



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08098/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 1st May 2019

Decision and Reasons Promulgated
On 07th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M F E
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr D Sills, Counsel, instructed by Freedom Solicitors

For the respondent: Mr A Tan, Senior Presenting Officer

DECISION AND REASONS

The background

1. The appellant is an Iranian Kurd. He made a claim for protection on the basis he and his brother had been involved with the KDPI. Etellat came to their home and arrested his brother and other family members. He managed to escape and made his way across Europe. En route he converted to

Christianity and began attending a church, initially in Manchester and then Liverpool.

2. His claim for protection, made on 15 December 2015, was refused on 9 May 2016 on credibility grounds. His appeal was heard by First-tier Tribunal Judge Moxon on 7 February 2017 and dismissed in a decision promulgated on 14 February 2017. At that stage the appellant said he had been baptised on 26 July 2016. The judge heard evidence from 2 members of the Christian church he attended. Again, the judge did not find the appellant's account credible.
3. On 25 April 2018 further representations were made on his behalf. These referred to his ongoing Christian beliefs and sur place activities on behalf of the KDPI. The latter included attending demonstrations and Facebook activity. A letter dated 8 July 2017 confirming his membership of the KDPI and involvement was submitted.
4. Protection was again refused on 3 May 2018. Reference was made to the earlier findings in relation to credibility by First-tier Tribunal Judge Moxon. Little weight was attached to the letter on 8 July 2017 and the respondent did not accept his sur place activities would not bring him to the adverse attention of the Iranian authorities.
5. His appeal against that decision was heard by First-tier Tribunal Judge A.R. Hudson on 13 August 2018. In a decision promulgated on 28 August 2018 his claim was again dismissed. The judge heard from 2 different church members. Again, the judge did not find the appellant to be a credible witness. The judge referred to the earlier decision of First-tier Tribunal Judge Moxon and the Devaseelan principle.
6. The judge accepted the appellant had been attending church and had been baptised. The 1st judge had said his attendances were for the purposes of his claim or else to socialise with other Iranians at the church and did not accept he was a genuine Christian convert. Before First-tier Tribunal AR Hudson he said he had begun evangelising. The judge accepted his account of involvement but questioned his motives. The judge accepted the church witnesses gave their evidence truthfully but that they offered little insight into the appellant's true motives.
7. The judge then dealt with the appellant's Facebook entries which disseminated Christianity and KDPI taglines. The judge concluded the postings were entirely self-serving made for the purposes of his claim. Regarding the demonstrations the judge concluded that his presence would not have been noted by the Iranian authorities.
8. The judge had also found that if the appellant had left Iran illegally this in itself would not give rise to real risk of persecution. The judge had found he had no

political profile. The judge acknowledged being Kurdish was an exacerbating factor but not sufficient to place him at real risk.

The Upper Tribunal

9. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable the judge erred in law in the approach taken towards the supportive evidence of the church members. This was in light of the guidance given by the Inner House in TF and MA [2018] CSIH 58. That decision also concerned Iranian nationals claiming protection on the basis of conversion to Christianity after their arrival in the United Kingdom as well as anti-regime activities and a claim of being Gay. The genuineness of those conversions as well as the other aspects of their claims had not been believed.
10. The Inner House made the point that the fact an individual may have lied about some aspects did not necessarily mean they were lying on all matters. The Inner House gave guidance as to the status of evidence from church leaders about the religious conduct of the individual and their opinion as to their sincerity. The court took the view that in some respects the evidence of the church witnesses could be considered as expert evidence. There was a generalised discussion about the nature of faith and beliefs.
11. At hearing, Mr Tan accepted there was merit in the grounds advanced for which permission was granted, particularly from paragraph 5 onwards. He also made the point that time had now passed, meaning there was a greater opportunity by the church members to observe the appellant over an extended period.

Conclusions

12. The decision of First-tier Tribunal Judge A.R. Hudson has been carefully prepared and sets out the claims made and the evidence put forward in support. The judge had the benefit of the earlier decision of First-tier Tribunal Judge Moxon. The decision reflects a scepticism about the genuineness of the claims being made.
13. The genuineness of the claimed conversion is extremely difficult to determine. The judge had accepted the appellant was dutiful towards the church and its members but suggested this was motivated by a wish to promote his claim. The genuineness of the appellant also impacts upon the likelihood of him wanting to evangelise if returned to Iran.
14. The judge did not have the benefit of the views of the Inner House on this issue and its consideration of the previous jurisprudence. In considering the error of law question I am required to have regard to things as they are now understood. Albeit with this hindsight, an error of law has been accepted by

the presenting officer in relation to how the judge dealt with the church witnesses. In the interests of justice I find this a fair concession by the presenting officer. It was also accepted there was merit in the points made in the grounds in relation to the Facebook activities.

Decision

The decision of First-tier Tribunal Judge A.R. Hudson materially errs in law and is set aside for a de novo hearing in the First-tier Tribunal.

Deputy Upper Tribunal Judge Farrelly

Dated 02 May 2019

Directions

1. Relist in the First-tier Tribunal at Manchester for a de novo hearing, excluding First-tier Tribunal Judge Moxon and First-tier Tribunal Judge A.R. Hudson.
2. The hearing should focus upon the appellant's claimed conversion to Christianity. Related to this, is his claim of a wish to proselytise.
3. There has been no challenge to the rejection of the appellant's account as to why he left Iran. Rather, the focus at the relisted hearing should be upon his sur place activities in relation to the KDPI, including his Facebook activity.
4. The parties should also consider the risk to the appellant on return simply for being Kurdish if he left the country illegally.
5. A hearing time of 2 ½ hours is anticipated. The appellant intends giving evidence and at least 2 witnesses from the church may attend.
6. The appellant's representative has indicated a Farsi rather than Kurdish Sorani interpreter is required.

Deputy Upper Tribunal Judge Farrelly