



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Ex tempore

Case No: UI-2022-005823

First-tier Tribunal No: PA/12086/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 June 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

The Secretary of State for the Home Department

Appellant

and

A M
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Nolan, Home Office Presenting Officer
For the Respondent: Mr Gayle, Elder Rahimi Solicitors

Heard at Field House on 18 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. I shall refer to the Respondent as the Appellant as he was known before the First-tier Tribunal. The Appellant is a citizen of Iran. His date of birth is 27 August 1977. The SSHD for the Home Department was granted permission to appeal against the decision of Judge Lawrence allowing the Appellant's appeal.
2. The Appellant's case is that he fears persecution should he be returned to Iran as a result of his political activities and his conversion to Christianity. The SSHD accepted the Appellant's nationality but rejected his claim to be persecuted as a result of political activities or that he has converted to Christianity. The position of the SSHD is that the Appellant cannot avail himself of the Refugee Convention because he is excluded following his criminality. The Appellant was convicted of possession with intent to supply class A drugs on 25 June 2010. He was sentenced to a period of imprisonment of two years. At the same time he was convicted of possession of drugs for which he was sentenced to one month to be served concurrently. The SSHD wishes to deport the Appellant. He is a foreign criminal. There is a signed deportation order of 26 August 2011.
3. A brief summary of the Appellant's immigration history is as follows. He came to the UK on 2 December 2007. The SSHD refused his claim for asylum on 21 January 2008. The Appellant appealed against the decision. His appeal was dismissed by the First-tier Tribunal following a hearing on 5 March 2008. The Appellant was granted permission to appeal by the Upper Tribunal. The Upper Tribunal found no error of law in the decision of the First-tier Tribunal; however, it went onto dismiss the appeal under Article 8. The Appellant's application for permission to the Court of Appeal was refused. The Appellant made further submissions which included reference to the birth of his daughter on 7 May 2013. There was a further decision by the SSHD refusing to grant the Appellant leave under Article 8. The Appellant appealed against this decision. The First-tier Tribunal dismissed this appeal against deportation on Article 8 grounds, following a hearing on 18 November 2011.
4. On 30 July 2014 the Appellant was convicted at Northwest London Magistrates' Court of two counts of battery. He received sentences of imprisonment of six weeks suspended for twelve months. Further submissions by the Appellant led to a further appealable decision from the SSHD 30 October 2019 refusing his claim and certifying the application under s. 72 of the NIAA 2002. The Appellant appealed against this decision. The First-tier Tribunal dismissed his appeal ;however, that decision was set aside by the Upper Tribunal and his appeal was remitted to be reheard by the First-tier Tribunal. The matter came before Judge Lawrence.
5. Judge Lawrence heard evidence from the Appellant and three witnesses including the Appellant's wife and a minister from the Iranian Christian Fellowship (ICF). The judge made findings at paragraph 18 onwards. He considered s.72 of the NIAA 2002 and whether the Appellant had rebutted the presumption that he constitutes a danger to the community. He noted the submission of the Home Office Presenting Officer that the Appellant had failed effectively to rebut the presumption because he had reoffended and he failed to provide an OASys assessment despite having been under the supervision of the probation service. He also submitted that the Appellant's use of a stolen or alternatively forged

French passport when he first entered the UK on 2 December 2007 should be considered as part of his offending history.

6. Mr Gayle representing the Appellant before the First-tier Tribunal made submissions which were recorded by the judge; namely, that the use of the French passport in 2007 should not be considered as a criminal act as there was no conviction and defences were available to a person fleeing persecution and that there was no relationship between the offences leading to the 2010 and 2014 convictions. He submitted that there was no regularity or pattern to the Appellant's offending. He submitted that the Appellant had not reoffended since 2014 and the 2014 offence was relatively minor, as reflected in the sentence. The judge said the following:-

“ 21. Considering the information and evidence in the round, I find that the Appellant has rebutted the presumption that he is a danger to the community at the present time, due to his The Appellant's use of the French passport in 2007 is relevant to his risk of criminal offending generally, but I am persuaded that it is not indicative of dangerousness. The 2010 and 2014 offences are dissimilar but such repeated harmful offending is indicative of an absence of thinking skills and a disregard for the criminal law and the harmful consequences of offending for victims and for the consequences of punishment for the offender. However, it is significant in my consideration that the Appellant has apparently desisted from any crime for eight or more years. I do not consider that an OASys report from 2014 would have been of any significant assistance in assessing the Appellant's present danger to the community. Therefore, I am not bound to dismiss the appeal insofar as it relies on a Convention or revocation of protection ground.”(my emphasis)

7. The judge then turned to the claim by the Appellant to be at risk on political grounds. He dismissed the claim. There is no cross appeal concerning this decision. I do not need to set out the judge's decision in detail. Suffice to say that the judge was mindful that the Appellant had claimed to be politically active in Iran before coming to the UK and this was a matter that had been considered by two previous judges of the First-tier Tribunal. There is no challenge to the judge having properly directed himself and properly applied Devaseelan v SSHD [2002] UKAIT 000702. The judge at paragraph 37 found that:

“Considering the evidence in the round, I am satisfied that the Appellant's activity on Facebook since 2020 and his attendance at demonstrations might not have been entirely contrived, but that they have been minimal and motivated to a significant degree to bolster his protection claim.”

8. At paragraph 39 the judge found that the Appellant's political activities have been of a relatively short duration and there was no detail in his evidence as to how many demonstrations he had actually attended. The judge found that the Appellant's political convictions are undeveloped and this indicated a lower than reasonable likelihood that he would persist in those activities outside the context of a protection claim or appeal in a safe country whether or not he would be at risk from doing so.

9. The judge noted that the Home Office Presenting Officer made a similar point regarding the timing of the Appellant's claimed conversion to Christianity as he had about the political activities indicating that it was an opportunist attempt to bolster his protection claim. The judge found that this was plausible. The judge at paragraph 43 took into account the Appellant's evidence in his most recent statement that his friends and relatives were very worried about his state of despondency after the previous appeal was dismissed, his cousin's husband is a minister at the ICF Church in Chiswick and that he (the Appellant) began to attend services there which, as put by the judge, "moved him and led him to embrace Christianity". The judge found this to be plausible.
10. The judge noted the Appellant's evidence that he had completed Alpha courses at the ICF Church in Chiswick and at another church in London and that he was baptised on 23rd January 2022 and had been attending services every week in person and Bible study and prayer meetings every week via video link. The judge found that the Appellant's oral evidence was consistent with his claims that he made in his witness statement. The judge considered an inconsistency raised by the SSHD at paragraph 44 about who had introduced the Appellant to Christianity however the judge, for reasons that he gave within paragraph 44, attached limited weight to this. At paragraph 45 the judge directed himself in relation to Dorodian 01/TH/1537 and SA (Iran), R (on the application of) SSHD [2012] EWHC 2575. At paragraph 46 the judge said as follows:

"Considering the evidence in the round, I am persuaded by that it is reasonably likely that the Appellant is an active participant in the practice of the Christian faith in the ICF, which is an indicator that he has genuinely converted to Christianity. I have already mentioned the possibility that that activity may have been motivated by a desire to bolster his protection claim. However, the explanation given by the Appellant is also plausible and on balance and, applying the lower standard of evidence, I prefer it."

11. The judge at paragraph 47 set out the applicable country guidance PS (Christianity - risk) Iran CG [2020] UKUT 46. The headnote thereof reads:
1. This country guidance applies to protection claims from Iranians who claim to have converted from Islam to Christianity.
 2. Insofar as they relate to non-ethnic Christians, this decision replaces the country guidance decisions in FS and Others (Iran - Christian Converts) Iran CG [2004] UKIAT 00303 and SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082 which are no longer to be followed. 2
 3. Decision makers should begin by determining whether the claimant has demonstrated that it is reasonably likely that he or she is a Christian. If that burden is discharged the following considerations apply:
 - i) A convert to Christianity seeking to openly practice that faith in Iran would face a real risk of persecution.
 - ii) If the claimant would in fact conceal his faith, decision-makers should consider why. If any part of the claimant's motivation is a fear of such persecution, the appeal should be allowed.

- iii) If the claimant would choose to conceal his faith purely for other reasons (family pressure, social constraints, personal preference etc) then protection should be refused. The evidence demonstrates that private and solitary worship, within the confines of the home, is possible and would not in general entail a real risk of persecution.
4. 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."

12. The judge concluded as follows:

- "48. The Appellant claims that evangelism has become an increasingly important part of the practice of his faith, owing to a desire to share the spiritual benefits he has received from Christianity. That claim could plausibly be opportunistic, but I find that it is consistent with the Appellant's explanation of conversion to Christianity, which I have accepted.
49. Considering the evidence in the round, I find that the Appellant is a convert to Christianity who would seek to openly practice that faith in Iran or, if he chose not to, that he would do so owing to fear of persecution."

13. The judge went on to allow the appeal on protection grounds (and under Articles 3 and 8 ECHR).

The grounds of appeal

14. The first ground is that the judge failed to give adequate reasons in relation to s.72 of NIAA 2002. Reference is made to paragraph 21, and what appears to be a typographical error in line 3. It is also asserted that the mere passage of time alone is insufficient to demonstrate that the Appellant no longer presents a risk to the community. There are no findings in relation to remorse or rehabilitation.
15. The second ground is that the judge failed to give adequate reasons for finding that the Appellant would seek to practice Christianity openly nor that he would seek to evangelise. It is asserted that the finding is based largely on the Appellant's evidence. However, the judge had dismissed the Appellant's claim on political grounds.

Submissions

16. Ms Nolan submitted that the decision in relation to the Appellant's conversion to Christianity was not reasoned. She accepted that this was not raised in the grounds. In respect of the s72 certificate, she said that the reasoning is insufficient. She submitted that the judge did not engage with how the Appellant will live as a Christian in Iran. She submitted that the reasoning at paragraphs 48 and 49 is inadequate. Ms Nolan highlighted another issue not raised in the grounds relating to another typographical error in the decision of the judge in order to support an assertion that the judge had not applied anxious scrutiny.
17. Mr Gayle relied on his Rule 24 response.

Conclusions

18. I conclude that the grounds amount to a disagreement with the findings of the judge and that they do not identify an error of law.
19. The judge considered the absence of an OASys Report however said that any report from 2014 would not have had any significance in assessing the Appellant's present danger to the community. I find that this is a rational conclusion.
20. There was no up-to-date evidence, for example, from a forensic psychologist assessing the risk presented by the Appellant. However, the judge was entitled to take into account the nature of the offences committed by the Appellant and the absence of offending over a period of time. I do not find that the absence of a specific reference to rehabilitation or remorse amounts to a material error. I note what the judge said about the offences at paragraph 21 (set out above) to which my attention was drawn by Ms Nolan in oral submissions. I am satisfied that this indicates that the judge took into account the nature of the offences. However, it is clear that the judge correctly assessed the risk presented by the Appellant at the date of the hearing.
21. The typographical error in paragraph 21 (which I have highlighted) does not disclose an error of law. The paragraph clearly contains the reasoning behind the judge's decision. The judge was entitled to attach weight to the nature of the

offences and the period of time that the Appellant had not been convicted of criminal offences and conclude that the presumption had been rebutted.

22. In relation to the Appellant's conversion the findings are grounded in the evidence and adequately reasoned. The judge was entitled to accept the Appellant's evidence as credible. He accepted the evidence in respect of the conversion and the nature of the Appellant's faith. He had the benefit of oral evidence from the Appellant and witnesses in support of the conversion.
23. The grounds in this respect are an attempt to reargue the case and a disagreement with the findings. The judge heard evidence from witnesses including a minister from the church and properly directed himself in relation to SA (Iran) and the relevant country guidance. The judge found that the Appellant was a Christian. This finding is not challenged in the grounds and in any event, the finding is clear and adequately reasoned.
24. The judge did need to go on to consider whether a convert to Christianity would openly practice that faith in Iran and if not whether he would conceal his faith in order not to risk persecution. His conclusions in this respect are brief, if one looks specifically at paragraphs 48 and 49. However, it is very clear when one reads the decision as a whole that the judge accepted the Appellant's evidence in relation to his conversion and the nature of the Appellant's faith and how he practices that faith in the UK and how he would practice his faith in Iran.
25. I asked Ms Nolan during submissions about the evidence that was before the judge and the parties referred me to the Appellant's witness statement of 13 April 2022. It reads as follows:
 - "10. Evangelism has become an increasingly important part of my practice and my faith. Whenever the opportunity arises, I propagate the virtues of Christianity. Given the spiritual benefits I have received from being a Christian, I believe that it would be selfish of me not to share my faith.
 11. My eagerness to share my faith means that if I was returned to Iran, I would be considered proselytising apostate by the Iranian authorities.
 12. Indeed, if I was returned to Iran, it is inevitable that I would be interrogated. I would not be able to deny my faith. After experiencing the freedom to openly express my new faith in the UK, I could never be discrete in the practice of my faith."
26. Ms Nolan accepted that if those paragraphs of the Appellant's evidence were accepted by the judge the Appellant would be at risk on return. It is clear that the judge accepted the Appellant's evidence about his religion and how he would behave on return. The judge reasoned why he accepted the evidence. He found that the Appellant's evidence was consistent (see paragraph 44). The fact that the judge did not accept parts of the Appellant's evidence relating to his claim to be at risk on political grounds does not disclose that the judge erred in accepting the Appellant's evidence in relation to his faith.
27. I take on board that there are a number of typographic errors in the decision of Judge Lawrence. However, I do not find that taking them all into account, that they amount to a lack of anxious scrutiny. The findings of the judge are grounded

in the evidence and adequately reasoned. For those reasons I do not find an error of law and the decision to allow the Appellant's appeal stands.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 June 2023