Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14284/2016

THE IMMIGRATION ACTS

Heard in Liverpool	**Determination & Reasons Promulgated**
On Tuesday 22 August 2017	**On Friday 25 August 2017**

Before
UPPER TRIBUNAL JUDGE SMITH

Between

M N
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Thomas, Solicitor, Compass Immigration Law Ltd
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate that a direction is made. 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 or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Holt promulgated on 22 February 2017 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 19 December 2016 refusing his protection and human rights claims. The focus of the appeal to this Tribunal is the protection claim.

2. The Appellant is a national of Iran. He arrived in the UK on 28 August 2014 and claimed asylum on 30 August 2014. That claim was refused on 7 January 2015 and an earlier appeal against that refusal dismissed with appeal rights being exhausted on 22 September 2015. The Appellant made further submissions on 28 October 2015 which were refused on 29 October 2015. Further submissions were then made on 28 October 2016, again refused but accepted as amounting to a fresh claim by the Respondent's decision under appeal.

3. The basis of the Appellant's protection claim is his conversion to Christianity. He says that he is a Jehovah's Witness. That was also the basis of his first claim and therefore his first appeal. The Judge therefore correctly took as her starting point, the findings of the first Judge (Judge Lloyd-Smith). Having given further reasons for not accepting the Appellant's credibility, Judge Holt indicated that she was not satisfied that the Appellant had genuinely rejected Islam and any conversion would not come to the attention of the Iranian authorities. He would not therefore be at risk on return to Iran.

4. The Appellant's grounds are three-fold. First, he says that the Judge has placed too much weight on the findings of Judge Lloyd-Smith. Second, he says that the Judge has misunderstood some of the evidence, in particular that of his witnesses, Mr Carter and Mr Edmans. He also says under this head that the Judge has discriminated against Jehovah's witnesses whose ministers have no formal status or training. He says therefore that the criticisms made of these witnesses are unfounded. Finally, he says that the Judge has failed to give proper attention to the evidence of the Appellant himself, particularly in relation to his knowledge of his religion and evangelising activities.

5. Permission was granted by Designated Judge Shaerf on 25 April 2017 in the following terms (so far as relevant):-

> "The grounds assert the Judge attached undue weight to the decision dismissing the Appellant's appeal against an earlier decision of the Respondent which the Tribunal had promulgated in [on] 20 May 2015 and insufficient weight to the evidence of the Appellant's present circumstances. Crucially, the Judge at para.24 of her decision [the Judge] found none of the evidence before her suggested the findings in the [of the] earlier Tribunal decision were wrong. She then set out her reasons

> including that since that decision the Appellant had become an active member of a congregation. Certain findings are made about the nature of the congregation at para.24(v) without reference to any evidence to support those findings. At para.24(vii) the Judge accepted the Appellant had been through a baptism/conversion ceremony.
> The Judge made no findings as to the weight to be given to that evidence or how relevant a change of circumstances since the earlier Tribunal decision it showed. Indeed, her conclusion at para.26 that she cannot judge whether the Appellant is a genuine and permanent convert goes to the heart of what she had to decide and appears to undermine her reliance on the earlier decision. These are arguable errors of law and so permission is granted."

6. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

Decision and Reasons

7. In short summary, the Appellant's grounds are that the Judge has given undue weight to the decision of the first Immigration Judge and insufficient weight to the evidence post-dating that appeal, particularly the fact that the Appellant has continued to attend church for over two years on a regular basis and has been baptised.

8. I can deal shortly with the first ground relating to the way in which the first Immigration Judge's decision was treated. The Judge properly directed herself at [8] to the fact that this is a second appeal and, as such, in accordance with the case of Devaseelan, that earlier decision should be her starting point. She also noted though that she needed to take account of matters arising after that decision and facts which were not at that stage relevant. When she turned to consider the evidence, therefore, starting at [17] of the Decision, she did so by first setting out a summary of the findings of Judge Lloyd-Smith before going on to look at the evidence before her. That is the correct approach. Although there is reference at later points in the Decision to whether the later evidence shows that the findings should be altered by that evidence, that is not an indication that the Judge was not applying independent thought to the evidence before her and assessing the case on that evidence. I therefore reject the suggestion that the Judge gave undue weight to the first Immigration Judge's findings.

9. I turn then to consider the remaining grounds. The analysis of the evidence and findings thereon is to be found at [24] of the Decision. Although Ms Thomas made one point about the import of the Asylum Policy Instruction in this case, consideration of which appears at [21] of the Decision, I can disregard that. Ms Thomas' submission about that was that the Appellant can "tick all the boxes" in the passage there cited. However, that begs the very question it seeks to answer. As Mr Bates pointed out, the assessment of credibility in cases like this is not

a tick-box exercise. The issue whether a person is a genuine convert and is to be believed as to his/her conversion is a matter for assessment based on all the evidence in the individual case.

10. With that preface, I deal with the criticisms made of the findings made at [24] of the Decision. For the most part, those are criticisms as to the weight to be given to the evidence and/or an assertion that certain facts have been misunderstood. Those submissions can be summarised as follows:-

- [24(v)]: Judge has misunderstood the evidence: the evidence is that 90-95% of the congregation are not asylum-seekers. The majority may be Farsi speakers but that is not the same thing;
- [24(vi)]: Judge has failed to have regard to the evidence: there is a worksheet monitoring the number of hours which the Appellant has spent evangelising;
- [24(vii)]: Judge has failed properly to consider the evidence that the Appellant has undergone a baptism ceremony;
- [24(viii)]: Judge's criticisms of witnesses based on unfounded point about qualification and standing of ministers in Jehovah's witness churches; Judge has not properly applied Dorodian; Judge has failed to have regard to the rigours of the system of conversion and baptism in Jehovah's Witness churches; Judge has failed to give appropriate weight to the witness' evidence or explained why that evidence is rejected.

11. I can deal with the first three bullet points shortly. Even if it is right that the Judge misunderstood the evidence in relation to the proportion of the congregation who are asylum seekers, that is not the point of that paragraph. The point the Judge makes is that the Appellant attends church as a way of mixing with those of the same background rather than because he is a genuine convert. That is the point repeated at [26] of the Decision. The Judge accepted that the Appellant had been evangelising "to the evident approval and pleasure" of the church elders. However, the point made in that paragraph is similar to that in the preceding paragraph; the Appellant evangelises for the most part only to other Farsi speakers and therefore to mix with others of his background rather than because he is a genuine convert who genuinely wishes to convert others. As the Judge there observes, that is relevant to whether he would continue that activity in Iran. In relation to the baptism, the Judge accepts that this occurred. The point made in that paragraph is that, because the Appellant could not remember where he was baptised, it was not an event of such importance to him that it gave credence to the Appellant's claim genuinely to have converted.

12. I have certain misgivings though about [24(viii)] of the Decision. I can see no difficulty with a Judge expressing a view about the standing of a minister or other church official who attends to give oral evidence

as to an appellant's conversion. Such does not go beyond the bounds of what is envisaged by the guidance in Dorodian. My first concern though is that the Judge gives less weight to the evidence of Mr Carter and Mr Edmans based on lack of "status or training" whilst admitting that there was no cross-examination on the point. If the Respondent did not take a point as to their standing, it is perhaps understandable that the Appellant did not provide evidence as to their standing and qualification to give testimony. If this were a matter of concern to the Judge, she should have raised that issue.

13. I accept Mr Bates' submission that the Judge was entitled to have regard to the lack of critical evaluation which these witnesses have brought to bear on the issue of the Appellant's conversion (and the conversion of others who they have been asked to support). These are witnesses of fact and not in the position of experts. Only the Appellant can know in fact whether he has converted his religion and is now genuinely a believer in his new religion. The witnesses can only express their view albeit one on which they have a certain amount of experience. The Judge is not bound to adopt their views and has given reasons for rejecting those views.

14. However, I also take note of Ms Thomas' submission that, by adopting the approach which the Judge did, she has failed to take into account that, at least to some extent, that critical evaluation has already taken place because of the quite robust system of study, conversion and baptism within the church itself. That is not dealt with to any degree by the witness statements of Mr Carter and Mr Edmans and it does not appear to have been the subject of the oral evidence (at least not in any detail). There is however, some documentary evidence on the point, particularly the letter co-written by Mr Carter and Mr Edmans and one other gentleman in support of the Appellant's case, dated 23 October 2016 which appears at [AB/31].

15. Were this the only criticism which could be made of the Decision, though, I would have been inclined to find it immaterial. There are ample other reasons given for rejecting the Appellant's claim genuinely to have converted. However, the rather more obvious difficulty with the Decision is what is said at [25] and [26] of the Decision. Indeed, that appears to be largely the reason that permission was granted. The comments there made have to be considered in context. As I have indicated, the reasons for finding the Appellant not to be credible in his claim are set out at [24] of the Decision. That paragraph starts rather than ends with the finding supported by those reasons and reads as follows:-

> "[24] My overall finding is that none of the evidence that I have been asked to consider makes me find that Judge Lloyd-Smith was mistaken when she found that she did *"not therefore accept that he has converted from Islam or intends to attend Church meetings in Iran."* None of the evidence before me suggested that her findings were wrong in relation to

> the appellant's claims regarding his (lack of) involvement in Iran with Christianity; nor the risks that he claimed to be under; and his reasons for becoming involved with Jehovah's Witness in the UK. I therefore also find that the appellant is not a genuine convert, the corollary of which is that I am not satisfied that he would be at risk upon return to Iran. This is because…"

The paragraphs setting out the reasons then follow.

16. If the Decision had ended there, I would, as I indicate, have found my misgivings about the treatment of the witness' evidence to be immaterial. However, the Judge then went on as follows:-

> "[25] Overall I am not satisfied that the appellant has rejected Islam. However, if I am wrong on that point and the appellant has simply lost interest in Islam and has found that he no longer accepts the tenets of Islam ie rejected it at a personal, philosophical level, I am not satisfied that there is any reliable evidence that he has communicated this "falling out" with Islam to anyone in Iran. (As a theological difference between Christianity and Islam, I note, is that evangelical Christians do not believe that an individual can be born into Christianity. Instead they have to be "born again" by actively choosing to accept the teachings of Christ). I am sure that rejecting Islam would be seen as grossly disloyal by many in Iran. However, like Judge Lloyd-Smith, I am not satisfied that the appellant would continue to practise Christian faith or to profess to be a Christian if he returned to Iran. And, as set out above, I am not satisfied that anyone would know or suspect that he had discarded the Islamic beliefs he was raised with. I therefore find that he would also be able to live in Iran in such a way as not to draw attention to his rejection of Islam (if indeed he has rejected the religion).
>
> [26] As set out above I am entirely unable to judge whether the appellant is a "genuine" and permanent convert to Christianity, although I find that his social life greatly revolves around Manchester Persian Congregation of Jehovah's Witnesses at present. However, I am not remotely satisfied that the factor of his current Manchester Persian Congregation of Jehovah's Witnesses lifestyle would ever come to the attention of the authorities in Iran."

17. There are two difficulties with these paragraphs. The first and the most obvious is what is said at [26] of the Decision. As Judge Shaerf observed when granting permission, this was the very issue the Judge had to decide. She could not fail to make a finding about it without falling into error. Mr Bates sought to persuade me that the error in this paragraph is simply bad drafting. He suggested that by "I am entirely unable to judge whether …" the Judge did not mean "I am unable to make a decision whether…" but "I cannot consider it to be the case that…". He reminded me that the paragraph begins with the words "As set out above…" which incorporates the finding at [24] of the Decision that the Appellant is not a genuine convert. That suggestion might have had some force were it not for the use of the word "whether". If the Judge had simply used the word "judge" as meaning "find" or "assess",

she would have said that she was "unable to judge that" the Appellant is a genuine and permanent convert.

18. I appreciate that decisions of this nature are not to be interpreted as one would interpret a statute but, where there is some ambiguity, it is necessary to look also at the context. In so doing, it is necessary to consider [26] of the Decision alongside [25]. What the Judge appears to be saying in the two paragraphs read together is that, if she is wrong about the Appellant having converted, it is nonetheless merely a facet of his losing his own faith and is not sufficiently important to him that he would continue to profess his new-found faith on return to Iran because it would not be important to him to do so. There is no reason to suppose that the authorities would be aware that the Appellant has been practising the Christian faith in the UK unless the Appellant were to tell them or continued with that faith in Iran. However, if that is what the Judge meant to say, she needed to make a finding whether the reason the Appellant would not continue his new faith is because he does not genuinely believe it and would not wish to do so or whether it would be in order to avoid the risk which it would pose. Based on HJ (Iran), if the latter were the reason, the Appellant would be entitled to succeed. Further, the comment made at [26] then does make sense only in the way in which Judge Shaerf (and I) read it that the Judge felt unable to make a finding on the very issue which she had to determine which then lends uncertainty to what appears to be her earlier finding that the Appellant is not a genuine convert.

19. Principally for those reasons but based also on the misgivings which I have expressed about the treatment of the evidence of the church witnesses at [24(viii)] of the Decision, I conclude that the Decision does disclose errors of law. Those errors go to the adverse credibility findings made against the Appellant. In accordance with the Tribunal guidance, I therefore agree with the parties that it is appropriate to remit the appeal to the First-tier Tribunal for the matter to be considered afresh by a different Judge. None of the findings are preserved.

DECISION

I am satisfied that the Decision contains material errors of law. The decision of First-tier Tribunal Judge Holt promulgated on 22 February 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.

Signed Dated: 25 August 2017

Upper Tribunal Judge Smith