



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07723/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Columbus House, Determination Promulgated
Newport On 27 April 2018 On 03 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**BA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms L Gardner, Counsel instructed by Migrant Legal Project

For the Respondent: Mr K Hibbs, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge O'Rourke in which he dismissed the appeal of the Appellant, a citizen of Iran, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 28 July 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge O'Rourke on 11 September 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was

granted by First-tier Tribunal Judge Kelly on 24 November 2017 in the following terms

It is not arguable that it was “perverse” for the tribunal to attach weight to inconsistencies in the appellant’s testimony concerning the number of occasions on which he attended a house church in Iran when assessing his overall credibility as a witness of truth. Neither is it arguable that the decision in R (on the application of SA (Iran) v SSHD [2012] EWHC 2527 (Admin) contains any generally applicable principle of law (whether binding upon the tribunal or otherwise) or that the tribunal was obliged to assess the credibility of the appellant’s claimed conversion to Christianity by reference to his church activities alone rather than by reference to other matters that were capable of undermining it. Permission to appeal on the grounds contained within paragraphs 3 to 11 is accordingly refused.

It is however arguable that the tribunal was wrong to find that the appellant had not submitted any corroborative evidence of his claimed evangelising in the United Kingdom, with particular reference to the written evidence of the Reverend Rees. It is further arguable that this was material to the outcome of the appeal. Permission to appeal is accordingly granted on the grounds contained within paragraphs 12 to 14 of the application.

At the hearing before me Ms Gardner leave to amend the grounds of appeal to include assertions that there had been material misdirection of law in respect of the Appellant’s sur place activities and the evidence of Reverend Rees as well as procedural unfairness in reaching a conclusion that Reverend Rees had been ‘duped’ without affording him the opportunity to respond. Mr Hibbs did not object to the proposed amendment. I gave leave to amend on the basis that the amended grounds were, in reality, merely an enhancement of the existing grounds and did not raise discrete issues.

Background

3. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Iran born on 15 December 1976. He left Iran on 10 December 2016 arriving in the United Kingdom on 19 April 2017 and claimed asylum on or immediately after arrival. The basis of his claim was his fear of persecution on religious grounds due to his conversion from Islam to Christianity. He claimed that his conversion took place in Iran where he attended a house church. His attendance at this church and his possession of Christian leaflets and other materials was discovered by the authorities who sought to detain him. The Appellant left Iran in fear of persecution and travelled via Turkey to the United Kingdom. Having arrived in the United Kingdom and claimed asylum the Appellant began attending a local evangelical Christian church and his involvement with the church locally was confirmed by the Pastor.

4. At the hearing on 11 September 2017 the Appellant was represented by counsel and gave oral evidence. The Pastor of his local church had proposed to give oral evidence but was unavoidably engaged elsewhere. The Judge refused an adjournment application to enable the Pastor to give oral evidence noting (at paragraph 5 of his decision) *“Reverend Rees is a frequent witness in this Tribunal and his written evidence would stand in good stead of his attendance.”*
5. In dismissing the appeal the Judge found that the Appellant was not a credible witness so far as events in Iran were concerned and that this affected his credibility generally and so had an impact on the genuineness of his activities in the UK which included attending church although his claim to evangelise was uncorroborated.

Submissions

6. For the Appellant Ms Gardner referred to the grounds of appeal and said that the Judge failed to have regard to relevant evidence. It was clear that there was corroborative evidence of evangelising contrary to paragraph 29(iii) of the decision. Further this makes it clear that the Appellant was not simply attending church contrary to paragraph 29(ii). In this respect the accounts of the Appellant and Reverend Rees are corroborative of each other. The Judge materially misdirected himself by starting his assessment of the Appellant’s sur place activities by referring to his credibility generally rather than considering the supporting evidence. Further again there is a material misdirection amounting to unfairness in the specific finding at paragraph 30 that Reverend Rees has been duped. This was not put to the Appellant and it was not raised by the Judge during the course of the hearing. The Judge had the opportunity to adjourn the proceedings and hear from Reverend Rees. It may have been acceptable for the Judge to attach limited weight to the evidence of Reverend Rees but to specifically find that he had been duped when this had not been raised amounts procedural unfairness.
7. Mr Hibbs responded to say that credibility should be considered in the round and if the Appellant’s account of his conversion in Iran was not credible then the judge was entitled to find that his Christian activities in the UK were not genuine. Mr Hibbs said that the two aspects of the Appellant’s claim, his conversion in Iran and his activities in the UK were parasitic upon one another. Mr Hibbs went on to correct himself to suggest that it was only the activities in the UK that were parasitic on his claimed activities in Iran. The Appellant never claimed to have converted in the UK so if his conversion in Iran was not credible the rest of his claim falls away. In fact the Judge makes an alternative finding at paragraph 29 (iii), even if the Appellant had participated in Christian events in Cardiff this was unlikely to bring him to the attention of the Iranian

authorities. Mr Hibbs accepted that the finding that the Reverend Rees had been duped was not put to him or raised in submissions or otherwise.

8. I said that the appeal would be allowed and reserved my written decision. It was clear that the Judge had failed to have regard to material evidence, that he had drawn conclusions on Reverend Rees' evidence that were not put to him or to the Appellant and that he had failed to consider whether the Appellant's activities in the United Kingdom cast light on his claim to have converted to Christianity in Iran.

Decision

9. The first issue in this appeal is the Judge's consideration of the evidence that was before him. At paragraph 29(iii) the Judge finds "*there was no corroborating evidence as to any evangelising activity by the Appellant (Reverend Rees does not mention any)*". At paragraph 29 (ii) the Judge finds "*simply attending a church cannot be, of itself, sufficient*". These findings are wholly contrary to the letter of September 1, 2017 from Reverend Rees. This letter was before the First-tier Tribunal and attests not only to the Appellant's church attendance and the genuineness of his Christianity but also to his participation in other church activities including evangelising. The Judge's failure to consider this evidence must have been material to his decision because the only other reason given for doubting the genuineness of his Christian activities in the United Kingdom was the Appellant's credibility generally, in other words the Judge's assessment of his activities in Iran.
10. In this regard Mr Hibbs first submission, before correction, that the two aspects of the Appellant's claim were parasitic upon each other was in my finding correct. Just as his activities in Iran cast light upon the credibility of his activities in the United Kingdom his activities in United Kingdom must cast light upon the credibility of his account of his activities in Iran. In this regard it is pertinent to note that the Judge did not make a specific finding as to whether the Appellant had converted to Christianity in Iran only that his account of events in Iran was not plausible.
11. In my judgement the Judge's treatment of the evidence of Reverend Rees was further at fault in his finding that the Reverend Rees had been duped. At the outset of the proceedings an adjournment application was made specifically because Reverend Rees could not attend. He wished to attend but was attending instead a speed awareness course. The Judge refused the application noting that Reverend Rees was a frequent witness in this tribunal and that his written evidence would stand in good stead of his attendance. The Judge further excused the strict

application of Dorodian on the basis that Reverend Rees would have attended if he could. Having made this decision to treat the Reverend Rees' written evidence in good stead of his attendance it was, in my judgement, unfair of the Judge to make a finding that Reverend Rees had been duped. If Reverend Rees had given oral evidence the suggestion that he had been duped could have been put to him and no doubt he would have had a response.

12. For all the reasons above it is my judgement that the Judge fell into error of law and that his decision cannot stand. I have considered whether the Judge's findings in respect of the Appellant's activities in Iran can nevertheless be preserved and it is my judgement that they cannot for the very reason put forward by Mr Hibbs, the two aspects of the Appellant's claim are indeed parasitic upon one another and it is impossible to make a reasoned finding on the one without consideration of the other. Indeed this is a further aspect where the Judge fell into error in that he considered the effect of the Appellant's activities in Iran upon the credibility of his account of his activities in United Kingdom whilst he did not consider the fact of the Appellant's accepted activities in the UK when considering his account of his activities in Iran.

Summary

13. The decision of the First-tier Tribunal involved the making of errors of law material to the decision to dismiss the appeal. I allow the Appellant's appeal and as the errors of law involved the credibility findings made it is appropriate that this matter is remitted to the First-tier Tribunal for hearing de novo with no findings preserved.

Signed:

Date: 29 April 2018



J F W Phillips
Deputy Judge of the Upper Tribunal