



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01298/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11th July 2019**

**Decision & Reasons Promulgated
On 06th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**M S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Youssefian (Counsel)

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 22nd September 1964. The Appellant applied for asylum asking to be recognised as a refugee. His claim was based on a purported well-founded fear of persecution in Iran on the basis of his imputed political opinion and religion. His application was turned down by Notice of Refusal dated 28th January 2019.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Skehan sitting at Hatton Cross on 12th March 2019. Judge Skehan anonymised the appeal. By decision and reasons promulgated on 11th April 2019 the Appellant's appeal was dismissed.

3. On 24th April 2019 Grounds of Appeal were lodged to the Upper Tribunal. On 31st May 2019 First-tier Tribunal Judge Bristow granted permission to appeal. Judge Bristow noted that the grounds asserted that the judge had erred in her assessment of:-
 - (a) any future proselytising and evangelising in Iran; and
 - (b) any risk to the Appellant on return to Iran due to the Appellant's previous conviction there.

Judge Bristow noted that the judge had found it proved that the Appellant had genuinely converted from Islam to Christianity and also found that the Appellant had been convicted of a crime in the 1980s and served a sentence of imprisonment. At paragraph 15 of her decision the judge had found it was likely that the Appellant would be questioned on return but that he would not be mistreated and she had found at paragraph 13 that the Appellant would not seek to evangelise or "spread the good word" in Iran. Judge Bristow considered it was arguable that the judge had failed to give consideration or sufficient consideration to the documents and that the decision and reasons contained an arguable material error of law.

4. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Youssefian. Mr Youssefian is familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Tarlow.

Submissions/Discussion

5. Mr Youssefian starts by reminding me (as is recited above) that the judge has accepted firstly that the Appellant is a Christian convert and secondly that back in 1982 he spent time in prison. He submits that the First-tier Tribunal Judge erred in the way in which he assessed the Appellant's likelihood to proselytise in Iran and come to the adverse attention of the authorities and consequently as a result will be persecuted. He submits that the key paragraph is to be found in paragraph 13 of the judge's findings and deliberations. He submits that in considering whether the Appellant would evangelise in Iran upon return the First-tier Tribunal Judge had arguably failed to properly focus on the Appellant's conduct in the UK not least given that he was at the very beginning of his faith conversion when in Iran. This is something to which the judge makes due reference at paragraph 12 of her decision. Further he submits that the judge had failed to make a finding as to whether she accepted that the Appellant had evangelised a fellow citizen during his brief time in the UK and contends that whether or not the Appellant has actually evangelised someone is central to his claim as it would form a crucial part of the assessment as to his prospective behaviour in Iran.
6. Further he considers that the judge's findings at paragraph 13, that the Appellant's evangelism was an exercise set solely by the church, is

arguably erroneous in law to disregard and that the judge ignored the fact that the Appellant chose to join a protestant church that had evangelism as its centrepiece. He contends that all that is necessary is for an Appellant to actively seek to evangelise whilst in Iran not that he would attract public exposure upon return and that his evidence is such that he submits it was hard for the judge not to come to the conclusion that once in Iran the Appellant would come to the attention of the authorities and proselytise.

7. Further he contends that the judge has made no findings on the Appellant's credibility and failed to take into account the Appellant's conduct in the UK. He asked me to read paragraph 12 of the decision carefully (which I have done) and submits that it is wrong to look at the Appellant's conduct in Iran rather than the UK on the basis that he already evangelised a fellow citizen who had joined the church. Further he submits the judge made no findings with regard to the issue of the Appellant's conversion.
8. Mr Youssefian acknowledges and accepts that converts can be returned but submits that the Appellant's actions in the UK show that he has evangelised and that the judge has not focused her mind on his activities in the UK and that the distinctions that the judge has made is not one that actually flows.
9. Secondly Mr Youssefian submits that the Appellant would be at risk upon return due to a previous conviction that he had had in the 1980s albeit that he notes that at paragraph 17(c) the First-tier Tribunal Judge found that although the Appellant would be questioned by the Iranian authorities on return he would not be persecuted. He acknowledges the law that the Appellant be questioned on return and it will become clear that he has converted to Christianity but submits that the error is that nowhere within the decision does the judge refer to the Appellant being an apostate and that apostacy is a crime punishable by death. He submits that this has not been considered by the judge, there has been no proper consideration by the evidence and that there is an inadequacy of reasoning. He refers me to the Secretary of State's own Country and Policy Information Note of February 2019 where it is accepted that illegal exit is likely to only be a significant issue if the Iranian state has previously manifested an adverse interest in the person and that given that the Appellant had previously come to the adverse attention of the authorities due to his illegal exit and being a deserter that he has once again exited Iran illegally, together with the fact that he is now an apostate with a desire to proselytise his Christian faith, forms the Appellant's well-founded fear of persecution. He submits that the judge has failed to provide adequate reasons as to why the Appellant would not be at real risk of persecution on return.
10. Finally Mr Youssefian turns to Article 8 and submits that there has been a failure by the judge to have proper regard to Section 117B of the 2002 Act and that the judge failed to have regard to the Appellant's proficiency in the English language, his financial independence or the nature of his ties

and private life and family life in the UK. He submits that the First-tier Tribunal Judge arguably failed to consider the provisions of Section 117 of the 2002 Act in both form and substance.

11. Mr Tarlow submits that the submissions made by Mr Youssefian amount to little more than disagreement. He accepts the arguments relate to the question of evangelism and that the Appellant has joined a church. He submits that within a religious community you will take onboard the broad characteristics of that church. He reminds me that Mr Youssefian has accepted that converts can be returned and that the judge has focused her mind on the Appellant's activities in the UK and given full and clear reasons for reaching her decision. Mr Tarlow asked me to read the decision thoroughly, submitting that this indicates the manner in which the judge has looked at this appeal and has come to findings which he was perfectly entitled to. He points out that at paragraph 17(d) the judge has considered how the Appellant is likely to behave if returned to Iran and that the Appellant has claimed to have practised religion in Iran previously and in a quiet way. He points out that the judge was perfectly entitled to conclude that there was no conflict between the Appellant living quietly and being a genuine convert and that because the Appellant was a member of a church that actively encouraged evangelism in the UK it did not follow at all that the Appellant would decide to follow that particular practice in Iran. He submits that the judge has examined each and every issue including a claim under Article 8 and he refers me to paragraphs 18 and 19 of the decision. He asked me to dismiss the appeal.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of

evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. I start by reminding myself that I am not rehearing this matter, I am merely considering whether or not there are material errors of law in the decision of the First-tier Tribunal Judge. I am not satisfied material errors of law are disclosed. The judge has very thoroughly analysed the Appellant's appeal. She has noted the Appellant's claim and given substantial consideration to the case law in particular at paragraph 8. Against that background the judge then went on to recite in detail at paragraph 9 to 11 evidence that she heard and at paragraph 11(b) noted that the executive pastor of the church had given evidence and that the church depends on personal evangelism rather than largescale events.
15. Thereafter the judge has made findings. The judge has noted that she found the circumstances giving rise to the Appellant's conversion vague and difficult to follow and noted the prospective reasons for that. However she concluded that the Appellant had shown a reasonable degree of likelihood that as claimed at date of hearing the Appellant had genuinely converted to Christianity as claimed. That remains the starting point.
16. Thereafter the judge addresses the issues which are the subject of this appeal. At paragraph 13 she addresses the issue in relation to evangelism. I do not recite that paragraph in this decision but I have read it. The judge concluded that the Appellant had not shown a reasonable degree of likelihood that he would seek to evangelise and/or spread the good word should he return to Iran. Those are findings that she was perfectly entitled to make and ultimately the submissions made on this issue on his behalf by Mr Youssefian amount to little more than mere disagreement with the findings of the judge.
17. The judge then goes on to consider the issue in respect of the Appellant's alleged criminal conviction and previous history. She does this at paragraphs 14 and 15. She has noted that the Appellant's evidence therein with regard to these issues is accepted and at paragraph 15 has concluded that whilst it is likely he will be questioned on return it is not likely that he would be mistreated. Again these are findings that the judge was entitled to make.
18. The judge has then gone on at paragraphs 16 and 17 to give very detailed consideration to the authorities, in particular the provisions of *FS and Others (Iran - Christian Converts) Iran CG [2004] UKIAT 00303*. Despite being an old authority that remains good law with regard to any suggestion that there is a death penalty for conversion to Christianity, albeit that I note that there are more recent authorities in particular *SJ and JM [2008] UKAIT 82*.

19. The judge has given very full and consideration to the manner in which she would expect the Appellant to behave if returned to Iran. She notes that he has provided evidence in relation to living alongside Christians previously and that he has claimed to practise his religion in Iran in a quiet way. There is no reason she has concluded that he would do anything different. She has made findings at paragraph 17 that she was entitled to.
20. Finally the issue remains as to consideration under Article 8. The judge has at paragraphs 18 and 19 given due consideration therein. I accept that there is no mention therein specifically of Section 117 of the 2002 Act. However the judge has given sufficient consideration to the Appellant's position under Article 8 and the mere failure to make specific reference to the provisions of Section 117 do not constitute a material error of law bearing in mind that the judge has given consideration to the Appellant's Article 8 position and done so quite thoroughly.
21. This is a judge who has carried out a very thorough analysis and has made findings that she was entitled to. It is not for the Upper Tribunal to go behind those findings providing they are reasoned and do not disclose material errors of law. They do not for all the above reasons. They are well constructed and thought through. Of course a different judge may have come to a different conclusion but this judge has considered all the relevant factors and made findings that she was perfectly entitled to. In such circumstances the decision discloses no material errors of law and the decision of the First-tier Tribunal Judge is maintained and the Appellant's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material errors of law. The Appellant's appeal is consequently dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and that order is maintained.

Signed

Date 29 July 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 29 July 2019

Deputy Upper Tribunal Judge D N Harris