



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04223/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 4 June 2018

Decision & Reasons Promulgated
On 7 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SAEED SABET-GHADEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Frantzis (counsel) instructed by Bankfield Heath Solicitors
For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Monaghan promulgated on 14 June 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 16 June 1970 and is a national of Iran. On 18 April 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Monaghan ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 12 November 2017 Upper Tribunal Judge Lindsley gave permission to appeal stating

4. The decision arguably errs in law for failing to determine whether the appellant is in danger of return to Iran on the basis of the facts found to be true by the First-tier Tribunal. His case might be summarised as follows; the appellant was previously in the Iranian military, has left Iran illegally and has attended an evangelical church regularly for the past two years. It is arguable that this is a material error as the appellant has now been absent from Iran for 2 ½ years, and is likely to be questioned about what he has been doing on return, see paragraph 467 of 471 of AB and others (Internet activities- state of evidence) Iran [2015] UKUT 257. Further it is arguable that the Iranian State will not believe it relevant if the applicant says that he made an asylum claim and was baptised Christian faith and attended church for two years and that this was not done in good faith. It is arguable that this behaviour still may be seen as apostasy and lead to persecution.

5. It is also arguable that decision that the appellant has not genuinely converted to Christianity is irrational given the acceptance of the Reverend Hellewell's evidence as genuine and the reasons given to doubt the conversion are simply that he has converted quickly after arriving in the UK having been a previously devout Muslim; that he had only had one lengthy religious discussion with Reverend Hellewell; and that he was not believed to have deserted from the Revolutionary Guards. It is arguable that reported decisions of the higher courts endorsing an approach that what is most relevant in assessing the genuineness of a conversion is the attendance at church have not been followed in this aspect of the decision making, see Dorodian (01/TH/01537) and SA (Iran) [2012] EWHC 2575 (Admin).

The Hearing

5. (a) For the appellant, Ms Frantzis moved the grounds of appeal. She reminded me that the appellant drafted his own grounds of appeal and told me that the grant of permission to appeal is the focus in this case. She told me that the Judge failed to consider the appellant's profile on return. She told me that, on the facts as the Judge found them to be, the appellant previously served in the Iranian military, left Iran illegally, and at the date of hearing has been attending Christian church for two years and has been baptised. Relying on paragraphs 467 to 471 of AB and others (Internet activities - State of evidence) Iran [2015] UKUT 257, Ms Frantzis told me that with that profile the appellant would be interrogated. He could not be expected to lie, and his profile is sufficient to raise a risk of persecution.

(b) Ms Frantzis took me to [84] of the decision, where the Judge started her consideration of the evidence of the appellant's Minister of religion. Rev Hellewell was the appellant's Dorodian witness. At [84] the Judge finds that Rev Hellewell was a committed, clear and honest witness who genuinely believes that the appellant has

converted to Christianity. The Judge specifies that Rev Hellewell's evidence is based on his own observations of the appellant at the time.

(c) Between [85] and [88] the Judge finds that other pieces of evidence are more reliable than the evidence of the Rev Hellewell. Ms Frantzis told me that the Judge's findings are inadequately reasoned and irrational. She told me that there was no good reason for rejecting the clear and honest evidence of a Dorodian witness. She urged me to set the decision aside and to remit this case to the First-tier for further fact-finding. She told me that the appellant has continue to practice his faith and that more detailed recent evidence of his practice of Christianity is available.

6. (a) For the respondent, Ms Petterson told me that the decision does not contain errors. She relied on the rule 24 response dated 27 November 2017, and told me that the Judge considered the appellant's profile and dealt with illegal exit at [89] and [90] of the decision. She told me that the Judge gives clear reasons for rejecting the appellant's account of conversion to Christianity. She told me that the Judge considered the evidence of Rev Hellewell, but gave it no weight because on a holistic consideration of every piece of evidence the Judge found that the Rev Hellewell has been fooled by the appellant, who is cynically manipulating a man of faith.

(b) Ms Petterson urged me to dismiss the appeal and to find that the grounds of appeal amount to nothing more than a disagreement with the facts as the Judge found them to be. She told me that the Judge has prepared a detailed, sustainable decision which withstands appeal.

Analysis

7. At [70] and [71] the Judge finds that it is accepted that the appellant is an Iranian who has previously been involved in the Iranian military. It is not disputed that the appellant entered the UK in September 2015. The Judge goes on to find that the appellant has been attending Christian church for more than two years. She accepts Rev Hellewell's evidence that the appellant has been baptised, and that the appellant attends church at least once each week.

8. In Shirazi v SSHD (2003) EWCA Civ 1562 the Court of Appeal generally approved the guidance in Dorodian 01/TH 01537 on how to determine the veracity of conversions to Christianity in Iran. In Dorodian it was suggested that a statement or letter giving the full designation of the minister supporting such a claim should be sent to the Home Office at least a fortnight before the hearing of any appeal, which should give the Home Office time to make a basic check on the minister's existence and standing. Unless the Home Office accepted that the appellant was a committed church member, in writing in advance, the minister should invariably be called to give evidence.

9. At [84] the Judge finds that the Rev Hellewell is a committed, clear and honest witness, but the Judge rejects his evidence. The reasons for rejecting his evidence are set out between [85] and [88].

10. At [85] the Judge says that the appellant does not give an adequate explanation for turning his back on his previous devotion to Islam. At [86] the Judge finds the speed of conversion from one faith to another counts against the appellant. At [87] the Judge is critical of the lack of intense contact between the appellant and Rev Hellewell, and at [88] the Judge uses the rejection of the appellant's claim to have deserted from the Revolutionary Guard as a reason for rejecting the appellant's claim to have converted to Christianity.

11. The difficulty with the decision is that the Judge has clear evidence from the Rev Hellewell that the appellant converted to Christianity, has been baptised, and now lives a Christian life, participating in Christian worship at least once each week. The Judge finds that the Rev Hellewell tells the truth, but that the Judge cannot give his evidence weight. The reasons that the Judge gives for not giving weight to clear and honest evidence from a Dorodian witness is that the Judge does not believe separate aspects of the appellant's claim. The Judge's remaining reasons amount to no more than a refusal to accept that a middle-aged man can have a rapid change of faith.

12. SA (Iran), R (on the application of) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin) was a judicial review against a certification of an asylum claim by an Iranian Christian convert under S.94(2) of the Nationality, Immigration and Asylum Act 2002, his Honour Judge Gilbert QC found that current evidence pointed to a greater risk for Iranian Christian converts than is reflected in the country guidance. He also made the following comments on the judicial assessment of the genuineness of a Christian conversion (at 24):

"It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church."

13. The Judge gives inadequate reasons for rejecting the evidence of a credible Dorodian witness. The Judge's conclusions are inadequately reasoned. The Judge implies that the appellant has cynically manipulated the Rev Hellewell and his community of faith, but does not make that finding and does not support that implication with adequate reasoning. These are errors of law.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say

so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. The errors of law are material errors because they have the potential to affect the outcome of the appellant's appeal. As the decision is tainted by material errors of law I set it aside. I am asked to remit this case to the First-tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

18. I remit this case to the First-tier Tribunal sitting at Bradford to be heard before any First-tier Judge other than Judge Monaghan.

Decision

19. The decision of the First-tier Tribunal is tainted by material errors of law.

20. I set aside the Judge's decision promulgated on 14 June 2017. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed

Paul Doyle

Date 6 June 2018

Deputy Upper Tribunal Judge Doyle