



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03588/2019 (V)

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business
On the 6 January 2021

Decision & Reasons Promulgated
On 20 January 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

H A
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Dunne, legal representative on behalf of the appellant

For the Respondent: Ms R. Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Iran, appeals with permission against the decision of the First-tier Tribunal (Judge Monaghan) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 9 October 2019.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of 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 him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The hearing took place on 6 January 2021, by means of *Skype for Business*, which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The immigration history of the appellant is set out in the decision of the FtTJ. The appellant claimed to have left Iran on 9 February 2016 and travelled to Turkey where he stayed for 6 weeks. He then travelled to Kos and later Italy before his arrival in France where he remained for a period of 2 ½ years and claimed asylum there on 5 August 2016. His claim was refused in France in December 2017 and he remained in France for a further year.
5. The appellant arrived in the United Kingdom on 31 December 2018 and claimed asylum on the same date. He had a screening interview on the 1 January 2019 was substantively interviewed on the 12 March 2019. Further representations were submitted on the 22 March 2019.
6. The basis of the appellant's claim that when he was in Iran he became disillusioned with Islam and at the age of 21, he was arrested by the morality police for playing pop music in his vehicle. A further incident occurred later when he was drinking water during Ramadan. Further incidents were also referred to in the appellant's evidence. This led to the appellant at the age of 21 to stop his practice of the Islamic faith.
7. The appellant claimed that he began a relationship with a woman called N and after eight or nine months together, she told him that she had converted to Christianity.
8. Approximately 2 to 3 months later, she asked him to attend one of her gatherings with her Christian friends. They were concerned about him because she told them that she had informed him that she was a Christian. They chatted for around 2 to 3 hours so they could get to know him. 2 to 3 months after this, his girlfriend gave him a copy of the Gospels whilst they were in the car together. The book was in Farsi but because he was called back to work

urgently he left the book he had been given in the compartment under the dashboard in the car. A few hours later a colleague came to the office. He used to be in the Sepah and was very religious. During the journey, the man asked if he had any cologne and the appellant told in that there was some under the dashboard, but he had forgotten about the copy of the Gospels. The man opened the book and started reading it and began shouting stating that the book was dirty, and that the appellant was “insulting Islam”. They then got into a fight and the man threatened to tell his friends in the Sepah about the book.

9. The appellant stated that later on the man and other members of Sepah had gone to the appellant’s house and raided it looking for the appellant.
10. Arrangements were made for the appellant to leave Iran and he travelled to France. On 5 August 2016 he claimed asylum. When in France he was helped by people from churches there and in or about July 2016 he began to attend church. During his time in France the appellant was baptised. He was told about a church called Persian church Cyrus (an international church run by Iranians based in the Netherlands) and initiated contact with them. A meeting took place and the appellant stated that he was baptised. It is also his account that he evangelised whilst he was in France.
11. After the claim for asylum was rejected by the French authorities, the appellant travelled to Turkey and then made an onward journey by air to the United Kingdom.
12. Whilst in the United Kingdom the appellant has been attending church since January 2019 and it is his claim that he is a genuine Christian convert.
13. The respondent refused his claim in a decision letter dated 29 March 2019.
14. The appellant appealed that decision to the FtT (Judge Monaghan) on the 23 September 2019. The FtTJ heard oral evidence from the appellant and the Reverend.
15. In a decision promulgated on 9 October 2019 the FtTJ dismissed his appeal. The FtTJ set out her analysis of the evidence and factual findings at paragraphs [69 – 97]. As to the events that the appellant claimed had occurred in Iran, the FtTJ whilst accepting that it was possible for him to be disillusioned with Islam for the reasons that he gave, the judge did not accept that the appellant had given a credible or consistent account of events that occurred in Iran. At paragraph [78] the FtTJ took into account that the appellant had failed to give a consistent account concerning the woman with whom he claimed to have had a relationship with for around 11 to 12 months and at paragraphs [89 – 92], the judge did not find his account to be plausible or credible that his girlfriend had taken him to a meeting or gathering after such a relatively short period of time and only after he expressed an interest in her faith. In the alternative, the judge found at [89] that it was not plausible that having attended and spent a period of three hours there, that none of the gathering would have discussed Christian

beliefs with him. The judge found that “in taking the decision to allow the appellant to attend, the 11- or 12-persons present had therefore already exposed themselves to being discovered if the appellant had chosen to report their activities as it is his case that he knew that it was a gathering of Christian converts. There therefore seemed little point in not discussing any aspect of the religion within once he was present. I do not find this at all plausible, particularly as he had been taken there by his girlfriend who was in effect vouching for him to the other members.”

16. At paragraphs [90 – 91] the judge rejected his account of having left the Gospels in the glove compartment. This was the event which the appellant claimed had led him to flee from Iran.
17. The judge also considered the events in France. At paragraphs [79 – 88], the FtTJ considered the evidence of the appellant that he had been baptised in Paris but for the reasons set out in those paragraphs rejected his evidence. In doing so the FtTJ took into account the written documents from the church in the Netherlands but reached the conclusion that the evidence had been written by two different people from the church and that the judge had not been told what position either of those people held within the church or whether they had sufficient knowledge and experience to be considered “Dorodian witnesses”. The judge also found that one of the emails was “very generic” and thus limited weight could be attached to it. The documents also referred to a simple procedure for acceptance for baptism and accepted that they could not and did not want to assess whether someone was genuine in their face before baptising them. In the alternative at [87] the judge found that even if she accepted the baptism certificate, at its highest it was evidence that he went through a ceremony but did so without any assessment of whether he was genuine or not in his beliefs.
18. At paragraphs [94 – 95] the judge went on to consider the evidence from the Reverend who attended court to support the appellant’s claim that he was a genuine Christian convert who had practised his faith in the United Kingdom since his arrival. The judge referred to this as “strong evidence” that he had been regularly attending and participating in services and other related activities since a date in mid-February 2019. At [95] whilst the judge had found him to be a credible witness who had knowledge and experience of the appellant and his range of activities and that he had given an opinion based on his own observations of and interactions with the appellant, the judge found that whilst it carried weight in the overall assessment, the FtTJ concluded at [96] that the evidence did not outweigh the “many inconsistencies, implausibility and credibility of the other evidence relating to acclaimed conversion in Iran, which I do not accept, nor of a claimed conversion in Paris, which I do not accept either. Given that I have rejected those matters, I also reject the claim conversion United Kingdom and do not find it to be genuine, like the claim conversions in Iran and Paris.”

19. The FtTJ dismissed his appeal on the basis that he would not be at a real risk of persecution or serious harm on account of his religion if returned to Iran.
20. Permission to appeal was sought and permission was refused by FtTJ Woodcraft but on renewal was granted by UTJ Stephen Smith on 21 April 2020.

The hearing before the Upper Tribunal:

21. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on the 5 October 2020, *inter alia*, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
22. Ms Dunne on behalf of the appellant relied upon the written grounds of appeal. There were also further written submissions (undated) which were reproduced in a bundle of documents for the hearing sent on the 21 December 2020.
23. There was no Rule 24 response on behalf of the respondent.
24. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions. I intend to consider their respective submissions when addressing the grounds of challenge advanced on behalf of the appellant.

Decision on error of law:

25. The grounds advanced on behalf of the appellant assert that the FtTJ compartmentalised her findings on the appellant's claim and took what the grounds describe as a "linear" approach to the evidence. In respect of the adverse findings of fact made concerning his conduct in Iran and in France, it is submitted that the FtTJ went on to reject the evidence of the church witnesses without giving proper consideration to that evidence.
26. Ms Pettersen on behalf of the respondent submitted that there was no error in the FtTJ's approach to the evidence and that she was entitled to consider each aspect of the appellant's account as a matter of structure and to make the factual findings that she did in the way set out in the decision.
27. As to the evidence of his baptism in Paris, she submitted that even though the witness evidence was to the effect that they accepted that he had previously been baptised and therefore did not baptise him again, the FtTJ was entitled to take that evidence and compare it alongside the appellant's evidence to reach the conclusion that the appellant had misled those witnesses in the UK.
28. Ms Pettersen further submitted that whilst the grounds criticised the FtTJ for failing to deal with the evidence of the Reverend, the decision at paragraph [95]

demonstrated that the judge did attach weight to that evidence but for the reasons given at paragraph [96] the judge did not accept that the evidence outweighed the inconsistencies given in the appellant's evidence (which the judge had outlined in the previous factual findings) which related to events in Iran and France. Thus she submitted the judge did give appropriate weight to the evidence of the Reverend, but the weight attached to it was a matter for the judge consequently there was no error in the FtTJ's decision.

29. I have carefully considered the decision of the FtTJ and have done so in the light of the evidence that was before the Tribunal. The appellant's account related to events in Iran which concerned his disillusionment with Islam, his discovery of Christianity through his girlfriend and that he had come to the attention of the authorities by having a Bible in the glove compartment which was later found. His account was that after he had left Iran, he had attended church in Paris and was baptised there and also had carried out some evangelising. In France he had made a claim for asylum which was refused which had then led to him returning to Turkey from where he travelled to the UK. Once in the UK he began attending church in 2019 and his claim was that he was a genuine Christian convert.
30. The summary of the evidence before the Tribunal is set out in the decision at paragraphs [13 – 59] and other evidence is summarised at paragraphs [60 – 67]. The evidence is set out in detail and there is no suggestion in the written grounds, or the oral submissions made that the judge was in error in her summary of the evidence. At paragraphs [69 – 97] the judge set out her findings of fact which included her consideration of the events in Iran and also in Paris before considering the evidence relating to his church activities in the UK.
31. Upon reading the factual findings made by the FtTJ, I do not consider that there is any error in the judge's approach by considering events in a chronological way or that the judge was in error by considering the evidence concerning events in Iran and Paris before considering the evidence concerning his conduct in the UK. As submitted on behalf of the respondent, it is entirely permissible for a judge to structure a decision in such a way. However, having considered the factual findings and in particular the assessment of the evidence from the Reverend which is set out at paragraphs [94 –96], I am satisfied that the judge fell into error in the way the grounds assert.
32. Dealing with the grounds, it is submitted on behalf of the appellant that the judge fell into error having found that the appellant was not credible relating to past events relying on the decision in *TF (Iran) v Secretary of State for the Home Department* [2018] CSIH 58, 2019 SC 81.
33. It is submitted that the judge did not adequately assess his conversion to Christianity independently of the claim relating to events in Iran and in France.

34. I have therefore carefully considered the submissions in the light of the evidence before the FtTJ and in the light of the relevant jurisprudence. The grounds cite the decision in *TF (Iran) v Secretary of State for the Home Department* [2018] CSIH 58, 2019 SC 81 which was before the FtTJ.
35. In the decision of the Extra Division of the Inner House of the Court of Session in *TF (Iran) v Secretary of State for the Home Department* [2018] CSIH 58, 2019 SC 81 the appeal concerned an issue about the genuineness of a claimed conversion. Lord Glennie observed at paragraph [44] that it was not possible to “open windows onto men’s souls” and that it was therefore necessary in determining the genuineness of the conversion, to draw inferences from more easily ascertainable and concrete facts, such as regular attendance at religious services. Whilst active participation in church was not conclusive evidence of the genuineness of a claimed conversion, the court found that it was “likely to be a very powerful consideration, to be assessed alongside any other evidence pointing to the sincerity or otherwise of the claimed conversion to Christianity.”
36. The remainder of the opinion was concerned with the type of evidence that would be admissible to support the genuineness of a conversion to Christianity. At [58] the Court did not accept the suggestion that evidence had to come from someone at a particular level in the hierarchy (if any) of the church but what mattered was that evidence should come from individuals with:

“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.’

37. In *TF* there had been independent evidence including oral evidence from one witness which supported the genuineness of the appellant’s conversion. The evidence given was detailed and extensive (see paragraph 9 – 16). The judge fell into error because he failed to engage with the evidence and as a result the appeal was remitted.
38. At paragraph [59] the Court stated:

‘Of course, it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal. To this extent it is legitimate to question the experts on their opinions and as to the basis upon which they have reached those opinions. In some cases, it may be appropriate to question the objectivity of the assessment made by the witness, or to suggest that there may be an element of wishful thinking given the evangelical mission of the particular church. But, as we have already made clear, that exercise should not start with any predisposition to reject the evidence because it does not fit in with some a priori view formed as to the credibility of the

appellant. The evidence should be considered on its merits and without any preconception, based upon an assessment of the individual appellants, that it is suspect or otherwise falls to be disregarded'.

39. In a more recent decision of *MH (review; slip rule; church witnesses) Iran* [2020] UKUT 125 (IAC), the Upper Tribunal set out in its headnote that:-

“written and oral evidence given by “church witnesses” is potentially significant in cases of Christian conversion (see *TF and MA*). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is that of the judicial factfinder”.

40. The Tribunal went on to refer to the decision of *TF and MA* and stated at [48-49] as follows:

“48. We do not understand Gilbert J to have suggested that it is impermissible as a matter of law for a judge who is tasked with assessing a claimed religious conversion to consider anything other than whether the individual is an active participant in the church. That he did not intend to suggest as much is clear, in our judgment, from the final sentence which we have underlined. Insofar as this paragraph is relied upon by representatives in support of a submission that active participation in church activities suffices, without more, to demonstrate the truthfulness of a conversion, we do not consider that to be the position. On the contrary, it is entirely permissible for a judge in a case of this nature to turn his mind to a whole range of additional considerations, including not least the timing of the conversion, the individual's knowledge of the faith, and the opinions of other members of the congregation as to the genuineness of the conversion.

49. We are conscious that the opinions we have expressed above are *obiter*, but we consider it necessary to express them, since it is the experience of both members of this Tribunal that TF & MA and R (SA) v SSHD are frequently cited in cases of this nature.”

41. A general point from those cases above and from the opinion of the Court as delivered by Lord Glennie in *TF and MA* is that in these cases, as in all others, the factfinder considers the evidence as a whole, which includes the opinion evidence from the church.
42. There may be enquiries into the extent to which the person giving the opinion is able to show that his or her opinion should be accepted; and, in any event, the opinion evidence needs to be set in the context of all the evidence in the case, to be considered as a whole.

43. In the recent decision of *PS (Christianity - risk) Iran CG* [2020] UKUT 46 (IAC) the Upper Tribunal gave country guidance relating to Christians in Iran and therefore its relevance to this appeal is by way of general points made. At [10] it was stated:

“10. That leads to our second point: what we mean by ‘Christian convert’. It is not possible to make windows into men’s souls. Whether someone is, or is not, a Christian is a matter of fact that is impossible to objectively verify. For example, an individual may pay very little attention to scripture or sermon but might fervently believe that Jesus Christ is the son of God; Christians with a long-held and deep belief can still face a crisis of faith at any given moment. It is no doubt for that reason that the Tribunal in Ali Dorodian v Secretary of State for the Home Department (01/TH/1537) preferred to focus on the externally observable: “as we have said, it is church membership rather than mere belief, which may lead to risk”. This difficulty means that in this jurisdiction decision makers must rely largely on the observations of others to determine whether someone is, or is not, a ‘genuine’ Christian. A further complexity arises. There is no doubt for many a path to wholehearted belief, with gradations marked by life events and a deepening understanding. At what point along that path an individual might become a ‘Christian’ is not clearly signposted. There is certainly no theological consensus on the matter; baptism is an indicator, but it should not be regarded as determinative. The terminology used in this decision must therefore be read with that caveat in mind. For our purposes we are primarily concerned with those whom the Iranian state regard as ‘Christians’.”

44. Having considered the jurisprudence, I am satisfied that the judge did fall into error in the way that the grounds submit by reference to the decision in *TF and MA*. As set out above, it concerns the approach in circumstances where the judge has found that the appellant is not telling the truth in relation to past persecution/events. As Lord Glennie points out, the mere fact that somebody is not telling the truth in one part of his evidence does not necessarily mean that he is not telling the truth in another part of his evidence.
45. As set out in the grounds, the judge rejected the Reverend’s evidence (and that of his colleague) solely on the basis of the appellant’s lack of credibility in relation to his claimed past events in Iran and France none of which were referable to the evidence given by the Reverend himself (see paragraph 69 of the decision). Whilst the Reverend did give evidence as to his church attendance, active participation in church activities does not suffice, without more, to demonstrate the truthfulness of a conversion and there are a range of additional considerations, including not least the timing of the conversion, the individual's knowledge of the faith, and the opinions of other members of the congregation as to the genuineness of the conversion which are relevant considerations. However, the evidence given by the witness arguably went beyond church attendance and as the grounds set out, the evidence of the Reverend was not based on what the appellant had told him but was based upon his own observations of the appellant alongside observations of others who also had engaged with the appellant.

46. As set out above and by reference to paragraph 59 of *TF and MA*, it is legitimate to question the witness on their opinions and as to the basis upon which they have reached those opinions. In some cases, it may be appropriate to question the objectivity of the assessment made by the witness. The Reverend was asked questions concerning his objectivity and how he had reached the conclusion that the appellant was genuine in his conversion, but no factual findings were made on that evidence as reflected in the concluding paragraph at [96] where the judge made reference to the “many inconsistencies, implausibility and credibility of the other evidence relating to acclaim conversion in Iran, which I do not accept, nor the claim conversion in Paris, which I do not accept either. Given that I have rejected those matters, I also reject the claimed conversion in the United Kingdom and do not find it to be genuine like the claimed conversions in Iran and Paris.”
47. I am therefore satisfied that the judge did fall into error in the way that the grounds submit and that the FtTJ, having rejected the appellant’s conversion in Paris went on to reject his conversion in the UK rather than considering the evidence “in the round”.
48. Consequently I am satisfied that the FtTJ dismissed the evidence of the Reverend and the Canon with no real analysis and did so by making an overall credibility assessment by viewing the evidence of the Reverend from the adverse reference point of her analysis of the events relating to both Iran and Paris and thus failed to carry out an assessment “in the round” by considering all of the relevant evidence.
49. That being the case, I have reached the conclusion that the decision to dismiss the appeal cannot stand and shall be set aside.
50. As to the remaking of the appeal, Ms Dunne accepted that the evidence of the Reverend was not expressly relevant to events that occurred in Iran and that the grounds did not challenge those particular findings.
51. Furthermore, having considered the factual findings made I am satisfied that the judge carefully considered the events which the appellant claimed had occurred in Iran and gave adequate and sustainable reasons by reference to the evidence for reaching the adverse findings. Whilst the judge accepted that the appellant had given a consistent and plausible account that he was disillusioned with Islam for the reasons set out at paragraph [73 to 75], it was open to the judge to conclude that it was not necessarily the case that he would have become interested in another faith, i.e. Christianity and convert to it in Iran. The FtTJ also gave adequate and sustainable reasons as to why she was not satisfied that he had given consistent and credible evidence concerning events in Iran which included attendance at the house church and the reasons given for leaving Iran (at paragraphs [88 -92]). Those paragraphs should be preserved findings.

52. As to the evidence relating to Paris and the issue of his baptism, the FtTJ did not take into account the evidence from the Reverend and the Canon that they did not baptise him again because they had accepted he had already been baptised. The relevance of that evidence had not been considered or taken into account by the FtTJ when reaching findings of fact on the issue of the appellant's conduct in France and in particular his baptism in Paris as set out in the grounds. I do not preserve any further findings of fact.
53. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

54. Both advocates submit that the venue for hearing the appeal should be the FtT in the event of an error of law being found. I have considered their submissions in the light of the practice statement recited above. As it will be necessary for the appellant and the Reverend to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant evidence, and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing.
55. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision should be set aside with the findings of fact at paragraphs [89 - 92] preserved.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside. It will be remitted to the First-tier Tribunal.

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

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated 8 January 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is 'sent' is that appearing on the covering letter or covering email