they had seen regularly at church.
9. In the third ground it is argued for the appellant, in summary, as follows. It is argued that there is a materially flawed analysis of the credibility of the history of adultery. The First-tier Tribunal requires, it is argued, corroborative evidence of the appellant's husband having lodged a complaint of adultery against her, and also ignores the appellant's plausible explanation that he refused to allow her to divorce him as it would have been societally embarrassing for him as a powerful and influential man in Iran, even though he hated her and had abused her throughout the marriage. It is argued that the First-tier Tribunal's approach to domestic violence is ill-informed: it is not implausible that a woman who owned her own business and therefore had her own income could be the victim of domestic violence in any society.
10. The First-tier Tribunal also fails to consider the evidence of her having rented her own flat when it was in the bundle before the First-tier Tribunal. This agreement makes it plain that she had rented a flat for two people, and therefore supports her evidence that she had rented it supposedly for herself and her son in his early twenties. Ms Stuart-King also argued that it was not consistent with any country of origin evidence to state that it was difficult for a woman to rented an apartment in Iran, but Mr Lindsay objected to this point as it was not part of the original grounds, and he would have required an adjournment to address the point so this was not pursued. The First-tier Tribunal found that the appellant was evasive with respect to how she knew her husband had seen her and her lover on CCTV when she gave extensive evidence about this in her asylum interview and gave a coherent account of the renting of the flat and it should have been appreciated that the appellant would not have known the full process by which her husband came to know about her relationship with her lover because this happened when she was not in Iran.

11. In a Rule 24 notice and in submissions from Mr Lindsay, in short summary, it is argued for the respondent as follows. In relation to the second ground it is argued that it was understood by the First-tier Tribunal that the appellant argued she had become interested in Christianity due to her lover in Iran being born a Christian, and that it was contended that there had been misunderstanding regarding Easter due to interpreter error. Further, the First-tier Tribunal had been aware of the evidence about Christianity in the interview notes but the First-tier Tribunal gives reasons why the claim is not credible.
12. It is argued that the grounds fail to base themselves on the current country guidance in PS (Christianity – risk) Iran CG [2020] UKUT 46. The case cited in the grounds of SA (Iran) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin) is a High Court case which is not binding on the Tribunal, is old, and should not be preferred to PS. It is argued that simply focusing on church involvement is not enough when considering if someone is a genuine Christian. It is argued that the evidence of the Reverend M was considered at paragraphs 49 and 50 of the decision, and only really went to the attendance of the appellant at church, and it was right to focus on the evidence of the witness KA, a deacon at the appellant’s church, who attended the hearing, and who was found not to be a good witness supporting the appellant for unarguably proper reasons, and also that his evidence gave the First-tier Tribunal proper reasons for thinking that there were those who attended the appellant’s church who did so to gain an immigration advantage. It is argued that when it is said at paragraph 49 of the decision that the appellant could not agree as to whether she had converted to Christianity or was expressing an interest in it that this referred to evidence given before the First-tier Tribunal, and not in the asylum interview,.
13. In relation to the third ground it is argued that the First-tier Tribunal had provided sufficient reasoning to find that the appellant was not at risk from an allegation of adultery by her husband. The comment about the lack of a police report is simply an observation at paragraph 40. Similarly the reasoning with respect to the appellant being unlikely to have genuinely rented an apartment for her and her lover was sound, and the existence of a tenancy agreement was acknowledged in the decision, and the appellant was properly found to have failed to provide reasoning as to how she understood that her husband had come to view the CCTV from her rented flat.
14. At the end of the hearing I reserved my decision but canvassed the parties opinions on remaking were an error to be found. Mr Lindsay asked that the findings with respect to the witness KA might be preserved but had no particular position on whether the appeal should be remade in the First-tier Tribunal or the Upper Tribunal. Ms Stuart-King indicated she thought the setting aside of all of the findings was appropriate, and that the remaking should take place in the First-tier Tribunal.

Conclusions - Error of Law

15. In relation to the second ground of appeal the evidence of the appellant is recorded at paragraph 23, under the heading “Proceedings at the Hearing” as it being the evidence of the appellant that she fears persecution on account of her conversion to Christianity and she would not be able to deny her faith if she were to return to Iran. I find that it was not rationally open to the First-tier Tribunal at paragraph 49 to find that there was any doubt that this was the appellant’s position at the hearing was that she was a Christian convert. As Ms Stuart-King has pointed out there was a point in her first asylum interview where she indicated that she had not fully made up her mind, but by the time of the making of her appeal statement and in her evidence before the First-tier Tribunal this was undoubtedly her position. I find that this was therefore a material error in the assessment of whether the appellant was a genuine Christian.
16. It was for the First-tier Tribunal to assess whether the appellant’s conversion to Christianity was genuine. As set out at point 3 of the headnote of PS the first task of the First-tier Tribunal was to assess whether the appellant had genuinely. The decision does not provide a framework for making this decision however. I find that what is said by the High Court in SA (Iran) continues to be worth of note, and as found in this judgment, that it is, at the very least, very difficult for a judge to attempt peer into what a religious person might call someone’s soul and determine whether they are a genuine convert to a religion, and therefore that active participation in a church, endorsed by senior members of that church ought to be seen as significant evidence of being a genuine convert. I find that the directions with respect to this exercise at paragraph 47 of the decision of the First-tier Tribunal that prior “real enjoyment of religious spirituality” is significant and that to some extent that the appellant has to explain why they did not adopt one of the many other human faiths are erroneous and misguided.
17. I find that the apparently accepted regular church attendance from November 2018 to the date of hearing in July 2022, along with the Alpha course attendance, baptism, help with Sunday school ought to have been given considered as material evidence and that it was an error of law by the First-tier Tribunal to fail to do so. There is engagement with the appellant’s evidence that she has said that she developed an interest in Christianity when she met her lover in 2016 at paragraph 47 of the decision, but this is then deflected by the legal directions which I have found to be faulty. I cannot understand the reasoning of the First-tier Tribunal at paragraph 50 of the decision as to why it was found to be suspicious that the letter from Reverend M had a title baptism certificate. It is a letter about the appellant’s engagement with his church, and he records the fact of her baptism in the letter. His evidence is that there are no baptism certificates, which seems to be clearly a reference to the fact that no separate such documents are issued by this particular church.

18. I find there was also a failure to consider material evidence by failing to balance in the decision as to whether the appellant had made a genuine conversion her detailed Christian knowledge as set out in the asylum interview record. It was open to the First-tier Tribunal to find that it was not satisfied that there had been an interpreter error, rather than general misunderstanding which led the appellant to think a question about Easter was one about the book of Esther, but not to discount the fact that the appellant clearly had in her interviews demonstrated an understanding of the significance of the birth of Christ at Christmas, the crucifixion, and the resurrection at Easter, accurately described in the answer to question 449, and indeed the book of Esther (as described in interview in the answer at question 450) in her interview. It was not open to the First-tier Tribunal to find the appellant did not understand the significance of Easter at paragraph 48 given her answer to question 449 in her asylum interview where she states with respect to Christian holy days: “25th December is the date of birth of Jesus, the Pentecost, and then there is Easter which is called Qian (Easter), after three days he rised and came alive again”
19. Reasons are given for not giving significant weight to the evidence of the witness KA at paragraph 51 of the decision. I must be careful not to interfere with findings of a Judge who has heard the witness when I have not been in that position. However, ultimately on consideration of what is said, I do not find that it was open to the First-tier Tribunal to find that it was “evasive” of a witness to say that he would not attend if he was asked to be a Tribunal witness by someone who he did not believe to be a genuine convert, and would instead ask someone else to do so. I find that actually, on consideration, this is a straight forward and respectful approach given the complex issue of whether someone’s faith is genuine. If KA did not believe an appellant was a genuine Christian his position was that he would not attest to their being a genuine convert before the Tribunal, but he would ask someone else if they wished to do this. Further the fact that KA was willing to accept that others might have taken advantage of the church ought to go to his credibility as someone with his eyes open to this fact, and strengthen his evidence that he believed that the appellant was a genuine convert, not, as the First-tier Tribunal found it to be, a matter against his credibility. I therefore ultimately find that the treatment of the evidence of KA is materially flawed for want of sufficient coherent reasoning. Further the First-tier Tribunal fails to engage with the fact that Reverend M, a senior minister in the North London Iranian Church attests to the genuineness of the appellant’s faith. In addition, based on the evidence of the two church witnesses, as indicated above, I find that being active in a church over this period of time ought to have been a very significant positive starting point for consideration of whether the appellant was a genuine Christian convert following SA (Iran).
20. It follows that I find that the decision of the First-tier Tribunal with respect to the appellant’s conversion to Christianity must be set aside

on the basis of unsound legal directions, a failure to engage with relevant evidence and insufficient reasoning, and that no findings should be preserved.

21. In relation to the second ground I find that the lack of documentary evidence of a complaint against the appellant by her husband was found to go against the credibility of her claim at paragraph 40 of the decision. There is no attached reasoning going to why this would normally or reasonably be available with reference to country of origin materials. I find this is a material error of law due to insufficient reasoning. I also find that the First-tier Tribunal failed to engage, at paragraph 41 of the decision, with the appellant's explanation that she was allowed a certain amount of freedom as her husband hated her and abused her but was not allowed to divorce him, as per the documents relating to her efforts to do this, because that would have been societally unacceptable for someone in his position in Iran, an Islamic theocracy. Further, in paragraph 40, the First-tier Tribunal fails to reason with reference to any country of origin materials going to the apparent premise that it would have been more socially damaging for the appellant's husband to have brought adultery charges against his wife than to divorce her. The decision with respect to the risk of serious harm to the appellant from adultery proceedings then proceeds from this point largely based on plausibility findings that were potentially open to the First-tier Tribunal but given the errors of approach identified at the start of the decision-making on this matter I find that findings are unsafe and should all be set aside.
22. With respect to remaking I find that the extent of fact finding will be extensive given that the appeal will need to be remade with respect to the two issues and the bundle before me being almost 500 pages long, and that in these circumstances it would be appropriate for the appeal to be remitted to the First-tier Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal with no findings preserved.
3. I remit the remaking of the appeal to the First-tier Tribunal in Taylor House to any Judge of the First-tier Tribunal other than Judge Hussain.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th January 2024