Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001242
PA/01875/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31st May 2022	**On 1st August 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

'YAA'
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Representation:

For the appellant: Mr S Galliver-Andrew, Counsel, instructed by Freemans Solicitors

For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 31st May 2022.

2. This is an appeal by the appellant, an Iranian national, against the decision of First-tier Tribunal Judge Hussain, (the 'FtT'), promulgated on 30th November 2021, by which he dismissed the appellant's appeal against the respondent's refusal on 7th December 2020 of his protection and human rights claims. The respondent had considered that as a result of his conviction and sentencing to 30 months' imprisonment for possession with intent to supply cocaine on 11th October 2018, (separate from a motoring offence, of driving without insurance for which he was also sentenced to imprisonment), the automatic deportation provisions of section 32 of the UK Borders Act 2007 potentially applied, unless to do so would breach the appellant's rights to protection or the right to respect for his human rights.

3. The appellant subsequently claimed to have converted to Christianity whilst in prison for the index offence. The respondent considered that section 72 of the 2002 Nationality, Immigration and Asylum Act 2002 applied to the appellant's protection claim. He was presumed to have been convicted of a particularly serious crime and constituted a danger to the community of the UK, so that his protection claim was bound to be dismissed.

4. In any event, the respondent did not accept that the appellant had a well-founded fear of persecution. The appellant had relied on his claim of religious conversion, and the risk to him on return as someone of Kurdish ethnicity, in circumstances where he claimed to have fled Iran, when members of his family had been killed during their involvement in alcohol smuggling. The allegations of adverse interest in Iran, as being from a family of alcohol smugglers, had been rejected by an FtT in an earlier decision in 2011. His claims of conversion to Christianity were rejected on the basis that he had not practised Christianity on his release from prison.

5. The core points taken against the appellant by the respondent was that she did not accept his claim to have converted to Christianity as a genuine. She also did not accept his claim to have a British citizen partner. In respect of his private life, the appellant had not been lawfully resident in the UK for most of his life, having entered the UK in June 2011 and only having lawful leave from 7th October 2011 until 23rd February 2013, when his discretionary leave had ended, and his appeal rights were exhausted. The respondent noted the decision of a previous FtT, refusing the appellant's protection and human rights appeal in 2011, and did not accept that he was socially and culturally integrated into the UK or that there would be very significant obstacles to his integration the purposes of 'Exception 1' in 117C(4) of the 2002 Act.

The FtT's decision

6. As required by section 72(10) of the 2002 Act, the FtT considered first, at §§99 to 107, the respondent's certification of the index offence pursuant to

section 72 of the 2002 Act and concluded that the appellant had rebutted the presumption that he constituted a danger to the community of the UK.

7. However, at §§110 to 123, the FtT was not satisfied that the appellant had proven, to the lower standard, a genuine (let alone a well-founded) fear of persecution. In relation to the appellant's claimed fear of adverse interest because of his family's involvement in alcohol smuggling, the FtT saw no reason to depart from the previous judicial decision in 2011.

8. At §111, the FtT also rejected a well-founded fear based on the appellant's previous immigration history (prior adverse interest in Iran) and his current 'sur place' activities. The FtT concluded, in the context of the appellant being "unlettered," that he had merely cut and pasted social media posts from elsewhere. Moreover, the internet posts would not excite the interest of the Iranian authorities.

9. The FtT did not accept the appellant's claimed conversion to Christianity. In reaching this conclusion, the FtT bore in mind the timing of the conversion when the appellant was in prison, and not earlier. The FtT did not accept as credible the appellant's reason for conversion to Christianity as being that he was not forced to believe specific doctrines. The FtT regarded religious doctrine as a common feature of both Christianity and Islam. The FtT also regarded the appellant as having been vague about the number of times that he had attended church; and was also concerned that while the appellant claimed to identify with the Church of England, he had only ever attended Greek Orthodox services, in the company of a friend, and did not know the difference between the two Christian sects.

10. Moreover, whilst the appellant claimed to have read the Bible in prison, the FtT regarded that as not easy to understand when the appellant claimed to be illiterate.

11. Even if his conversion were genuine, the FtT did not regard the appellant as someone who would manifest his religion openly in Iran. He had not done so in the UK on his release from prison to any great extent.

12. In respect of the appellant's human rights, at §125 onwards, the FtT considered the appellant's human rights, including s117 of the 2002 Act. 'Exception 2' was said not to apply because he had neither a qualifying partner nor child. At §130, the FtT concluded that the appellant did not meet the requirements of 'Exception 1,' as he was not socially and culturally integrated and had not lived for most of his life lawfully in the UK. Even had he done so, the FtT considered whether there would be very significant obstacles to his integration in Iran and concluded that there would not.

The grounds of appeal and grant of permission

13. The appellant lodged grounds of appeal, comprising four grounds:

    13.1. Ground (1) - the FtT had misdirected himself by considering only the appellant's manifestation of his belief and had presupposed the particular characteristics of a genuine Christian convert. The

appellant cited R (Williamson and others) v Secretary of State for Education and Employment [2005] UKHL 15 and R (SA (Iran) v SSHD [2012] EWHC 2575 (Admin) in support of the proposition that those who expressed themselves in matters of religious faith may do so without a high degree of cogency and that the bar in a protection appeal was a low one. It was also dangerous for a judge to "peer into a person's soul" and the assessment of whether conversion was genuine was necessarily fact specific.

13.2. Ground (2) – the FtT had erred at §120 in assuming that the appellant was illiterate. He had been illiterate in 2011 when he entered the UK as a minor, but as per his recent written evidence, was now literate. This error was material as it undermined the FtT's assessment of his credibility.

13.3. Ground (3) – the FtT had erred, noting R (Iran) & Ors v SSHD [2005] EWCA Civ 982, by considering at §§116 to 119, irrelevant, stereotyped considerations about the reasons for religious conversion and manifestation of belief.

13.4. Ground (4) – the FtT's assessment of the appellant's human rights claim at §119 was cursory and insufficient.

14. First-tier Tribunal Judge Grimes granted permission on all grounds on 22nd December 2021.

The hearing before me

15. I identified and agreed with the representatives the issues before me at the beginning of the hearing. They were pragmatic in narrowing down the areas of dispute. The representatives' submissions were focussed and assisted me in reaching my decision, for which I am grateful.

16. Mr Lindsay, on behalf of the respondent, accepted that the FtT had erred on the basis of ground (2). The FtT had recorded at §§21 and 23 that the appellant did not now claim to be illiterate and had referred to the appellant as being able to read English. That error in turn impacted on the FtT's assessment of whether the appellant's conversion to Christianity was genuine. The FtT's assessment on that issue was therefore unsustainable.

17. However, Mr Lindsay argued that while grounds (1) and (3) therefore fell away, the error in relation to ground (2) was not such that the FtT's dismissal of the protection and human rights was unsafe. The FtT had specifically considered the alternative scenario at §122 that the appellant's claimed religious conversion was genuine, but the FtT concluded that he would be discrete about his religious observance in Iran, just as he had been discrete about his religious observance in the UK, for reasons unconnected with a fear of persecution.

18. For his part, Mr Galliver-Andrew, for the appellant, indicated that ground (4) was no longer pursued.

19. The impact of both of those concessions is that there is an error in respect of the FtT's conclusion as to whether the appellant is a genuine Christian convert are unsafe and cannot stand. The appeal is not pursued in relation to ground (4) and that ground is consequently dismissed. However, it is necessary for me to deal with the central focus of the remaining grounds and that is whether the acknowledged error is material, or whether the FtT's alternative analysis at §122 was sufficient and did not disclose an error of law.

The appellant's submissions

20. Mr Galliver-Andrew addressed me first on the preliminary point about whether the reasoning at §122 was even a ground of appeal in respect of which permission had granted. He invited me to consider that there was, just, a challenge to the FtT's self-direction on 'discretion' in behaviour and how it applied to religious belief. (He accepted that it could have been put in greater detail). For the avoidance of doubt, I make no criticism Mr Galliver-Andrew himself as he did not settle the grounds. The relevant paragraph of the grounds is at §5, which states:

> "The appellant argues further that the FtTJ's approach in finding that he is not a genuine Christian convert at §§114 to 119 and 122 are contrary to binding authorities of the higher courts above. The FtTJ applied the principles in HJ (Iran) with respect to the appellant's case but did not self-direct rightly in accordance with the observations by Lord Walker at §98:
>
> > 'I respectfully concur in §82 of Lord Rodger's judgment, setting out the approach to be followed by Tribunals in cases of this sort. It involves … an essentially individual and fact-specific inquiry. It will often be a difficult task since much of the relevant evidence will come from the claimant, who has a strong personal interest in its outcome.'"

21. The reference in that passage to §82 of HJ (Iran), was to the well-known guidance when considering a claimed fear of persecution on account of being gay. That analysis included asking whether someone would live discretely in their country of origin, and if they would, the reason for their discretion. By analogy to this case, the FtT had failed to self-direct himself to HJ (Iran). On the basis that that ground was before the judge granting permission, it was open to the appellant to pursue this ground of appeal.

22. Mr Galliver-Andrew submitted that the credibility of the appellant's conversion to Christianity could not be separated from the analysis of whether he would be 'discrete' in Iran, and if so, the reason for his discretion. A flaw in the analysis of the credibility of conversion affected the analysis of whether the appellant would be discrete. Mr Galliver-Andrew accepted that this would not always be the case, and that it was potentially open to a judge to consider whether someone would be discrete, even if doubting the genuineness of conversion, but the FtT had failed to consider the evidence as a whole in this case. For example, the appellant had attended church whilst in prison, as noted at §114. The FtT had failed to consider that the nature of faith and how it was practised could change over time. Prison in this case had been a catalyst for the

appellant's conversion. His attendance at an 'Alpha' faith course had been unchallenged.

23. Also, it was important not to attach too high a standard as to how somebody would manifest their faith. For example, to expect them to be aware of the differences in Christian denominations would be impermissible, as would expectations on manifestation of belief. Similarly, the FtT's concerns about the lack of evidence about whether the appellant had attended church on release from prison, at §119, ignored the context in COVID-19, which the FtT had recorded (but not engaged with) at §79.

24. Alternatively, the FtT had failed to adequately explain at §122 why he concluded that the appellant would be discrete about practising his faith. The appellant had been clear in his witness statement, at §26, that he would practise his faith openly if returned to Iran. He had practised his faith openly in the UK. It had never been put to him that he would be discrete in Iran, although I discussed with Mr Galliver-Andrew that the point was expressly referred to in internal page [15] of the supplementary refusal letter.

25. The FtT had also erred in failing to consider the so-called 'hair-trigger' response of the Iranian authorities, (see HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)).

The respondent's submissions

26. Mr Lindsay responded that the central ground now developed, of whether the findings on discretion had been adequately reasoned and explained, was simply not in the grounds of appeal. A specific example that the FtT had failed to consider that the Covid pandemic explained the appellant's lack of church attendance was referred to for the first time in oral submissions.

27. In the alternative, if the respondent were allowed to argue this ground, the FtT had not erred in law. It was trite that that the FtT did not need to recite all of the evidence before him or that he had considered. It was also entirely permissible for the FtT to have rejected the genuineness of Christian conversion, but in the alternative, to go on to consider the appellant's actions, in the event of his return to Iran. The FtT's reasons at §122 were clear, adequately reasoned, and consistent with HJ (Iran). He had taken the appellant's claim of conversion at its highest. The challenge of inadequate reasons was not in the permitted grounds. There had been no challenge at all to the reasoning in §122. Even had there been a challenge in the permitted grounds, the FtT's reasoning was plainly adequate, and was clearly separate from the FtT's analysis of the genuineness of the appellant's conversion. The Covid lockdown did not begin to explain why the appellant had not even carried out research about where he could attend local church worship.

28. In relation to the two authorities cited in ground (1), the proposition in R (Williamson and others) did not undermine the FtT's analysis of how the

appellant would behave in Iran, and why. R (SA (Iran), a High Court case, was not binding on this Tribunal. In any event, the facts of that case were different from the appellant's circumstances. In R (SA (Iran), the claimant had attended church regularly, and the Court cautioned against looking into peoples' 'souls' as to the genuineness of their faith, notwithstanding regular attendance. This case was the 'flip-side', where the appellant had barely attended worship after release from prison; was vague in his beliefs and reasons for conversion, and his involvement with Christian fellowship was limited, with a focus on a friendship with a Christian of a different Christian sect from his claimed adherence (the difference of which he had not even appreciated).

Discussion and conclusions

29. On the preliminary issue of whether there was before me a valid challenge to the FtT's conclusion that the appellant would be discrete in the practice of his Christian faith, I am just about prepared to accept that the grounds contained such a challenge, at §5, as already cited, although it was put in the most indirect terms and was the only reference. However, in reaching that conclusion, it is important to note, even opening that line of challenge, how limited the permitted challenge is. The challenge is that the FtT did not self-direct himself in accordance with HJ (Iran). There is no permitted challenge to the adequacy of reasoning, a failure to consider relevant evidence, (for example the context of Covid-19), or failure to consider a "hair-trigger" response.

30. I am conscious that the FtT's reasoning must be read as a whole and that it is important to be wary of appeals based on isolated passages of evidence (so-called "island-hopping" – see: Volpi v Volpi [2022] EWCA Civ 464). As I have already canvassed with the parties, the FtT did refer to HJ (Iran) at §§46 and 47 in relation to the respondent's decision, including specifically, the question of whether the appellant would be discrete in any religious practice and if so, the reason for that discretion.

31. Turning to the FtT's reasons at §122, which I have considered in context, but for brevity only I cite in isolation, these are as follows:

> "122. Even if the appellant had genuinely converted, I do not accept that he would publicly manifest his religion. I say this firstly because having come out of the confinement of a prison, he has had one and a half years in which to associate himself fully with his newfound religion. The only evidence of the appellant's practice seems to be when he attends prayers with his witness (following material on YouTube) and on the few occasions that he has attended, it was the Greek Orthodox Church. It seemed to me surprising that the appellant not only not attend [sic] other churches of his own denomination but he seemed to not know if they exist near him. Even if the appellant had not noticed the presence of churches on almost every parish in the United Kingdom, he could have made enquiries about where they are. He did not do so. He received assistance from Harbour Project in relation to his immigration status, yet I cannot understand why he would not have asked someone there as to where the nearest Church of England church was. In my view, the reason why he showed no enthusiasm for

> finding a church is because even if he had adopted the Christian faith, he is not someone who publicly manifests his religion."

32. As Mr Galliver-Andrew points out, this is in the context of earlier findings as to the genuineness of the faith. However, I accept Mr Lindsay's submission that it was open to the FtT to consider the alternative scenario of genuine conversion and how the appellant would manifest his faith. The FtT did so, signalling this at §122 in the first sentence. The FtT's reasoning clearly addressed the issues in HJ (Iran) as to whether the appellant would be discrete in his religious practice and if so, why. When read as a whole, the FtT had already referred to HJ (Iran) and specifically answered these two questions posed by that case.

33. I do not accept Mr Galliver-Andrew's submission that the flaw in the FtT's assessment of genuineness of conversion affected his assessment of the appellant's manifestation of belief. The FtT did not err when he analysed how the appellant had practised his religion in the UK, when considering how discrete he would practice his religion in the future. Whilst the relevance of the timing of the appellant's conversion and his lack of knowledge of the doctrines of religious sects were said to be impermissible, and the FtT's inaccurate statement about his reading ability was flawed, these challenges did not affect the central analysis that how the appellant had practised his religion in the UK, and why, was relevant to how he would practice it in Iran. I also add that on of the specific point developed by Mr Galliver-Andrew orally, namely that the FtT had failed to consider the context of the Covid-19 pandemic as an explanation for the lack of church attendance, this was not referred to in the grounds that were permitted to proceed.

34. In conclusion, while the FtT's analysis of the genuineness of the appellant's religious conversation was flawed, the FtT's alternative conclusion that the appellant would still not have a well well-founded fear of persecution is safe and should stand on the basis of the alternative analysis at §122. In these circumstances, the appeal in respect of the protection claim fails. The appeal in respect of the FtT's decision on human rights was not pursued.

Decision on error of law

35. While the FtT erred in his reasoning about the genuineness of the appellant's conversion to Christianity, his decision on the appellant's appeal against the refusal of his protection claim remains safe, on the basis that he considered the alternative scenario of whether the appellant would be discrete about that faith in Iran and the reason for that discretion.

36. The appellant did not pursue the human rights appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that its decision is not safe and cannot stand. The appellant's appeal is dismissed.

The anonymity directions continue to apply.

Signed J Keith Date: 14th June 2022

Upper Tribunal Judge Keith