



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

Appeal Number: PA/11458/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 April 2019**

**Decision & Reasons promulgated
On 11 April 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SYED KEYVAN ESBALANI
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown instructed by Parker Rhodes Hickmotts Solicitors.

For the Respondent: Mrs R Pettersen Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Holt promulgated on 1 November 2018 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Iran born on 21 March 1972. The appellant claims he will be at risk on return to Iran as a result of his conversion to Christianity.
3. The Judge had the benefit of both seeing and hearing oral evidence given as well as being able to consider the documentary evidence filed in accordance with directions. The appellant had the benefit of supportive evidence given by the Rev Benson Kimaru as noted in the decision.
4. The Judge sets out the core finding at [17] of the decision in the following terms:

“I have considered the credibility of the appellant’s claim most carefully applying the lower standard of proof. Having done so I conclude that the claim was not credible.”

5. The Judge makes six core findings in support of that conclusion as follows:
 - i. The Judge was not satisfied that the appellant was a Christian in Iran or attended a house church there for the reasons set out at [20 (i-vi)] of the decision under challenge.
 - ii. The Judge was not satisfied regarding the claim there was a raid on the house church as the account of the raid lacked detail and the “a ring of truth” for the reasons set out at [21 (i-iv)] of the decision.
 - iii. The Judge was not satisfied about the appellant’s alleged conversion [22] for which the Judge notes the appellant has given two occasions namely December 2017/January 2018 and, alternative, when he was baptised in the UK although the Judge noted the baptism certificate is dated 2 May 2018 and that, crucially, he had not given any explanation as to why he had given two dates. The Judge also found it very surprising that the appellant was allowed to be baptised by the church authorities at Wakefield Cathedral on 2 May 2018 because he had only arrived in the UK on 28 March 2018 about 5 weeks earlier which brings into question how well they knew the appellant and whether there was any critical assessment of his motivation and keenness to undergo the baptism ceremony.
 - iv. The Judge found the claim the appellant’s and his family members house was raided again to be lacking in detail [23].
 - v. It was found wholly unsatisfactory that the appellant did not know that he had been in Austria despite having been conducted to the UK via agents and despite having the Austrian hotels business cards in his possession when he claimed asylum. The Judge found this unconvincing behaviour

further compounded by the appellant's claim he did not know he had been in a hotel in Austria which, given that the appellant is a man educated to diploma level having worked for an international business, the Judge found deeply unconvincing which was found to damage the appellant's credibility pursuant to section 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 as the appellant failed to claim asylum in Austria.

- vi. In relation to the evidence of the appellant's links to the church in the UK and his church attendance on the evidence of Rev Kimaru, the Judge did not find this evidence supported the appellant's claim to be a genuine Christian convert for the reasons set out at [25 - 32] of the decision under challenge (see below).
6. At [33] the Judge concludes that as the appellant was not found to be credible the Judge was not satisfied he left Iran illegally. The Judge finds the appellant made up large chunks of his narrative and that he will be able to answer questions upon return to Iran necessary to explain his absence that will not create a real risk for him at the airport or otherwise.
 7. The appellant sought permission to appeal like relying on three grounds, being a failure to give adequate reasons for rejecting the evidence of Rev Kimaru, that the Judge failed to properly assess whether the appellant will be at risk of harm upon return as a failed asylum seeker who had gone through an actual Christian conversion and exited Iran illegally, and placing impermissible weight on what was recorded in the screening interview to justify her credibility findings and adopted an impermissible approach to the screening interview affecting the overall conclusions.
 8. Permission to appeal was granted by another judge of the First-tier Tribunal who stated it was arguable that in assessing the evidence of the church minister the Judge failed to have regard to the guidance in TF (Iran) [2018] CSIH 58 and failed to consider and assess the same as expert evidence. The grounds state that given the Judge's finding in this regard was material to the conclusion that the appellant's conversion was not genuine, and he would not be at risk on return to Iran, it constituted an arguable error of law.

Error of law

9. As can be seen from the summary, the Judge's adverse credibility conclusions do not turn solely upon the assessment of the evidence of the Rev Kamari as there are a number of other concerns recorded by the Judge in relation to the appellants claim which have not been shown to be findings outside the range of those reasonably available to the Judge on the evidence.

10. In relation to Ground 1, the appellant asserts the Judge simply failed to properly consider the important oral evidence which the Rev Kimaru gave in which he explained why he came to the view that the appellant is a Christian. The grounds claim the Judge appears to have ignored what was said about the interaction shown by the appellant during Bible classes which the witness led and that the structure and setting of the Bible study classes would provide an adequate platform on which the witness could form a view.
11. There is in *TF (Iran) v Secretary of State for the Home Department* [2018] CSIH 58 an extensive discussion of how to approach the fact-finding exercise in cases where the appellant claims to have converted to Christianity. So far as Dorodian was concerned, it was said that while it would no doubt be desirable that the individual concerned be vouched for by someone in a position of leadership within the relevant church, it is more important that the evidence be given by someone who has knowledge of the individual whose commitment is in question. What mattered was that they have sufficient knowledge of the practices of the church of which they are a member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities.
12. The Judge notes the appellant produced a number of letters on the day including a letter from the Rev Kimaru in the following terms:

“25/10/18
Rev’d Benson Kimaru
Minister of Religion - PTO
St George’s Church Barnsley

To whom it may concern

Ref; Keyvan Esbelani

Dear M/s

I write to confirm I have known Keyvan Esbelani born on 21/03/1972, of 63 Spencer Street, S70 1QX, Barnsley since he joined St. George’s church on 30 May 2018 having arrived in Barnsley on 23 May 2018. I left St. George’s on 7 October 2018. Keyvan has been active in the life of the church in a number of ways including:-

- i) Attends Farsi/English church that takes place every Wednesday evening 7.30 – 9.00 pm and he is always punctual. He understands quite a bit of English which gives him some advantage compared with his Iranian colleagues when it comes to participating in the discussions during my teachings. The teaching usually takes about an hour divided between teaching and question time. All talks are interpreted from English to Farsi and Keyvan is sometimes involved in interpreting. So far I have taught on Bible characters like, Abraham, Modesai, Esther, Luke and Zacharias. Other times we have covered topics on Jesus' character as well as prayer tips etc.,.
- ii) Attends our main church service every Sunday at 10:45 AM and Thursday Holy Communion service at 10 AM
- iii) He helps at the tea and coffee rota
- iv) He attends men's Bible study monthly

He is cooperative and has ability to make friends easily and he is a good and dependable team player. I highly recommend him.

Yours sincerely”

13. The appellant's assertion the Judge's findings regarding the weight to be given to the evidence from Rev Kamaru is infected by arguable legal error requires detailed examination of the actual findings made by the Judge in relation to this material. These are set out at [31-32] in the following terms:

“31. Obviously, I find that the appellant secured the attendance of Rev Benson Kimaru who had previously written letters of support for the appellant. I listened very carefully to his testimony and found him to be a sincere, if rather uncritical witness. I am also firmly of the view that I had a lot more evidence about the appellant and his background than Rev Kimaru does and confidently assert that my assessment of the appellant, the truth about his claims and his likely motivation are based on a much wider and more detailed base of information than Rev Kimaru. Whilst Rev Kimaru's belief that the appellant was a genuine Christian is a strong point in the appellant's favour, it is not the end of the matter. I cannot delegate assessment of the appellant's faith to him or any other “Dorodian” witness. I am not satisfied that the appellant is a genuine Christian for the following reasons (in no particular order):

- (i) I do not find it onerous for someone to in the appellant's situation to join a church like Rev Kimaru's and spend a significant amount of time there. This is particularly because at the churches he attended he met other people from his country and who spoke his language. People were undoubtedly kind and friendly. The churches were

undoubtedly welcoming. This last point was corroborated by the “telling” evidence of Rev Kimaru who, when asked if he had ever turned anyone away who wanted to worship, responded “*No. Indeed I keep wanting more to come.*” He also said immediately before that: “*... Our work as a Christian church is to welcome people and help people to grow to Christian maturity as long as they are open to join the church and to learn about the Christian religion.*” The tenor of his evidence was that it was part of the Christian “duty” to be open to new recruits, if not very keen. I find that this unquestioning attitude is likely to have blinded Rev Kimaru to considering alternative motivations on the part of the appellant. There was no evidence that it ever crossed his mind why joining the church might be an attractive option for the appellant for other reasons connected to gaining status in the UK i.e. other than his claims to be genuinely interested in Christianity. In short, Rev Kimaru took the appellant uncritically at “face value”. In contrast, I do not so assess him;

- (ii) To a significant extent, Rev Kimaru assessed the appellant’s Christianity on his Christian behaviour. However, when this was examined it did not amount to more than him being polite, courteous, keen to engage with church activities including asking questions at the bible study, being available to help with church refreshments and help out in the garden. I find that such behaviour is nothing more than normal courteous or civilised behaviour and there is nothing about it which is particularly Christian about it. As an educated man used to working in an international business in Iran, I would not really expect any other type of behaviour;
- (iii) There was no reliable explanation as to why the appellant had been allowed to be baptised as quickly as he had. Rev Kimaru could not provide any detailed explanation on the process at Wakefield Cathedral, other than having unquestioning respect for his clerical colleagues there;
- (iv) I noted that the appellant said that he had never discussed his faith “one-to-one” with Rev Kimaru. He also claimed that they had talked about “other things” but in “broken English” and with “hand signals”. The appellant described the conversations between himself and Rev Kimaru as “*primitive. Greetings and asking how we are ... [With] broken English and hand signals as we pass the message on.*”
- (v) Against the evidence from the appellant about his limited conversations with Rev Kimaru, the most significant deficiency in the evidence regarding Rev Kimaru’s assessment of the appellant’s faith was that, when he was cross-examined by Mr Richardson, it quickly became apparent that the oral communication between Rev Kimaru and the appellant was very superficial. Rev Kimaru

claimed to have had an in-depth conversation with the appellant but conceded that it was at *"his level"*, that Rev Kimaru had to speak slowly and accept a *"limited way of speaking"*:

- (vi) Further, Rev Kimaru did not claim to know why the appellant left Iran. His assessment of the appellant seemed largely based on assumptions. Rev Kimaru referred vaguely to general *"political problems in Iran"* and gave this as the explanation as to why the Church of England *"had received so many people from Iran"*. At another point he talked about Iranians in his congregation *"testifying"* (notably, not the appellant) which led Rev Kimaru to state that he *"assumed"* that the majority had the same sorts of problems *"going on"* as they were from the same country. What was clear from this was Rev Kimaru's deep concern about the political situation of people in Iran and no doubt his in the church's desire to support and care for Iranians who have left Iran:

32. In short, Rev Kimaru's assessment of the appellant seems to have been on the basis that he was a pleasant, friendly, courteous individual (which I also found him to be). However, these factors do not mean that Rev Kimaru's assessment of the appellant corroborates his claim and I am not satisfied that the appellant is a genuine Christian who would be at risk of persecution or worse upon return to Iran. For completeness, I record that Rev Kimaru's assessment of the appellant is not altered by the letter in support from Gabriela Ingram dated 19 October 2018 who did not attend the hearing but who also knew him through St. George's church in Barnsley."

- 14. The Judge clearly took a great deal of care in ensuring that a fair and balanced assessment of the evidence of Rev Kimaru was undertaken and how the same was factored into the Judge's conclusions. There appears to be a clear contradiction between the statement in the letter of 25th October 2018 that the appellant understands quite a bit of English and the evidence given to the Judge that their communication was at the level of broken English with hand signals. The Judge clearly took into account all the written and oral evidence and the assertion the Judge's assessment had been made solely on the basis of the appellant being friendly and courteous has no arguable merit. The Judge clearly assessed all the relevant evidence before coming to the conclusions set out above which were open to the Judge on the evidence.
- 15. Ground 1 has no arguable merit in that it fails to establish material legal error in the Judge's decision.
- 16. Ground 2 appears to ignore a fundamental finding by the Judge at [33] that the Judge was not satisfied that the appellant left Iran illegally. The Judge clearly considered risk on return. The assertion the contention the appellant did not leave the Iran illegally is inadequate reasoned and/or irrational has no arguable merit. The appellant claimed he left Iran

illegally and that is the only source of such a claim by a person who was found to lack credibility by the Judge. The appellant asserts a real risk on return but the Judge's conclusion that no risk arises on return is within the range of those reasonably open to the Judge on the evidence and in accordance with the country guidance case law considered by the Judge and referred to in the grounds. It was not made out the appellant has come to the adverse attention of the authorities in Iran or would do for any reason sufficient to give rise to a real risk on return.

17. In relation to Ground 3, the appellant contends the Judge placed impermissible weight on what was recorded in the screening interview to justify the credibility findings at [18] and [20v] of the determination. At [18] the Judge writes "*from the screening interview, I note that the appellant worked for Samsung [1.14] in Iran in sales and management, that he has a diploma in economics and that he claimed that he was a "Catholic Christian" [4.1].* It is difficult to see how any arguable legal error is made out in such an assessment in which the Judge merely refers to answers given by the appellant in the screening interview.
18. At 20 (v) in which the Judge sets out one of the findings justify the conclusion the appellant was not a Christian in Iran who attended a house church there, the Judge notes that the appellant claimed the house church was not affiliated in or with any particular branch of Christianity and that there was no ordained priest which was found to be in stark contrast his claim in the screening interview that he was a catholic. This has not been shown to be an arguably irrational finding. Even though there are limitations upon the weight to be placed on a screening interview in circumstances where an individual may have had a long and tiring journey and which, by its nature, is it is not intended to enable an appellant to set out the full details of their claim a person being interviewed for the purposes of the screening interview is still required to tell the truth. It is not made out the Judge applied undue weight to the screening interview. There is, in any event, little reference to the screening interview when compared to the substantial weight of evidence from other sources supporting the Judge's adverse credibility findings.
19. This is a carefully considered and written determination. The grounds disagree with the Judge's conclusion and attempt to assert legal error on the basis of the matters pleaded and in Mr Brown's submissions. Having considered everything very carefully I conclude that the appellant fails to establish arguable legal error sufficient to warrant the Upper Tribunal interfering any further in this matter. The findings made are adequately reasoned. The weight to be given to the evidence was a matter for the Judge. No arguable perversity or unfairness is made out in the Judge's approach or findings made. The fact the appellant may not like the overall conclusion and clearly wishes to remain in the United Kingdom does not mean the Judge only arrived at those conclusions by making legal error. The determination shall stand.

Decision

20. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated the 9 April 2019