



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10132/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 11.1.19

Decision & Reasons Promulgated
On 4.2.19

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

A M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel, instructed by Broudie Jackson Canter Solicitors.

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1 This is the appellant's appeal against the decision of Judge of the First tier Tribunal Brookfield dated 14 May 2018 dismissing the appellant's appeal against the decision of the respondent dated 20 September 2017 refusing his protection claim. The appellant is a national of Iran, and has been present with his wife in the United Kingdom since October 2013. He had previously claimed asylum on the basis that

the Iranian authorities had found material on a computer CD in his shop (which provided computing services), relating to the Baha'i faith. By the time that his earlier appeal was heard in January 2015 it was also asserted that both he and his wife were then actually interested in the Baha'i faith. The appellant's account was disbelieved and his appeal dismissed. An appeal to the Upper Tribunal was also dismissed. It would appear that the appellant pursued an appeal to the Court of Appeal on the basis that the First tier Tribunal had not adequately considered a potential risk on return to the appellant as an undocumented failed asylum seeker (see summary of those events in the second paragraph of a letter from the appellant's solicitors dated 25 April 2017 at B8 of the Respondent's bundle). However, that appeal was withdrawn by the appellant by consent.

- 2 In time, the appellant made a fresh claim for asylum (in the letter dated 25 April 2017 referred to above). Evidence that the appellant relied upon, postdating the original First-tier Tribunal decision of 2015 included two letters, both dated 24 August 2015, relating to the appellant and his wife respectively, from the National Spiritual Assembly of the Baha'is (hereafter, 'NSA'), which provide:

"It is with great joy that the National Spiritual Assembly welcomes you as a member of the Baha'i community. We are pleased to enclose two small books as a gift, including a prayer-book ..."

- 3 Since the first hearing, the appellant and his wife had also had two children born to them in the United Kingdom, in January 2015, and March 2017 respectively. The appellant asserted that he and his wife were, notwithstanding the adverse findings of the Tribunal in 2015, genuine adherents of the faith, and would be at real risk of serious harm on return to Iran.
- 4 The respondent refused that protection claim, but did not certify it, and hence the appellant was entitled to appeal against that decision to the Tribunal.
- 5 The appeal came before the judge on 30 April 2018. The appellant's children were then aged one and three years old respectively. The judge noted at [8(v)-(vii)] that the evidence before her included the oral evidence of three witnesses who were themselves members of the Baha'i community. The appellant also relied on an additional letter from the NSA, dated 25 October 2017.
- 6 In her decision, the judge set out at [10(i)-(vi)] the history of the appeal, including the adverse credibility findings made in 2015, and treated those findings as her starting point, applying the authority of *Devaseelan* [2002] UKIAT 00702. The judge then set out her findings relevant to her own assessment of the credibility of the appellant's protection claim, her most relevant finding being at 10(vii) to (xiii). I do not set them out in full, but I mention the following:

“(vii) I note the letter from the National Spiritual Assembly of the Bahais of the United Kingdom, advises that appropriate and careful steps were

taken to ensure the appellant and his wife were genuine convert to this religion. It does not explain what the steps were or what the process is for a person to register within this faith. It does not identify that any members of the group which the appellant and his wife attend were interviewed about the level of the appellant's and his wife's attendance at their local group, or identify with actual evidence the nine people on the National Council, who have never met the appellant or his wife, used to conclude the appellant and his wife were genuine converts to the Bahai faith. I did not find the assurance of the National Assembly that it takes appropriate and careful steps to assess whether the person's desire to register as a Bahai has arisen from his or her genuine belief in the Bahai faith, or that confirmation that such steps were taken in the appellant's and his wife's registration to be reliable evidence that their conversion to this faith is genuine, when there is no explanation in the letter of the registration process or what it involves or the actual evidence the nine members and the National Council considered to reach the decision to register the appellant and his wife as members of this faith.

...

- (xii) The appellant called three witnesses to provide evidence of his attendance at Bahai gatherings, meetings and celebrations. Each of the witnesses advised that the appellant and his wife were good people who held devotions at their home and were kind had accepted the founder of the Bahai faith and had registered their children in the faith. These witnesses are all friends of the appellant and his wife. They are therefore not independent. I accept the appellant and his wife attend Bahai gatherings and meetings and have gleaned sufficient knowledge about this faith since they arrived in the UK. I also accept that their friends in this faith believe their acceptance of this religion to be genuine. However, unlike the witnesses, I have to view the evidence in the round."

7 Due to those and other reasons given between 10(vii)-(xiii) the judge held that she did not find it reasonably likely that the appellant or his wife would practice or would intend to practice the Baha'i faith on their return to Iran, and dismissed the appeal on asylum grounds. She considered the appellant's appeal on human rights grounds between 10(xiv)-(xx) and held that the removal of the family members to Iran would not be unlawful under section 6 Human Rights Act 1998.

8 The appellant appeals against that decision on renewed grounds of appeal dated 29 June 2018 which argue that the judge erred in law, in summary, as follows:

- (i) failing to have adequate regard to the letter of the NSA dated 25 October 2017; the judge noted that the document did not provide an explanation of

what the registration process involved or what evidence had been considered to make the decision; it was argued that the judge had failed to explain why this information was relevant to her finding that the NSA 'are unreliable as a source of evidence';

- (ii) failing to give anxious scrutiny and sufficient weight to the witness evidence of three supporting witnesses who attended the hearing; the Baha'i faith does not have ministers, and in the absence of any possible Dorodian witness, those witnesses' evidence should have been given greater weight;
- (iii) confining her consideration to the issues which were before the Tribunal in January 2015, and incorrectly recording that the Court of Appeal dismissed the appellant's previous appeal;
- (iv) failing to give anxious scrutiny to the appellant's evidence of his continued four year practice of the Baha'i faith in the United Kingdom;
- (v) failing to consider the best interests of the appellant's children, in failing to consider what impact would result to their no longer being able to practice their faith in the UK;
- (vi) failing to consider the country guidance case of SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 (IAC), and what treatment the appellant and his family would face on return to Iran as undocumented failed asylum seekers; it was asserted that the appellants would be questioned on return to Iran, and the judge was required to consider how the authorities would deal with the undisputed facts that they had been practising the Baha'i faith in the UK for 4 ½ years; a significant period of time, and they were registered members of the Baha'i; it was said that these were issues likely to arise during an initial questioning of the appellant on return, which could lead to further questioning likely to cause serious harm.

9 Permission to appeal was granted on 21 September 2018 by Upper Tribunal Judge Chalkley on the basis that the ground were arguable.

10 I heard submissions from the parties

Discussion

11 Mr. Brown drew my attention to the content of the initial two letters from the NSA dated 24 August 2015, and to the letter of 25 October 2017. That letter provides, on the issue of the appellant's membership of the faith, as follows:

"We confirm the status of Mr. (AMM) and Mrs. (LM) as registered Baha'is in good standing since 24 August 2015. The National Spiritual Assembly is aware that individuals may seek to use the formal registration process as one

of possibly a number of means of attempting to obtain refugee status within the UK, and therefore takes appropriate and careful steps to assess whether a person's desire to register as a Baha'i has arisen from his or her genuine belief in the Baha'i Faith. We can confirm that such steps were taken in this case.

It may be helpful for you to know that as the governing body of the Baha'i faith in the United Kingdom, it falls to this body, and to this body alone, to determine through a carefully considered protocol, whether one is a member of the Baha'i community or not. It is not in the interest of this Assembly to register as Baha'is those who are not genuine in their desire to be Baha'is. Indeed it would be contrary to our interest to do so.

As a matter of policy, the National Assembly does not send representatives as witnesses to attend court hearings for such matters, however, we understand that Mr. (M) Mrs. (M) have been in touch with Baha'i friends within their local community, and they may be able to testify and support them at the court hearing should their circumstances permit them to do so."

- 12 The remainder of the letter largely draws the reader's attention to human rights reports about the position of the Baha'i in Iran.
- 13 Mr. Brown argued that the content of the letter should have been sufficient to satisfy the judge that the appellants were genuine followers of the Baha'i faith in the United Kingdom, and the judge was not entitled to complain about the lack of description of the protocol or methods by which the Assembly had determined that the appellant and his wife were genuine adherents of the faith.
- 14 I find that the judge was entitled to have regard to the clear deficiencies in the letter from the NSA. Even accepting at face value Mr. Brown's point that the Baha'i community do not appoint ministers to lead specific congregations, and therefore an appellant is unable to invite any such person to attend court to give evidence of the genuineness of their beliefs, I find that the judge was entitled to have regard to the absence within the NSA letter of any kind of explanation as to their methodology. Whereas the NSA states that it fell to that body, and to that body alone, to determine whether or not the person is a member of the Baha'i community in the United Kingdom or not, I accept that may well be the case *for their own purposes*. However that stricture cannot bind a decision maker in a protection claim. A decision maker such as the judge in the present is entitled to be satisfied not only whether an individual takes part activities within the in Baha'i community, but whether this activity has 'arisen from his or her genuine belief in the Baha'i Faith', to use the NSA's own expression. There is nothing within the letter which explains to the reader, such that the reader can place proper weight on the letter, which explains *how* the NSA was satisfied of that issue.
- 15 The NSA has also consciously adopted a policy of not sending representatives as witnesses to attend court hearings for such matters. The combination of adopting

that position, providing no information about the protocol that is used for them to be satisfied that the person has a belief in the Baha'i faith, and providing no details of the evidence actually considered by the NSA to reach its decision, resulted in the judge being fully entitled to find the letter not to be 'reliable evidence that their conversion to this faith was genuine' at [10(vii)]. More weight could have been attached to the NSA's assertions if, for example, they had provided details of evidence considered and the protocol applied, and/or sent a witness.

- 16 Mr Brown does not argue that the judge should simply have taken the letter of the NSA at face value, there being no other reason to disbelieve the appellant's claim to be a genuine convert to the Baha'i faith. The judge did have other reasons to doubt that, which are not challenged in this appeal: the judge did not believe the appellant's evidence regarding his motivation for, and timing of, his conversion [20(ix)-(x)] (and [10(xiii)] - his pathway to the Baha'i faith was not credible); there was also a discrepancy in the evidence of the appellant's wife as to whether not she had converted to the Bahai faith in Iran [10(xi)]. The appellant's grounds of appeal have not established any error of approach to the NSA evidence.
- 17 Further, Mr. Brown argued that the judge had failed to take adequate account of the evidence given by the supporting witnesses. He drew my attention in particular to the witness statement of Dr. Farshid Taleb, at page 12 of the appellant's bundle. The witness describes how he became friends with the appellant and his wife, then states:

"During this period, I have observed that the family have been systematically and continuously active in all the activities offered by the Trafford Baha'i community. They have attended Baha'i study groups, devotional gatherings, Baha'i monthly the gatherings (19 Day Feasts), Baha'i Holy Days, Reflection Meetings, Unit Conventions, National Conventions may have held several gatherings at their own game as well.

I remember Mr. (M) initially telling me that he did not have any religion and any believed in God, although his wife considered herself as a Baha'i in Iran following her associations with some of her Baha'i friends there. Over time though, as he learned more about the Baha'i teachings and studied the Baha'i Writings, he became more and more interested to such extent that he became a very active support of the Faith and eventually decided to become a Baha'i.

I am well aware that the National Spiritual Assembly of the Baha'is of United Kingdom, the governing body of the Baha'i faith the United Kingdom, takes appropriate and careful steps to assess whether the person's desire to register as a Baha'i has arisen from his or her genuine belief in the Baha'i faith or not, and I have no doubt whatsoever that they must have carefully considered Mr. (M)'s case before registering him as a member of the Baha'i community."

- 18 Mr. Brown at one point appeared to argue that the evidence of Dr Taleb had been that he was himself aware of the steps that the NSA took to determine whether a person was a genuine adherent of the Baha'i faith, and that he should have been asked questions about that if any further information had been required. However, as can be seen from his letter quoted above, Dr Taleb makes no such assertion; he merely states that the governing body of the Baha'i faith takes appropriate and careful steps to assess that matter, and he had no doubt that they must have carefully considered the appellant's case before registering him. That, of itself, says nothing at all about what those methods were and does not establish that Dr Taleb knew what they were.
- 19 Further, it cannot properly be argued that it was procedurally unfair for the judge not to have asked Dr. Taleb questions as to the NSA's methodology; firstly, because there is nothing in his letter which suggests he knew what they were; and secondly, because the appellant has been on notice for a considerable period of time that the respondent was not satisfied as to the genuineness of his conversion to the Baha'i faith. It was for the appellant to establish his case, on whatever evidence he chose to put forward.
- 20 Further, it is to be noted that Dr. Taleb does not assert that he himself has had any conversations, in-depth or otherwise, with the appellant in order to come to a view of his own as to whether the appellant's participation in Baha'i activities or his registration as a member of the Baha'i community had arisen from a genuine belief in the Baha'i faith. The judge does not at [10(xii)] find the evidence of Dr Taleb and the other witnesses incredible; she accepts that these friends may believe the conversion of the appellant and his wife to be genuine, but I find that the judge was entitled to find at [10(xiii)] that she was unable to conclude that the appellant or his wife had established that there was a reasonable degree of likelihood that they were genuine converts to the Baha'i faith. I find no procedural irregularity in the way that the judge dealt with the evidence of the supporting witnesses.
- 21 There is nothing in the suggestion that the judge confined her consideration to the issues which were before the Tribunal in January 2015. The judge had regard to the evidence before her post dating that decision. Further, I cannot see that it is material to the judge's assessment of the appellant's credibility that the judge recorded that the appellant's previous appeal to the Court of Appeal was dismissed rather than withdrawn. Further, the judge had regard to the appellant's participation in Baha'i activities in the UK, and indeed found that he had participated in such activities [10(xiii)], but she found that such attendance was not out of genuine adherence to the faith.
- 22 Mr. Brown did not seriously pursue the suggestion that the judge had erred in failing to consider what impact might result to the appellant's children, being one and three years old respectively, no longer being able to practice their faith in the UK. Given the children's ages, and given that the judge's findings of fact were that

the children's parents were not genuine convert to the faith, he was right not pursue the point.

- 23 In relation to the ground of appeal that the judge had failed to consider what questions the appellant may face at the pinch point of return to Iran, and whether any questioning would be likely to result in it being disclosed that the appellant had been practising the Baha'i faith in the United Kingdom, I asked Mr. Brown to demonstrate whether this issue had actually been raised in the appellant's grounds of appeal to the First-tier Tribunal against the respondent's decision, or in any witness evidence or skeleton argument put before the judge. He was unable to do so. He invited me to consider the judge's record of proceedings, to see if Ms. Mason, who appeared before the judge, had advanced any such argument. I find that this is something of a fishing expedition. Nonetheless I considered the judge's record of the submissions, and there was nothing recorded to indicate that Ms. Mason had made such an argument.
- 24 I find that the judge did not err in failing to consider a matter that was not put to her.
- 25 Further, I find that it is doubtful, having regard to the country guidance given in SSH and HR, that the judge was obliged of her own motion to consider what the appellant might say if asked on return about their time and activities in the United Kingdom. I find on balance the judge was not under any obligation to consider that issue in the present case. The judge therefore is not err in law in the having failed to consider the matter.
- 26 However, if I am wrong in my assessment in that regard, I find that what the appellant that might say, speaking truthfully to the Iranian authorities, was not that they were 'practising' the Baha'i faith in the United Kingdom, but rather, applying the judge's findings of fact, which are not vitiated by error of law, that they were involved in activities with the Baha'i community, but were not genuine adherents to the faith. They would not be able to genuinely assert that they were converts to the Baha'i faith.
- 27 In those circumstances, I find that there is nothing within SSH and HR which would suggest that appellant or his wife would be at real risk of serious harm on return. As per SSH and HR at [30]; "We can understand the sensitivity that the Iranian authorities may have towards perceived slights against their own state in the form of untruthful allegations about the conduct of the state, but equally one can expect a degree of reality on their part in relation to people who in the interests of advancing their economic circumstances would make up a story in order to secure economic betterment in a wealthier country." Mr. Brown did not draw to my attention any country guidance or country evidence suggesting that a person who had associated with members of the Baha'i community in the UK, but who was *not* a genuine convert to the Baha'i faith, and who would not, on the judge's

findings, practice or intend to practice the Baha'i faith on return to Iran, would face any real risk of serious harm on return to Iran.

- 28 Therefore, even had the judge been obliged to consider this point, I find that she would, on her own findings as to the appellant's account, have held that the appellant would not face any real risk of harm.

Decision

The decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

The judge's decision is upheld, and the appellant's appeal is dismissed.

Signed:

Date: 17.1.19



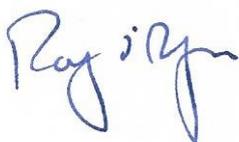
Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

This appeal concerns a protection claim. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 17.1.19



Deputy Upper Tribunal Judge O'Ryan