



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

**Appeal Number: PA/08829/2017**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 17 January and 21 February  
2019**

**Decision & Reasons Promulgated  
On 04 March 2019**

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**SAJAD [I]**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr T Haddow, Advocate, instructed by Latta & Co,  
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION and REASONS**

1. The appellant sought asylum on arrival in the UK on 21 September 2015, claiming to be at risk of persecution from the Iranian authorities because he had attended a Christian house church. His appeal against refusal of that claim was dismissed by FtT Judge Blair in a decision promulgated on 2 September 2016 ("the 2016 decision", PA/03449/2015).
2. The appellant made further representations on 10 August 2017, which the respondent refused on 25 August 2017. The appellant's appeal against

that refusal was dismissed by FtT Judge Agnew in a decision promulgated on 8 February 2018 (“the 2018 decision”).

3. On 22 February 2018 the appellant applied to the FtT for permission to appeal to the UT on 3 grounds, headed as (1) failing to properly follow *Devaseelan* [2002] UKIAT 000702; (2) failing to properly follow *Germany v X and Y* [2012] EUECJ C-71/11 and *Hj (Iran) v SSHD* [2010] UKSC 31; and (3) procedural unfairness.
4. In a decision dated 7 March 2018, FtT Judge Hodgkinson refused permission on grounds 1 and 3, and went on:
 

“In relation to ground 2, the judge considered the appellant’s internet activity at [77 - 80] ... It is arguable that her reasoning in relation to the risk posed ... on return to Iran is flawed. Such does not relate to the judge’s adverse credibility findings .... Permission is granted on this ground only.”
5. On 5 April 2018 the appellant applied to the UT for permission to appeal on the grounds which had been refused (and sought to expand upon those grounds).
6. In a decision dated 29 May 2018, UT Judge Kebede refused permission on grounds 1 and 3.
7. By application made in writing shortly before the hearing on 17 January 2019, and orally at the hearing, the appellant sought late admission of an application for permission to appeal on a supplementary ground.
8. The supplementary ground was that the FtT “erred in its approach to assessing the genuineness of the appellant’s claimed conversion to Christianity”, under reference to *TF and MA v SSHD* [2018] CSIH 57, 2018 SLT 1225.
9. Bearing in mind that *TF and MA* became available only after the procedure outlined above, I allowed the application, and found the amended ground to be arguable.
10. Mr Govan sought an adjournment to another date in order to prepare, which was reasonable considering the late stage at which the new ground emerged, and the limited time remaining available on the day.
11. Directions were issued, dated 16 January 2019, and the case was listed on 21 February 2019. Submissions on error of law were then made. Under reservation of that issue, further evidence was led, and submissions heard on remaking the decision of the FtT, if it were to be set aside.
12. I find no merit in the original ground 2. It implicitly assumes a series of matters which the appellant failed to establish (or even to assert), such as that he left Iran illegally; could return only as a failed asylum seeker; was likely to be questioned; and was likely to make any incriminating answer. The appellant laid no foundation in the FtT for such a case.

13. The appellant's argument on the Christian conversion ground begins by criticising the 2016 decision. That is legitimate, because although that decision stands as a starting point, it is no more than that, and it may be weakened by reference to authority which was not available at the time. Similarly, the status which the 2018 decision gave to its predecessor, on *Devaseelan* principles, may be open to criticism, even if with the benefit of hindsight.
14. The following is a distillation of Mr Haddow's submissions on *TF and MA*:- Failure to properly take account of independent evidence of genuineness of conversion, and failure to give adequate reasons for effectively disregarding such evidence, constitute error of law. Evidence of engagement with the church and active participation was likely to be a powerful consideration. Independent evidence of genuineness of a conversion was not to be assumed to be suspect. A tribunal might regard with suspicion evidence from church witnesses based entirely on what an appellant has told them, but not when their evidence is based on observation of his engagement with church activities. There is a world of difference between telling lies and being able to live a lie over a protracted period without detection. A finding of telling lies does not justify a leap to a finding of creating a false persona and living a false lifestyle to dupe sincere witnesses. There must be some evidence pointing to such a conclusion. Evidence from religious leaders may go to the commitment required, and the extent to which participation tests faith, which are relevant to assessment of their evidence. That may be admissible as expert opinion, particularly when based on long experience, which is also relevant to how easily such witnesses may be duped.
15. Mr Haddow suggested that the 2016 decision was inconsistent with the principles set out in *TF and MA*, along the following lines:- There was only brief narration of evidence from church witnesses, and no proper assessment, other than the comment at [25] that those witnesses did not have the benefit of seeing and hearing the appellant give evidence. Although their sincerity was accepted, no other weight was given to their opinion on conversion, although that was based on more than what they were told by the appellant. No account was taken of their advantages such as knowledge of the appellant over time, opportunities to observe him, expert knowledge of his participation, and experience with similar claimed converts. In contrast, the judge at [23] took account of his own assessment of the appellant's religious knowledge. The supportive evidence was tested against other evidence and found to be neutral, of no weight of its own. The finding of fabrication of events in Iran was impliedly taken as undermining the independent evidence. The FtT failed to acknowledge that for there to be no real possibility the claim was genuine, despite sincere evidence of independent witnesses, it had to be in no real doubt those witnesses had been duped. There was nothing in the decision to justify that implicit finding. No account was taken of evidence, although recorded at [20], that the witnesses were alert to possible deception.

16. The submission on the 2018 decision was that it carried forward those previous errors, and showed further inconsistency with *TF and MA*:- Evidence from church witnesses was explicitly set against credibility issues at [61] and [82]. There was nothing to support the leap from adverse credibility to sustained fabrication of a persona. Although *TJ and MA* made the point that such fabrication is not straightforward, the FtT assumed at [64] and [66] that it was only a matter of time and effort, without acknowledging that opinions of church witnesses might be based on more than frequency of attendance.
17. Mr Govan submitted along these lines:- The 2018 decision was not influenced to more than the appropriate extent by the 2016 decision. Both decisions were reached in the round. The 2018 decision was not based only on rejecting the *sur place* claim, but on a finding at [81], which was not criticised by the appellant, that he had further embellished his other claims. *TF and MA* emphasised the significant weight which might attach to evidence of church witnesses, but both judges found those witnesses to be sincere, and acknowledged their knowledge of the appellant and their place in the organisation. The 2018 decision was thorough and careful, and should not be interpreted as saying that conversion was easy to fabricate. It had been for the appellant to establish his case. The judge found, having considered the evidence as a whole, that he failed to do so. No error of law was disclosed.
18. The case having developed in slightly unusual way, I find it more convenient to state my view on error of law after mentioning the further evidence led and the submissions on remaking.
19. The appellant adopted his previous and supplementary statements and was briefly cross-examined.
20. Mr Mohsen Rezaey gave evidence. He came to the UK from Iran and was recognised as a refugee, not on grounds of Christian conversion. He later met the appellant and through his friendship with him began going to the Tron church to meet other Iranians. He then became drawn to Christianity, and was eventually baptised into another church.
21. Mr Taylor was examined and cross-examined on the appellant's part in the Tron church (for the third time in this case; he has also given evidence in many similar cases). He spoke also to the general practices and experience of the church.
22. Submitting on why the appellant should be found in any remaking not to be a genuine Christian convert, Mr Govan relied upon the respondent's refusal letters and on adverse findings in 2016 and 2018. He said (and I accept) that a properly reasoned adverse finding might remain sound, or a similar conclusion might be reached. The 2016 decision contained 2 such points about events in Iran. The 2018 decision at [81] added the point about embellishment, mentioned above. While a false claim about events in Iran did not exclude a good claim based on events in the UK, a good

claim was not automatically established by evidence from church witnesses. *TF and AM* did not exclude but rather confirmed that the correct approach was holistic. Looking at the evidence accordingly, the UT should find that the appellant failed to establish his case.

23. Mr Haddow said that as the only plausible alternative to the claim was a fabrication, the UT would have to be satisfied of that to a standard approaching beyond reasonable doubt, not as reversing the burden of proof but as a logical consequence. He submitted further on the plausibility of the appellant's account about events in Iran, and the strong independent evidence, including expert opinion evidence, of genuine conversion.
24. The 2016 decision is based on two adverse matters. The first is around the appellant's evidence of his relationship with a friend, Arman, who initiated his interest in Christianity. The second is a discrepancy over the timing of a raid on a house church. Both findings are properly reasoned, and it was open to the judge to find the appellant's evidence on those matters less than persuasive. They are findings of some significance, but not so devastating that the appellant was never likely to be found to be reasonably likely to be telling the truth about anything else.
25. The embellishment point at [81] of the 2018 decision amounts to very little. It is based on the appellant not accepting that his previous claim was incredible and adding nothing to it; and on introducing a new claim that he is related to political activists, which is a fabrication to enhance his prospects of remaining, as are his internet activities. No additional reasons are given.
26. Nothing adverse emerged from the cross-examination of Mr Rezaey, and Mr Govan advanced no argument that he should be found an unreliable witness. The 2018 decision at [43 - 47] declined to find him a witness of credit, but for no discernible reason. It is possible that he might have conspired with the appellant in deception, but that would take the case into even deeper and more unlikely realms of fraud. I see no reason to take his evidence as anything but supportive, and quite strongly so.
27. The 2016 and 2018 decisions are both conscientious attempts to resolve the evidence. The latter decision explicitly considered whether conversion was no more than an elaborate pose. Other than with the benefit of hindsight through *TF and MA*, neither decision might have been thought to err on any point of law. However, with that benefit of hindsight, there has been error of approach to the evidence of church witnesses which has fed through both decisions. While only the 2018 decision may now formally be set aside, the evidence falls to be assessed on an entirely fresh basis.
28. The respondent has advanced relatively weak reasons whereby the appellant's account of events in Iran might be rejected. Those are the only criticisms of his credibility. The appellant has advanced an impressive body of evidence, including significant opinion evidence, about

his practice of Christianity in the UK. That does not have to carry the day, but if anything further is required, I find it in the evidence of Mr Rezaey.

29. The evidence, as a whole, shows a reasonable likelihood that the appellant has genuinely converted to Christianity.
30. The decision of the FtT is set aside, and the appeal, as originally brought to the FtT, is allowed.
31. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

27 February 2019  
UT Judge Macleman