



Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: PA/12649/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Magistrates Court
on 27 June 2016** **Decision & Reasons promulgated
on 11 July 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MS
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nadeem instructed by Duncan Lewis (Birmingham) Solicitors.

For the Respondent: Mrs Aboni Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Butler ('the Judge') promulgated on 6 January 2017 in which the Judge dismissed the appellant's protection appeal on all grounds.

Background

2. The appellant, an Iranian national said to have been born on [] 1979, flew into the United Kingdom on 24 April 2006 using a false passport and claimed asylum on arrival. The appellant's son, born in 2013, is a dependent on her application.
3. The appellant's claim for asylum was based upon an alleged well-founded fear of persecution as a Christian in Iran.
4. Having set out the core account, evidence and submissions made, the Judge sets out findings of fact between [33] and [49] of the decision under challenge that may be summarised in the following terms:
 - i. As agreed between the parties, the issue for the First-tier Tribunal was the genuineness of the appellants claimed conversion to Christianity [35].
 - ii. The appellant's account of events occurring before she left Iran and during her journey to the UK was not found to be credible. The account is entirely uncorroborated, there is no evidence to support the claim the appellant is wanted by the authorities. The appellant confirmed she had been in touch with her husband about four weeks prior to the hearing and it was found surprising there was no evidence from her husband to corroborate the appellant's account and no arrest warrant had been produced [36].
 - iii. There was no evidence in the form of a statement from the appellant's friend who is said to have first introduced her to Christianity in Iran [37].
 - iv. The appellant's account of her escape from the house church was not found credible. It was found incredible that the police would not have watched both the front and rear exit and it was found rather convenient that the police were apparently able to trace the appellant because she left her handbag behind. The Judge found that since the appellant had time to retrieve and put on her Islamic dress she would have had time to collect her handbag [38].
 - v. In oral evidence, the appellant claimed a laminated copy of an Islamic prayer was put in her bag by an unknown member of her family and she did not open it on her journey to the UK. The Judge did not believe the appellant would travel with a two-year-old carrying a small case throughout a road journey to Turkey, three to four days in a village, three days in a hotel in Istanbul and then two flights to get to the UK without opening her carry-on case. It was also said her response in her oral evidence was inconsistent with replies given in the asylum interview [39].
 - vi. It is not credible the appellant's sister who knew all about the alleged conversion would have been a party to placing an Islamic prayer in her luggage. The appellant's explanation was

- said to be inconsistent with earlier answers given regarding who packed her case [40].
- vii. The appellant's account of the conversion to Christianity, escape from the house church and subsequent preparation for the journey was not believed [41].
 - viii. The lack of credibility impacts upon the appellant's account of her sur plas activities and the genuineness of her baptism as a true sign of her Christianity [42].
 - ix. The Judge considered testimonials from members of the appellant's church and a letter from Pastor Hooper who baptised the appellant on 29 May 2016, 31 days after she first attended his church. [42].
 - x. The Judge noted a letter from Mr Derek Church stating the appellant was "formally a devout Muslim" which was inconsistent with the appellant's own evidence [43].
 - xi. The evidence of Pastor Jones was considered but it found he had been 'taken in' by the appellant's account [44].
 - xii. The appellant's account of her conversion was a fabrication designed to bolster her asylum claim and that the appellant's lack of credibility led to a finding her sur place activities are also designed to bolster her claim [45].
 - xiii. The appellant would not be at risk on return as it was not accepted she has come to the adverse attention of the authorities. Proving identity in Iran would not be a problem as the appellant confirmed she had been fingerprinted for passport purposes in Iran [46].
 - xiv. The Judge considered section 55 in relation to the appellant's son. The appellant has not separated from her husband, other than geographically, the appellants claim that her husband had fled Iran was found to lack credibility, and the child's best interests are to be bought up by both parents in his own culture. The child is three years of age and has only been in the UK for a short period of time. The child is not yet of school-age and has not entered the significant formative years and is heavily dependent upon his mother. The Judge concluded it was in the child's best interests to be removed to Iran with his mother where her husband and other family members can support them [49].
5. The appellant sought permission to appeal which was granted by a Designated Judge of the First-tier Tribunal on 6 September 2017. The grant is opposed by the Secretary of State on the basis the findings made were reasonably open to the Judge on the evidence made available.

Error of law finding

6. The first error the allegedly made, according to Mr Nadeem, is in the Judge looking for corroboration of the appellant's account. It was

submitted that in addition to the principal that seeking corroboration amounted to an error of law, the Judge failed to consider the evidence that the appellants friend had been arrested and her husband's evidence that he had fled the family home, meaning the type of evidence the Judge was seeking may not have been reasonably available. This is a specific reference to the arrest warrant which it had been stated had been left at home in Iran. The alleged error is a failure by the Judge to engage with the evidence rather than reject such evidence by reference the lack of corroboration.

7. The Judge does not reject the evidence solely because that evidence is not corroborated. It is accepted that had the Judge taken such a stark position it would have been found that the determination was infected by arguable legal error. The Judge in [36] noted the account is entirely uncorroborated which is factually correct. The appellant had told the Judge that she was wanted by the authorities but it was found that she had produced no evidence of this which is, again, factually correct. It is not a finding by the Judge that unless corroborative evidence was provided the account would not be accepted or considered. In fact, the Judge went on and records that at the hearing the appellant herself confirmed she had been in touch with her husband about four weeks previously and that it was surprising there was no evidence from her husband to corroborate her account and that no arrest warrant had been produced.
8. If the appellant's husband was not in the former family home in Iran where the arrest warrant had been delivered, it is understandable that he would have been unable to forward a copy of this document to the appellant. What the grounds fail to engage with is the comment by the Judge that it was surprising there was no evidence from the appellant's husband. It is not claimed the appellant's husband was unaware of her experiences in Iran and indeed there was clearly ongoing communication between them. It is not suggested, or made out on a credible basis, that the appellant's husband could not have produced any material to assist the appellant by way of a witness statement or anything else that may be reasonably available to him, but no such evidence was forthcoming. This observation by the Judge was one reasonably open on the basis of the available material.
9. In relation to the comment at [37] that there was no evidence in the form of a statement from the appellant's friend who introduced the appellant to Christianity, this is again factually correct. The appellant in her witness statement refers to three arrests but there was no evidence that those people who had been arrested, purportedly as a result of their involvement with the house church, had been detained or could not be contacted as the country material indicates that such arrests or any related punishment do not ordinarily result in long-term incarceration. The witness statement is dated 29 September 2016 the appeal was not heard until some three months later with no evidence being provided to the Judge to explain why no statement had been provided. In relation to a person who had been arrested such a lack of evidence must be treated as a neutral factor in that there is no

evidence from this person but possibly a plausible explanation as to why this should be so. At [37] the Judge does not make an adverse finding as a result of the failure to provide corroborative evidence but comments that there is no such evidence.

10. Mr Nazim submitted that the difficulty in cases of this nature is that it is hard to see what a person's genuine feelings and beliefs are and so it is necessary to explain/explore a person's beliefs in relation to the critical issue of whether they genuinely consider themselves to be a Christians i.e. a follower of the teachings of Jesus Christ. I accept that as a general statement this is correct, but proceedings before the First-tier Tribunal asked adversarial by nature and the appellant was represented both in the preparation for the appeal and by Counsel at the hearing. The appellant was therefore given ample opportunity to adduce the evidence she was seeking to rely upon to establish her claim. It is not made out that the evidence from the appellant should be given far more weight than that given by the Judge solely because that was the source by which such evidence was derived. The Judge was required to consider that evidence along with all other material made available and then to decide what weight it was considered appropriate to give to that material.
11. It must also be remembered that the Judge had the opportunity of not only seeing but also hearing the manner in which the appellant gave her evidence.
12. Mr Nazim also challenged the Judge's findings in relation to the genuineness of the appellant's baptism by the Oasis Church. The Grounds assert the Judge failed to take account of the fact that Pastor Jones did not know the appellant when she was a Muslim and therefore could not possibly comment upon the level of her devotion, even though the Judge refers to a statement in the letter from Derek Church that the appellant was a former devout Muslim. The Judge noted the evidence given by Pastor Jones at [41] that he takes seriously the task of ascertaining whether a person is truly a Christian and that he can usually tell when somebody is not, to which the Judge did not give the degree of weight it is stated in the grounds of challenge he should have given.
13. It is necessary to consider the Judge's findings in relation to the baptism in the round rather than attacking the Judge in relation to the findings made regarding the evidence of one witness. At [42] - [45] the Judge finds:

"42. This lack of credibility also impacts on the Appellant's account of her sur plas activities and the genuineness of her baptism as a true sign of her Christianity. I have considered in particular the various testimonials produced by the Appellant from members of her church. She also produced a letter from Pastor Rob Hooper who baptised her on 29 May 2016, 31 days after she first attended his church. Pastor Hooper makes clear in his letter of 24 November 2016 that he baptises people as soon as they become believers and all those baptised "will have attended a session on the doctrine and purpose of baptism which we hold once a month". He further states "at this meeting the biblical teaching is given

and the reasons for baptism clearly laid out". With respect to Pastor Hooper, who did not attend to give evidence, his letter shows only that he had one session with the Appellant before he baptised her. He also states that he is requested every week to attend hearings on behalf of asylum seekers. Without wishing in any way to trivialise his work, it is hardly surprising that he receives so many requests when it is apparently so easy to proceed to baptism in his church.

43. I also note in the letter from Mr Derek Church dated 22 November 2016 that he states the Appellant is "formally a devout Muslim" which is inconsistent with the Appellant's evidence that she was not and from her school days had serious reservations about Islam.
 44. I bear in mind the evidence of Pastor Jones. He clearly takes very seriously the task of ascertaining whether a person is truly a Christian and says he can usually tell when someone is not. However, I bear in mind the lack of credibility in the Appellants evidence of her conversion in Iran and then the speed with which she was baptised upon entering the UK. She is clearly a very intelligent woman but I do not share Pastor Jones' view of her commitment to the Christian faith and I find he has been taken in by her account.
 45. Accordingly, I find the Appellant's account of her conversion to be a fabrication designed to bolster her asylum claim. Her lack of credibility leads me to find that her sur place activities are also designed to bolster her claim."
14. It was not the job of any witness to determine the credibility of the appellant's account as that is the task of the Judge. A number of churches nationwide experience requests by asylum seekers to be baptised into the Christian faith and a number openly express their reticence in performing baptisms and issuing certificates confirming a person has been baptised until they are certain that that individual has a genuine desire to enter the Christian faith and is not using the claim to have been baptised as a means to bolster a claim for asylum. A number of churches will not baptise individuals until they have demonstrated a genuine desire and commitment to enter the Christian faith, which is ascertained by a period of attending church, regular attendance at church services or the church -related activities and face-to-face meetings in Bible and baptism classes where an individual's commitment and responses can be properly assessed. A number of churches run specific foreign language only services to assist those from countries such as Iran to partake in these activities. It is only when the results of such convince those within the church of the genuineness of the request that an individual will be baptised. It is also the case that many churches adopting this cautious approach will, as a matter of policy, not attend a hearing to give evidence in support unless they are satisfied that the person is a genuine Christian.
 15. In this appeal not only did the person who conducted the baptism and who is said to have had one session with the appellant not attend the hearing, it was also a baptism conducted within a very short period of

time after the appellant first attended that church. Whilst it is accepted that an evangelical Christian church is tasked with bringing as many individuals as possible within the family of the Christian church, indeed an obligation imposed upon any Christian according to the teaching of the Bible, the evidence before the Judge did not establish that the Oasis Church had in place sufficient checks and balances to ensure that they were only baptising those who genuinely wished to follow the Christian faith. The letter from Mr Hooper dated 29 May 2016 states “we follow the traditional Christian practices of baptising a person as soon as they become believers in Christ Jesus as their Lord and saviour since then I can confirm that her devotion to God is evident”. The difficulty, as identified by Mr Nadeem, is that whether a person has become a genuine believer in Christ Jesus is something that is within their soul and not something obvious to a person on the outside. Notwithstanding this fact, the evidence made available to the Judge when considered in the round from all sources, does not establish that the conclusions reached by the Judge were not reasonably open to the First-tier Tribunal on the basis the evidence that tribunal was asked to consider.

16. As stated, even though the Oasis Church claim they were persuaded the appellant is a genuine Christian the credibility of that claim was a matter for the Judge. It has not been shown the findings made were not reasonably open to the Judge or were arguably perverse, irrational, or contrary to the evidence.
17. The appellant also challenges the conclusion at [38] that the police would have watched both the back door and the front door which is said to ignore the appellants evidence that the back door led into an alley through which she made her escape and that she saw a car arriving as she fled. It is asserted in the grounds the appellant was not asked questions as to the relevant location of the Islamic dress and her handbag and that the Islamic dress would be helpful in assisting her to escape whereas the handbag would bear very little significance to the escape, and that the explanation for leaving the handbag was not adequately considered.
18. It is not disputed the appellant claims that when the police raided the house church she was attending she was able not only to put on her Islamic dress but also leave the rear of the property. This is a case in which the appellant claims to face a real risk on return as a result of her Christian faith. In her evidence the appellant claimed that shortly after the service began on 10 April 2016 at a friend’s house the police arrived. If the police were aware that a church service was being held and wished to arrest all those attending, it is plausible they would want to ensure that anybody within the property was unable to escape. This is especially so if the house had been under surveillance as found by the Judge.
19. Not only was the appellant able to escape without being detained, but she also claimed that her identity was discovered as she had left her handbag in the property. If the handbag contained evidence that would enable the police to identify her the assertion in the grounds

that the appellant would have taken her Islamic dress as it would have helped her in assisting her escape and therefore not being detected, whereas the handbag would not, is not factually correct. If the handbag contained evidence that would enable the appellant to be identified it is reasonable to expect her to have taken the bag with her when she left, especially if the appellant ordinarily carried a handbag with her containing personal items which may have included keys to her property, money, or other important items or documents. It has not been shown the Judge's findings with regard to this element are infected by arguable legal error as it has not been shown they are not findings reasonably open to the Judge on the evidence.

20. In relation to [39] in which the Judge comments upon the fact the appellant had a laminated copy of an Islamic prayer in her bag, the grounds assert the Judge failed to give proper consideration to the appeal statement where the appellant claims she did not know who packed the bag which it is stated she repeated in her oral evidence and interview. It is also noted the appellant explained that if she had opened the case she would also have found toys for her little boy which would have made the journey considerably more peaceful for her.
21. The Judge found in [39 - 40]:
 - "39. In her oral evidence, the Appellant said the laminated copy of the Islamic prayer was put in her carry on bag by an unknown member of her family and she did not open it on her journey to the UK. I do not believe that the Appellant travelling with a two year old would have carried a small case with her throughout her road journey to Turkey, her stay there for three or four days in a village and three days in a hotel in Istanbul and then to flights to get to the UK without opening her carry on case. Further, this evidence is inconsistent with her replies to questions 75 and 80 in her asylum interview where she states her mother, sister and sister-in-law packed the case for her and then that she could not remember whether she asked her brother to pack a case for her.
 40. It is further not credible that the Appellant's sister, who knew all about her alleged conversion (AIR questions 76], would have been party to placing an Islamic prayer in her luggage. When asked about the packing of the case in interview (AIR questions 78), the Appellant said that she did not know whether her sister knew about her plan to leave the country because she only spoke to her brother once after the raid on the house church. This is inconsistent with the statement of 29 September 2016 which refers to 4 telephone conversations with her brother and one with her mother. Her explanation at question 81 as to the involvement of her mother in packing for the journey, namely, that her rushing to her mother's house to collect her son "must have raised questions in (her) head", is completely illogical."
22. It is not made out that the finding of the Judge is infected by arguable legal error. It has not been shown the Judges conclusions are outside the range of those reasonably available on the evidence when considered as a whole.

23. The appellant fails to establish that the Judge applied an inappropriate burden or standard of proof and the Judge clearly considered the evidence made available from all sources.
24. The Judge has given adequate reasons for rejecting the claim and the grounds are, in effect, a disagreement with those findings and desire for greater weight to be attached to certain aspects of the evidence and for a different outcome.
25. I find the Judge considered the evidence with the required degree of anxious scrutiny and set out findings of fact which are adequately reasoned in relation to how the Judge assessed that evidence. I find it has not been made out that the conclusions arrived at, even though the appellant's representative clearly considers they are unreasonable, have been infected by arguable legal error material to the decision to dismiss the appeal. It has not been shown the findings made do not fall within the range of reasonably permissible findings that would have been open to the Judge based on the evidence the First-tier Tribunal was asked to consider.
26. The appeal is dismissed.

Decision

27. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity.

28. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 7 July 2017