



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01728/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 5th July 2017

**Promulgated
On 7th July 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

SR

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran.
2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 21st April 2017 dismissed his claim for protection. The Appellant's immigration history is set out within the determination at paragraphs 13-18, namely that he arrived in the United Kingdom in the back of a lorry having travelled from France to the UK on 25 May 2008. He claimed asylum the following day and it was discovered that he had been fingerprinted in Greece and therefore a "third country case" was commenced with the object returning

to Greece. He was then detained. Upon his release he failed to sign with the respondent and then appears to have absconded. In January 2011 the Secretary of State decided not to pursue his return to Greece. It was not until the year 2013 that the Appellant was interviewed in respect of his claim for asylum which was refused in a decision letter of 26 July 2013. He appealed that decision it came before an immigration judge who dismissed his appeal having found his account of events to be “inconsistent and vague” and rejected his account of having been detained as claimed or that the authorities in Iran had any interest in him.

3. The Appellant became appeal rights exhaust on 23 December 2014. He was not removed from the United Kingdom and on 10 November 2016 he lodged further submissions on the basis that he had converted to Christianity. The respondent treated this as a fresh claim.
4. Thus For the present application, the Appellant was interviewed on the 13th January 2017 and his claim was considered but refused in a detailed decision letter of the 19th January 2017.
5. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on 17th March 2017. The judge had the opportunity of hearing the evidence of the Appellant and for his evidence to be the subject of cross-examination. The judge in the determination did not find that he was a credible witness and that importantly did not find him to be a genuine convert to Christianity and dismissed his appeal.
6. The Appellant sought permission to appeal that decision on the basis that the First-tier Tribunal Judge failed to provide sufficient or sustainable reasons for the adverse credibility findings that were contained within the determination. Furthermore that the judge had failed to give reasons for rejecting the evidence of a witness from the Church who attested to his faith.
7. Permission was granted by the First-tier Tribunal (Judge Brunnen) on 15th May 2017.
8. At the hearing before the Tribunal, Mr Gayle, who represented the Appellant in the First-tier Tribunal, relied upon the grounds. He submitted that the judge made it clear that the Appellant’s credibility in his fresh claim had been undermined by the adverse findings in his previous claim. Thus he submitted this demonstrated a materially flawed analysis of the fresh claim. In his submission the judge’s reasoning was therefore infected by the previous findings. As to the credibility findings generally, he relied upon the grounds at paragraphs 4 to 9 relating to whether there was an inconsistency as to who had accompanied the Appellant to church and who had attended the baptism. In respect of the First issue, he submitted the when looking at the evidence including witness statements and the interview there had been no discrepancy or inconsistency. As to the baptism, the judge had misunderstood the evidence as could be seen from the witness statement of H who had not said that he had attended the baptism.

9. Mr Gayle also submitted that whilst the judge acknowledged that the witness K, who had given oral evidence before the Tribunal on behalf of the church had been genuine in her belief that the Appellant was a Christian, that the judge had failed to place weight on that evidence that she had given as to the Appellant's belief in Christianity and his attendance. Furthermore there were no reasons given for the rejection of that evidence. In this respect he also submitted that the judge did not take into account when reaching an overall decision on the genuineness of his conversion the earlier written evidence from the Reverend and also a deacon. For those reasons he submitted that the grounds demonstrated that the decision was not sustainable.
10. Mr Jarvis on behalf of the Respondent argued that the judge was entitled to find the Appellant not to be credible based on the various findings looked at cumulatively relying on the decision of Y v SSHD [2006] EWCA Civ 1223 where the Court of Appeal made reference to assessments of credibility and that a judge should look at the issue of credibility in the round "based on an accumulation of points." As to paragraph 3, he submitted that there had been no error of law in the judge's approach who are properly applied the decision of Devaseelan. As to the inconsistencies highlighted by the judge both to the baptism and attendance at church, he submitted that those were permissible findings by the judge who was entitled to draw the inferences from the evidence. Thus he submitted they did not demonstrate any material error of law. Furthermore had there been any inconsistencies or any ambiguity is not evidence they could have been specifically clarified after the interview by way of further representations made by the Appellant's solicitors.
11. As to the consideration of the evidence from the church, Mr Jarvis accepted the importance of the decision in Dorodian but that the judge had not ignored the evidence of the witness K and had described it fairly. However she was not required to take into account the previous decision of the immigration judge or make a broader judgement of the truthfulness and therefore her evidence could not be said to be determinative. Thus he submitted overall the decision was open to the judge. In the alternative if errors of law were present, this is a case that should be remitted to be reheard as credibility was central to the issue of risk on return.
12. I have considered with care the submissions that I have heard from each of the parties in the light of the determination and the evidence that was before the First-tier Tribunal. As to paragraph 3 of the grounds, I find no error of law. The judge properly directed himself in accordance with the law, that the starting point was the previous decision of the immigration judge applying the well-established principles of Devaseelan (2002) UKIAT 00702 (see determination at paragraph 27). It would have been an error had the judge not considered the new factual claim and the evidence provided, however, he did not ignore or fail to deal with that evidence and went on to make an examination of the Appellant's claim in the light of the further evidence before the Tribunal. Consequently I find no legal error identified in that approach. Furthermore I reject Mr Gayle's submission that by setting out the previous findings of fact that this led the judge's

findings as a whole to be flawed. The judge was entitled to take into account in the overall credibility findings any previous adverse findings which had been reached.

13. Furthermore I can find no arguable inconsistency as to the Appellant's evidence as to whether he was accompanied by his friend to his First church attendance. Whilst both the witness statement of H stated he had taken him to church with him and the Appellant's statement at paragraph 6 referred to the same, question 44 of the interview when read with a question 45 does support the judge's finding that there was an inconsistency as to the Appellant attending without H. Therefore it was open to the judge to reach that conclusion. What is more important is whether such a discrepancy was ever put to the Appellant to clarify this and it does not appear that it was. In any event as Mr Gayle submits it is a peripheral point of credibility as the judge appeared to accept the evidence that he had been a regular church attender.
14. That said, I am satisfied that there are errors of law in the determination as set out in the grounds. As to the finding relating to the circumstances of the baptism and who attended, I am satisfied that the judge did misunderstand the evidence in this regard. The Appellant had given consistent evidence as to the date of his baptism (see question nine) supported by evidence from the church. The Appellant's evidence was that the witness H did not attend the baptism. The Appellant's witness H (see D 1 of the bundle) stated that the Appellant had invited him to the baptism but the statement is silent as to whether or not he went. The judge's finding at [33] mischaracterises the evidence by referring to this witness saying that he did attend the baptism ("he adds that he attended the Appellant's baptism..." when that was not what the document said.
15. Furthermore the judge at two separate places in the determination makes reference to the evidence provided from two witnesses which lacked the letterhead of the church. In relation to the witness H at paragraph 34 the judge noted that the letter did not bear the letterhead of the church and at paragraph 45 in relation to the witness K he also made the same observation. Mr Jarvis on behalf of the respondent submits that they were not findings that were intended to undermine the weight of that evidence but were merely observations. However, I can see no reason for making such an observation if it was not a relevant matter to the weight that should be attached to that evidence. In the case of H, he was not a church official of any kind and thus there was no reason to expect any communication from him would be written on paper bearing a church letterhead. Whilst the evidence of K did emanate from the church and was not on paper with such a letterhead, this was of no relevance in the light of a letter from the Reverend in which he had stated K was a church elder appointed to attend the hearing. Consequently if those observations did go to the weight of the evidence they were not made out.
16. The real issue it seems to me is the consideration of the oral evidence given by the witness K. The decision of the Tribunal in Dorodian is of some age now. However that decision made it clear that "no one should be

regarded as a committed Christian who is not vouched for as such by a minister of a church established in this country, as we have said, it is church membership rather than mere belief which may lead to risk.” Thus it is often argued that in the absence of oral evidence attesting to an applicant’s faith, that the Tribunal cannot be satisfied as to the genuineness of the Christian conversion. In this case the judge had oral and written evidence from the church. Dealing with the statement of K, it was in very brief terms. However Mr Gayle accepts that the judge accurately recorded the witness’s oral evidence at paragraphs 47 to 49. The conclusion reached at paragraph 50 was that the judge had no doubt that the witness “genuinely believe that the Appellant is a genuine Christian convert”. However at paragraph 51, the judge, having looked at the totality evidence said that he did not find that to be the position. Whilst Mr Jarvis submits that it was open to the judge to consider that evidence in the light of the other discrepancies identified, as set out above I do not consider that those discrepancies were either present or material if they were. Secondly, the judge made no analysis of the witness’s evidence or gave any tangible reasons for rejecting the substance of that evidence given. It would have been open to the judge to reach the conclusion at [50] but it was incumbent on the judge to set out what it was about the evidence given in conjunction with the other issues that led him to reach a different view. There was also other written evidence from the church although I would accept that given the non-attendance that would have little weight but nonetheless was a matter to be factored in to the evidence as a whole.

17. For those reasons I am satisfied that the grounds have been made out and that the decision cannot stand and therefore the decision shall be set aside.
18. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature was for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the applicant’s evidence and his account and for the witness from the church to attend; this being a case in which the adverse credibility findings are unsafe and cannot be preserved.
19. In the light of those submissions, I am satisfied that that is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

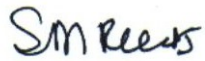
Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside; it shall be remitted to the First-tier Tribunal for a hearing.

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. 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

A handwritten signature in blue ink, appearing to read 'SM Reeds'.

Upper Tribunal Judge Reeds
6th July 2017

Date: