



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/10579/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 25 November 2020

On 2 December 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

PG

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr K Wood, instructed by IAS (Manchester)

For the Respondent: Mr A McVeety, Senior Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote

hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Iran with date of birth given as 12.5.71, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 23.12.19 (Judge Davies), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 4.10.19, to refuse her claim for international protection made in further submissions on 18.8.19.
2. The appellant claims that she is a Christian convert and for that reason has a well-founded fear of persecution on return to Iran. She first made that claim after arriving in the UK from Amsterdam in October 2016. The claim was refused and her subsequent appeal dismissed by the First-tier Tribunal (Judge Jones) in August 2017. Her onward appeal to the Upper Tribunal was also dismissed so that she became Appeal Rights Exhausted (ARE) on 11.4.19. Her further submissions maintain the Christian conversion claim with further evidence in support, and further assert that she is in a relationship with a British citizen caring for his British citizen child from a previous relationship following the death of the child's mother. The appellant claims to share the parental responsibility for her partner's child, including providing support for his mental health issues.
3. Pursuant to the Devaseelan principle, Judge Davies took the decision of Judge Jones as the starting point. In assessing the credibility of the conversion claim, the judge noted that the appellant had engaged in an elaborate deception in making and advancing her asylum claim, admitting before Judge Jones that she had invented the claim to have converted to Christianity in Iran and to have attended a house church which had subsequently been raided. She also invented the claim to have been sought by the Iranian authorities. Witnesses made statements and oral evidence was given in her support on the false premise that she had been in hiding from the Iranian intelligence services because of her Christian conversion and so in fear of her life that she had to flee Iran. She in fact left Iran lawfully using her own passport and identity and was not of adverse interest to the authorities. For obvious reasons, the appellant's deception undermined the credibility of her claim. Her failure to claim asylum in the Netherlands also undermined her credibility.
4. After making a careful assessment of the new evidence in support of the claimed Christian conversion, the judge accepted that the appellant started attending church in the UK soon after arrival. Curiously, she was first baptised in the Pentecostal faith at a church in Manchester before attending a nearby Church of English parish church after a relocation from Manchester to Chester. She admitted that this was in fact the church nearest to her home.

5. The judge raised a number of other concerns about the appellant's claimed Christian conversion and found the oral evidence of Reverend Hildreth unreliable. As the judge noted, this witness departed from his role as a Dorodian witness and entered into the legal area by asserting that the previous decision of the Tribunal was wrong in law, without being aware of the Upper Tribunal's decision on that issue. The judge made a careful assessment of each witness relied on. Of concern to the judge was that the evidence relied on did not explain what process was adopted to assess whether the appellant was a genuine Christian. After consideration of all of the evidence, at [57] of the decision the judge concluded that there were no grounds to justify departing from the decision of Judge Jones that the appellant was not a genuine Christian convert.
6. With regard to the appellant's relationship to her partner and his son, the judge noted that she could not meet the requirements of the Immigration Rules. The judge went on to assess the relationship with her partner's son, who had lived with his mother prior to her death in hospital. The judge made an error of date in suggesting the death was on 9.12.19, when it was on 9.12.18. However, the factual error is not material as it is obvious that the judge accepted that the son had lived with his father and the appellant since early 2019. Ultimately, the judge concluded at [69] of the decision that there was not a parental relationship between the appellant and her partner's son, by then 18 years of age. The judge went on to consider article 8 ECHR outside the Rules, applying section 117B of the Nationality, Immigration and Asylum Act 2002, and concluding that the appellant's removal would not be disproportionate.

The Grounds & Submissions

7. The grounds of application for permission to appeal to the Upper Tribunal argue that the judge materially misdirected himself in law in failing to assess the evidence of Reverend Hildreth as an expert witness. It is argued that the judge failed to apply relevant case law to the risk on return issue, and that having attended a Christian church the appellant would for that reason be of adverse interest to the Iranian authorities, irrespective as to whether she is a genuine convert.
8. The grounds also argue that there were exceptional circumstances in the appellant's relationship with her partner's son, who was still 17 at the date of application. However, there was no 'application' in this case but further submissions.
9. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 5.2.20, the judge considering it arguable that "the judge erred in making a material misdirection in law in respect of his approach to assessing the evidence of the church witness and of the attendance of the appellant at

church. Arguable errors of law are revealed in this regard. Furthermore, with regard to Article 8, it is arguable that the judge has failed to properly consider the evidence and correctly apply the law.”

10. The respondent’s Rule 24 response, date 18.2.20, submits that the First-tier Tribunal Judge directed himself appropriately. It is pointed out that a previous tribunal found the appellant not to be a witness of truth and that she had lied to at least one witness making a statement in support of her claim to Christian conversion in Iran. The argument that Reverend Hildreth was an expert witness is rejected. The respondent also pointed out that it does not appear that any claim in the alternative was made regarding risk on return from being a disingenuous Christian convert. It is submitted that the remaining grounds are no more than a disagreement with the decision.
11. The appellant has made further submissions, dated 19.5.20, in which it is accepted that in light of the Upper Tribunal’s reported decision in MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 (IAC), a church witness is not to be regarded as an expert witness, nor is their evidence necessarily deserving of particular weight, and the weight to be given is for the judicial fact-finder. Nevertheless, it is argued that it is not clear what weight was given to the evidence and the ‘opinion’ in MH is described as ‘obiter’.
12. In response, Mr Jarvis for the Home Office has lodged written submissions dated 27.5.20, arguing that in respect of the complaint about the Christianity findings, the decision of the First-tier Tribunal was extremely detailed, giving proper consideration to all relevant evidence and providing cogent reasoning, so that there there is nothing at all in this ground.
13. At the hearing before me, Mr Wood accepted that the grounds had shifted somewhat, so that he was pursuing a reasons challenge as to the weight given to the Dorodian witness. He submitted that whilst at [46] to [47] the judge had given some reasons, he had not explained what weight was given to Reverend Hildreth’s evidence or why it was not accepted, and there was a greater need for ‘particularity,’ as Mr Wood put it.
14. Mr Wood also submitted that it was open to Judge Davies to go back and look at the evidence considered by Judge Jones, in particular between [45] to [56] of that decision. In relation to article 8 he relied on the written grounds and submission. He cited R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines) [2019] UKUT 00411 (IAC), in which the Upper Tribunal held that the starting point principle is not a legal straight-jacket but permits subsequent judicial fact-finders to depart from the earlier decision on a principles and properly-reasoned basis.

15. Mr Wood did not address, until I raised it with him the argument raised in the grounds that the appellant would be at risk on return. He maintained that argument and in response to the fact that it was not raised at the hearing suggested it was *Robinson Obvious*.
16. Mr McVeety relied on Mr Jarvis' response and further submitted that the findings were entirely open to Judge Davies and were adequately reasoned. He submitted that Reverend Hildreth undermined his evidence by straying from his role as a Dorodian witness. In reality, the new evidence did not advance the appellant's case.
17. In relation to article 8, Mr McVeety submitted that this was doomed from the outset and there never was a basis for the appellant to remain on the basis of a parental relationship with her partner's child. In relation to the recently-raised risk on return as a failed Christian-conversion asylum-seeker who had attended church services, he relied on PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC), where the Upper Tribunal held that:

"In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival:

- i) All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum;*
- ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;*
- iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;*
- iv) If there are any reasons why the detention becomes prolonged, the risk of ill-treatment will correspondingly rise. Factors that could result in prolonged detention must be determined on a case by case basis. They could include but are not limited to:*
 - a) Previous adverse contact with the Iranian security services;*
 - b) Connection to persons of interest to the Iranian authorities;*
 - c) Attendance at a church with perceived connection to Iranian house churches;*
 - d) Overt social media content indicating that the individual concerned has actively promoted Christianity."*

Error of Law Consideration

18. I have carefully considered the decision of the First-tier Tribunal in the light of the oral and written submissions and the grounds of application for permission to appeal to the Upper Tribunal.
19. After hearing from both parties, I entirely agree with Mr Jarvis' written submissions, relied on by Mr McVeety. Weight to be accorded to the church evidence was for the judge and it is clear from the careful approach taken that all evidence relevant to the conversion issue was considered and assessed. Reverend Hildreth was not an expert witness and his evidence was deserving of no particular weight. It is not for such a witness to embark on a critique of the Tribunal's decision. In fact, given his behaviour in the First-tier Tribunal appeal hearing, deliberately trespassing onto ground that was outside his role, he demonstrated an inability to remain objective, undermining the reliability of the claim that the appellant is a genuine convert, so that his evidence did the appellant no favours at all. This inability to 'stay in lane' is further amply demonstrated by his most recent witness statement of 19.5.20, which also strays widely beyond the remit for which he is relied on as a witness. For example, he submits that the judge may have formed a concluded view of the veracity of the appellant before evaluating the witness' evidence. With respect to Reverend Hildreth, he appears entirely oblivious to the true purpose of being called upon as a witness as to the appellant's conversion and has become a strident advocate for the appellant. In the premises, no rational Tribunal judge would accord any weight to the evidence of such a partisan Dorodian witness. In any event, his further and post-decision evidence purporting to confirm the appellant's true conversion is immaterial to the issue as to whether the First-tier Tribunal erred in law.
20. Whilst the judge was entitled to look at the evidence heard by Judge Jones and reach a different conclusion, if that was justified, he was not obliged to revisit and effectively remake that unsuccessfully appealed decision. It is clear from the impugned decision that the judge did not regard the previous decision as a straight-jacket but carefully considered the evidence in the round and in some considerable detail before reaching a conclusion in the context of the evidence as a whole. In reality the grounds are a challenge as to the weight to be given to the evidence. In Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254.

21. Taken together with the appellant's admitted deception in claimed to have been converted in Iran and be wanted by the authorities for that reason, as well as the findings of the previous tribunal, I am satisfied that the conclusion that the appellant is not a genuine Christian convert is one which was entirely open to the judge and for which cogent reasoning has been provided. No error of law is disclosed in this regard.
22. In respect of the claim that the appellant will be at risk on return to Iran as a failed asylum claimant who in an attempt to bolster her claim has attended Christian church services in the UK, it is clear that whilst this 'bad faith' point is raised in the grounds of application for permission to appeal, it was not taken on the appellant's behalf either in her further submissions of 18.8.19, or at the First-tier Tribunal appeal hearing. Nor is it addressed in the appellant's further submissions of 19.5.20.
23. The CPIN on Christian Converts of May 2019 referred to in the refusal decision confirms that Christians who have converted from Islam will be regarded as apostates, a criminal offence in Iran. Sharia law does not allow for conversion from Islam to another faith and the respondent accepts that such a person would be at real risk on return of mistreatment amounting to persecution or breach of article 3 ECHR.
24. However, I am not satisfied that this was a '*Robinson Obvious*' point or that the appellant is entitled to raise it at this late stage. In any event, on the basis of PS, the appellant did not demonstrate that she would be at risk on return for having attended a Christian church in bad faith. She may be questioned and asked to renounce the faith. As she has been found not to be genuine in her conversion there is no reason for her to object to this course of action. It follows that no error of law arises on this point.
25. In relation to the article 8 claim, the fact that the appellant could not meet the requirements of the Rules for leave to remain was highly relevant to the article 8 proportionality balancing exercise. Contrary to the assertions in the grounds, it was open to the judge to conclude that on the facts of this case there were no exceptional or compelling circumstances justifying granting leave to remain on the basis that otherwise the decision would be unjustifiably harsh.
26. As pointed out above, at the date of the hearing the partner's son was no longer a child but 18 years of age. He was not a qualifying child and the appellant could not take advantage of s117B(6) of the 2002 Act. As Mr Jarvis has pointed out the grounds on this issue are misguided as the date of application is only relevant to the Rules, not consideration of family life outside the Rule. The judge assessed the evidence put before the tribunal but noted the limited period of time in which the son had been part of the household. The medical evidence including of mental health issues was also considered. The judge

accepted at [67] of the decision that he needed some support but was competent and able to attend college. The Judge accepted that the appellant was supportive of the son and helps with some housework. However, she had only lived with her partner and his son since May 2019, and the conclusion that she did not have a parental role was one open to the judge on the evidence, for the cogent reasoning provided. This is confirmed again at [69] of the decision, where the judge points out that the son is now 18 years of age and cognitively capable of making his own decisions. He has previously lived alone with a care package and would likely do so again. On this evidence and these findings, the judge was entitled to conclude that the support the appellant has provided does not equate to a parental relationship, nor is his ability to remain in the UK dependent on her presence. The judge then went on to make a perfectly acceptable R (Razgar) v Secretary of State for the Home Department [2004] UKHL 27 stepped approach to article 8, concluding that the refusal decision was proportionate. That was entirely open to the judge on the evidence and is adequately reasoned, demonstrating a careful consideration of all relevant information.

27. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal, so it should stand as made.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 25 November 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 25 November 2020