



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 60

P1124/17

OPINION OF LADY WOLFFE

in the Petition of

PZ

Petitioner

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner: Forrest; Drummond Miller LLP
Respondent: Smith; Office of the Advocate General

7 June 2018

Introduction

[1] In this petition for judicial review the petitioner challenges the refusal by the Upper Tribunal (“the UT”) to grant leave to appeal against the decision of the First-tier Tribunal (“the FTT”).

[2] The petitioner, who is an Iranian national, arrived in the UK in December 2015. He claimed asylum at that time on the basis that, as a Muslim who had converted to Christianity, he would be regarded as an apostate and at risk if returned to Iran.

[3] The petitioner's claim was processed and after interview, in March 2016, the Secretary of State for the Home Department rejected his claim on 6 May 2016. He appealed this decision unsuccessfully to the First-tier Tribunal, which promulgated its decision on 23 February 2017 ("the FTT Decision"). The petitioner appeared before the FTT, as did a Mr J S Taylor, who was a representative (though not a Minister) of an evangelical Christian Church in Glasgow known as the Tron Church. Mr Taylor had also provided a letter dated 21 December 2016 in support of the petitioner ("the Taylor letter") and he also spoke to a two-page document titled "Christian Baptism: General Practice Guidelines at the Tron Church" ("the Baptism Guidelines").

[4] The UT refused his application for leave to appeal on 9 August 2017. As a consequence, the only further avenue of challenge open to the petitioner is by judicial review. Judicial review proceedings were raised in this court.

[5] By interlocutor dated 6 February 2018 the Lord Ordinary, "being satisfied that the test in section 27B(3)(a) and (b) of the Court of Session Act 1988 had been met and being satisfied that the petition raises an important point of principle or practice", granted permission for the petitioner's application for judicial review to proceed ("the leave interlocutor"). As will be seen, Mr Forrest, who appeared on behalf of the petitioner, regarded the leave interlocutor as determinative of one of the points of principle identified in the petition.

[6] Before turning to the FTT Decision in detail, it is helpful first to understand the petitioner's two points of principle for which leave had been given.

The points of principle identified in the petition

[7] The petition identified two points of principle:

- 1) “the correct approach to conclusions by a fact finding tribunal that a person has not genuinely converted to Christianity”; and
- 2) “the way in which the evidence of an experienced Christian leader (such as Mr Taylor) is considered in reaching such a conclusion”.

[8] For the purposes of section 27B of the 1988 Act, the bases advanced were that, in relation to (1), the case law was of some vintage and the issue merited fresh consideration by a court at a senior level (“the old case law issue”). The “old” cases identified were *Dorodian v Secretary of State for the Home Department* (unreported 23 August 2001) (“*Dorodian*”) and *SJ (Christian Apostates – evidence) Iran* (2003) UKIAT 00158 (“*SJ*”).

[9] In relation to (2), it was suggested that the decision maker required to consider this kind of evidence “properly in relation to the issue of the genuineness of a person’s alleged Christian conversion in particular when presented with evidence from witnesses who have experience in considering such matters” (“the expert evidence issue”). This was developed in the petition under reference to the case of *Kennedy v Cordia Services LLP* [2016] SC

UKSC 59. As it was put in the petition:

“it is important that a decision maker considers evidence properly in relation to the issue of the genuineness of a person’s alleged Christian conversion in particular when presented with evidence from witnesses who have experience in considering such matters. The issue also goes to the status of such a witness as expert or skilled witnesses in relation to the issue at the heart of an appeal such as the present one.”

This, it was said, fell to be reconsidered in light of the Supreme Court’s decision in *Kennedy* (at paras 38 to 44(i) to (iv)). The petition also identified an error of law, but Mr Forrest confirmed that this was the same point as (2). The FTT was said to have erred because it:

“misunderstood the nature and significance of the evidence of the witness Taylor. The FTT has not placed enough emphasis on the evidence of this witness about the genuineness of the petitioner’s conversion to Christianity; and too much emphasis has been placed on what was said about baptism”.

The expert evidence issue and the error of law were presented as a single issue. The expert evidence point was acknowledged to be new, and had not been advanced before the FTT or the UT. Likewise, the old case law issue had not been advanced before either the FTT or the UT.

[10] Reduction of the decision of the UT was sought, but not of the FTT Decision.

Notwithstanding that, the focus of submissions was the FTT Decision. It was assumed, rather than argued, that the UT had erred in not recognising the error of law on the part of the FTT.

Matters outwith the scope of these proceedings

[11] While averments in the parties' pleadings also raised the issue of whether the second appeals test remained open for reconsideration at the substantive hearing, it was agreed that this issue would not be argued. I was advised that this issue was shortly to be considered before the Inner House. For the respondents, Miss Smith invited me to note that the respondent's decision not to argue this issue was one of expediency for the purposes of these proceedings only, and was not to be taken as a concession generally.

[12] Mr Forrest confirmed that no challenge was now made to the FTT's adverse determinations about the petitioner's activities in Iran (para 24 of the FTT Decision) or about the petitioner's reasons for irregular attendance at the Tron Church (in para 36). The focus accordingly became the activities of the petitioner once he had entered the UK and his status as a refugee *sur place*.

The FTT Decision

The grounds of appeal to the FTT

[13] The grounds of appeal to the FTT were as follows:-

“(a) that his removal from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, as he fears that if he were returned to Iran he would face mistreatment or death due to his conversion to Christianity;

(b) that his removal from the United Kingdom would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection;

(c) that his removal from the United Kingdom would be unlawful under Section 6 of the Human Rights Act 1998, on the basis of his right to freedom of religion.”

No distinction was drawn between these three grounds, as they all rested on the same factual basis.

The evidence at the FTT

[14] Having regard to the nature of the challenge, being an error of law as regards the assessment of the evidence and the weight and status given to the evidence of Mr Taylor, it is necessary to set out the FTT’s record of the evidence (at paras 8 to 15):

“8. Thereafter, the Appellant was questioned about his attendance at the Tron Church in Glasgow and also about matters relating to baptism. He confirmed that he had not been baptised in the Tron Church and accepted that this Church probably did not consider him ready for baptism yet. He stated that he had been placed in seven different addresses by the Home Office since being in Glasgow, some of which were a distance from the Tron Church. He also stated that he had been taken to the Destiny Church in Glasgow for the past three weeks by a friend and that he had been baptised there. He said that he had been told by Mr. Taylor that the fact that he had been baptised there did not lead to him being baptised in the Tron Church. The Appellant also confirmed that he had been baptised whilst he was in detention by an African gentleman called Joseph. However, he had not told the Tron Church about this baptism. He confirmed that he knew the Tron Church was a Protestant Church, but was unable to specify to what branch of Protestantism it belonged.

9. Finally, in cross-examination, the Appellant said that he was still in contact with his wife, from time to time. She had gone back to live with her family. He confirmed that he had told his wife about his conversion to Christianity and that

she had accepted this if this is what he wanted. The Appellant was then asked what difference Christianity had made to his life. He replied that he had become a much kinder and more tolerant person as a result of this. Previously he had drunk a lot and had been bad tempered. Now he had become a much nicer and happier person. He confirmed that he attended the Tron Church on a Friday for Bible Study and on a Sunday for prayer and service. He stated that he had been a regular attender initially, but that there was a time when he did not have enough money for bus fares and also had been unwell due to depression. As a result he estimated that he had missed between six to eight weeks of attendance at the Tron Church.

10. There was no re-examination.

11. In examination in chief, Mr Taylor was asked when the Appellant had first come to his attention, and he stated that he had been aware of him, on and off, since December 2015, although the Appellant was not as regular an attender as some. Mr. Taylor also confirmed that since September 2016 the Appellant had been in a Bible Study group sufficiently often for him to know who the Appellant was and to interact with him. The Appellant had not yet undertaken a course known as Christianity Explored, which would prepare him for baptism. However, if he were interested, he would be recommended to go on this course in 2017. Mr. Taylor was then asked whether he could say that he accepted the genuineness of the Appellant's conversion. In response, Mr. Taylor stated that a person in the Appellant's situation was on a journey, which the Appellant said began in Iran where he had come to feel dislike and hatred towards the Iranian regime. Also when he arrived in the United Kingdom, the first thing that the Appellant had done was to look for a church and he had been brought to the Tron Church by a friend. The fact that the Appellant had been unable to attend regularly due to having to move address and also due to depression, meant it had taken longer than usual to get to know him and for him to progress. However, Mr. Taylor expressed his personal opinion that the Appellant was continuing to show that there was light there and he wanted to understand more.

12. Finally, in chief, Mr. Taylor confirmed that it was very normal for someone coming to a Christian church from a different religion not to know the different denominations within Christianity, or to be aware of the differences between Catholicism and Protestantism. He believed that the Appellant has expressed a genuine intent towards Christianity.

13. In cross-examination, Mr. Taylor was asked how many Iranians attended the Tron Church and he replied that it was between one hundred and one hundred and twenty both on a Friday night and for Sunday service. He stated that about one fifth of the congregation at the Church were Iranians. Mr. Taylor then confirmed that the Church did not encourage people to put themselves forward for baptism, but that it was for the group leaders of the Bible study to recommend this. As the Appellant's attendance had been irregular, he would not have developed a relationship with a group leader as yet. He then stated that the Appellant had told him that he had been baptised in the Destiny Church but had not told him that he was going to go to this

Church. However, he said that this did not surprise him and he would not forbid this. However, when asked whether the Appellant had told him that he had also been baptised by an African pastor whilst he was in detention, Mr. Taylor confirmed that he had not known this and that this was news to him, for which he was grateful.

14. Thereafter, Mr. Taylor was asked whether it was made clear that the Tron Church was an Evangelical Church, and he replied that this was made very clear. He conceded that he had been deceived by Iranians in the past, and that he had worked for twenty-seven years in Japan where people tell others what they think they want to hear. He stated that this had made him alert to this kind of thing. Finally, in cross, Mr. Taylor confirmed that he had attended as a witness in an asylum appeal about thirty times in 2016.

15. There was no re-examination. I then asked Mr. Taylor whether the fact that the Appellant had already been baptised on two occasions would prevent him from being baptised again in the Tron Church. Mr. Taylor replied that they did not accept baptism as evidence of the genuineness of a Christian belief. However, as they got to know an individual and saw that their faith matched up, then they would recognise the baptism that had occurred." (Emphasis added.)

The Taylor letter

[15] In addition to giving evidence before the FTT, Mr Taylor had also provided a letter in relation to the petitioner, the Taylor letter, in the following terms:

"1. I am a retired solicitor and missionary with OMF International. With my wife, Elspeth, I retired to Glasgow in August 2009 after working for 34 years in Japan in cross cultural evangelism and church planting ministry. We now support the ministry of our home church, The Tron Church, at 25 Bath Street, Glasgow, by helping, among other things, to lead the International Ministry of the church. I attach a letter from Rev Dr. W. J. U. Philip explaining my involvement in this ministry.

2. As part of that International Ministry I have for the last seven years been involved with many Muslim asylum seekers from Iran, Afghanistan and other parts of the Middle East. Through that involvement I have seen many people express an interest in Christianity at first only to drift away later. Others have been sincere in their searching the Bible for the truth of forgiveness of sin in Jesus. Several have come to a life-changing faith in the Lord Jesus Christ.

3. [The petitioner] first came to the Sunday evening worship service at The Tron Church in December 2015. Over a number of years he had become disillusioned with the Islam he saw practiced in Iran and wanted to find out about Christianity. His being tortured in prison made him determine to become a Christian when he was released, so through an old family friend he was introduced to a house church.

He attended there regularly on a Thursday evening and considered himself a Christian because he was going to church. One day he arrived when a police raid was obviously in progress, so he fled.

4. [The petitioner] looked for a church when he arrived in Glasgow and after he came with a friend on Sunday he also joined the mid-week Bible study, which was held then on a Tuesday evening and was translated into Farsi. Because the numbers attending the Bible Study are really too many to deal adequately with the questions of members of the group, we split them into different groups with an interpreter in each group. This helps Iranians with no Christian background to understand the teaching and thus to avoid a mere nominal attachment to the church. [The petitioner] was in a small group lead by Alasdair Walker and Stephen Grant. Because he lived far from the church and his residence as changed seven times by the Home Office, he found it difficult to attend these studies every week but he has been attending the Sunday evening worship services regularly, where there is also translation into Farsi. He was also suffering from depression brought on by his imprisonment in Iran and subsequent events and this made it difficult to be regular in his habits.

5. Two or three months ago, [the petitioner] went to Destiny Church with a friend, because it was easier to get to than The Tron Church. He went just three times and on the third time some others were being baptised. He was asked if he had been baptised and when he responded that he had not, he was offered baptism, so he agreed. Since then, however, he has not attended Destiny Church but has returned to The Tron Church.

6. The Tron Church is an evangelical church, adhering to the teaching of the Bible in all areas of life and conduct relating to Christian faith, Christian growth and evangelism. Whereas it is not possible to look into a person's heart to ascertain whether or not a conversation to Christianity is more than just words, the church leaders look for a confirming work of the Holy Spirit in a person's conduct. A consideration of matters considered in regard to baptism of a new believer and what is a credible declaration of faith, is covered in the attached document, 'Christian Baptism: General Practice Guidelines at The Tron Church' written by the minister of The Tron Church, Rev. Dr. William J. U. Philip. Candidates for baptism are normally interviewed by the minister and an elder of the church or by other church leaders appointed by the minister, to consider their suitability for baptism and baptisms normally take place twice a year. People who are baptised also become members of the church.

7. Although [the petitioner] has not yet been admitted to membership of The Tron Church, we recognise that he is on a spiritual journey and believe it will help him to learn more about his faith by attending the Christianity Explored course, even though he has been baptised in another church. 'Christianity Explored' is a course of studying the teaching about Jesus, his life, death and resurrection, from the gospel of Mark, and it is run regularly in the church programme with translation into Farsi for our Iranian friends with limited English.

8. The Iranian authorities know nothing of the 'journey of faith' but accuse a person of 'blasphemy' (conversion) if they possess a Bible or attend a Christian meeting. Therefore, [the petitioner's] regular attendance at meetings in the church presents him with a problem. For someone from a Muslim background with its teaching of dire consequences for anyone who may convert to other religions, his professed conversion to Christianity, Baptism in Destiny Church, regular attendance at meetings and willingness to talk to others of his faith raises the very real probability of him being persecuted if he were to be sent back to Iran

9. I would therefore respectfully ask that [the petitioner's] application to remain in the UK because of a legitimate fear of what would happen to him if he were to return to Iran, be granted so that he may continue to grow in his Christian faith and settle down to become a contributing member of UK society." (Emphasis added.)

The submissions to the FTT

[16] The parties' submissions to the FTT on the evidence concerning the petitioner's activities in the UK were as follows:-

"...

17. Thereafter, with regard to the Appellant's religious activities in the United Kingdom, it was suggested by the Home Office Presenting Officer that Mr. Taylor's view of the genuineness of the Appellant's alleged conversion was based on him taking a view that the Appellant's story of what had happened in Iran was genuine. It seemed that the Appellant was not regarded as a 'star pupil', but that he was very keen on getting baptised. He had been baptised very quickly in the Destiny Church after a three week period, and had also been baptised whilst in detention. The Appellant had also said at the Hearing that he had put himself forward for baptism in the Tron Church, but Mr. Taylor had confirmed that this did not happen and would not happen, as the Appellant would be required to complete a course on Christianity Explored and then be recommended by his group leader for such procedure. It was further suggested that Mr. Taylor had been a bit underwhelmed in his praise of the Appellant, stating that he 'might' get there to meet their requirements. It was also clear that the Tron Church was an Evangelical Church, yet the Appellant did not seem to have attempted to evangelise anyone, not even his own wife. It was suggested that she was the most obvious person that he would tell about his new faith, but that this had not happened for some time. Moreover, Mr. Taylor had accepted that he had been deceived in the past and had also confirmed that the Appellant had not told him that he had been baptised by an African pastor in detention, despite baptism being 'a serious matter'. It was submitted that this must colour any view of the genuineness of the Appellant's alleged conversion and ongoing 'journey'. I was invited to find that the Appellant's claim to being a Christian convert was not credible. However, if I were to find that the Appellant was

a genuine Christian convert, then the appeal would have to succeed, given the background evidence available.

18. In summation on behalf of the Appellant, it was submitted that the Appellant had given a credible account of the circumstances that had caused him to leave Iran. A number of inconsistencies had been highlighted by the Home Office Presenting Officer, but it was submitted that these suggested inconsistencies were not such as to cause any real doubt as to the genuineness of the Appellant's conversion to Christianity. One such inconsistency related to the Appellant's answer to Question 58 in his Asylum Interview concerning the number of his attendances at the House Church. It was submitted that this was not in fact an inconsistency at all, but if it was, it should not cause doubt as to the genuineness of the Appellant's conversion. It was suggested that the Home Office Presenting Officer had taken the Appellant's answers to this question too literally. Rather, the Appellant had attended the church over a two month period but not necessarily over consecutive weeks. It should be remembered that English was not the Appellant's first language. However, the account given by the Appellant to Mr. Taylor was of a journey that Mr. Taylor recognised and accepted. Thereafter, the Home Office Presenting Officer had suggested that there was a lack of genuineness in the Appellant's evidence in that he had stated that he belonged to the Catholic 'sect' of Christianity. It should, however, be noted that the Appellant had not said that he was a Roman Catholic. Mr. Taylor had scoffed at the idea that someone would know anything about the various denominations within Christianity. A parallel would be whether a Christian would be aware of the differences between a Sunni and a Shia Muslim. It was submitted that it was not a matter that should be taken against the Appellant. Thirdly, with reference to the raid on the House Church described by the Appellant, it was submitted that the Appellant had said that he had taken a taxi to the church and should have been there by six in the evening for the start of the meeting, but that he had been half an hour late. It was suggested that if analysed properly, the Appellant's account could be seen as highly consistent. In relation to the Ettel'at issue, the Appellant's evidence was quite matter of fact. He knew that the people at the Church were Ettel'at, despite the fact that they were in plain clothes in unmarked vehicles. Thereafter, the evidence had always been that the House Church had taken the names of persons attending meetings. It was submitted that it was not incredible at all that records were kept by those in charge of the House Church.

19. With reference to the Appellant's alleged wish to become baptised, his evidence was that he had been baptised in detention and thereafter at the Destiny Church. Despite this, he continued to attend the Tron Church, going to Bible classes and services, except when he had been unable to attend for financial and health reasons. The Appellant had been quite open about this and Mr. Taylor had confirmed that he had not been a regular attender. It was suggested that the Home Office Presenting Officer had made light of the fact that the Appellant had been required to move address seven times in one year, but this was the case. The Appellant had continued to want to learn more about Christianity, and Mr. Taylor had not said in terms that he was not a 'star pupil'. Rather, Mr. Taylor had confirmed that the Appellant had maintained his attendances at the Church and that

he was genuine and on a journey. It was submitted that Mr. Taylor had been quite straightforward in his testimony and had not 'understated' the Appellant's commitment. The Appellant was said to be on the road to finding Christianity, a road that had not yet been concluded.

20. With regard to the Appellant's alleged unawareness of Evangelism, it was submitted that the Appellant was aware of the nature and ethos of the Tron Church and had confirmed that his conversion had made a difference to his life. Before this he had drunk a lot and had been bad tempered. Now he had changed due to his faith and told people about his faith. Whilst Mr. Taylor accepted that he had been deceived in the past, he had been involved with the Appellant over a matter of months which indicated the genuineness of the Appellant. I was invited to allow the appeal, taking into account the oral evidence produced. It was submitted that to change religion in Iran was a serious matter. The Appellant had previously come to the attention of the authorities in Iran after the Presidential election in 2009. He had indicated in his Asylum Interview that he had developed a hostility towards the Iranian regime as a result of this. It was submitted that there would be a serious risk of harm to him if he were returned to Iran on that basis also. However, even in doubt about this matter, the burden of proof should be given to the Appellant in the circumstances here. In addition, with reference to Article 9, the Appellant would not be permitted to practice his new faith if returned to Iran."

[17] The core issue in submissions was whether the petitioner's claimed conversion to, or interest in, Christianity was genuine.

The FTT's assessment of the evidence and its determination

[18] I need not record the FTT's findings in fact, save to note that it recorded the petitioner's baptisms, the first while in detention and the second in the Destiny Church. The FTT set out its assessment of the evidence and its decision in the following terms:

"30. In coming to a decision I have to consider, firstly, the Respondent's decision to refuse the Appellant's protection claim, and, secondly, whether such a refusal would lead to a breach of Articles 2 and 3 of the European Convention on Human Rights (ECHR).

31. On the question of asylum it is for the Appellant to establish his case. The standard of proof is, however, not a high one. It is lower than the normal civil standard. In determining this appeal, I am not restricted to those facts and circumstances prevailing at the time of the decision under appeal. For the Appellant to succeed he has to show that either:-

(a) owing to a well-founded fear of being persecuted for one of the grounds defined in Regulation 6 of the Qualification Regulations 2006, he is outside his country and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country. For the Appellant's fears to be well-founded he only has to demonstrate a reasonable degree of likelihood of being persecuted on one or more of said grounds if returned to his country. This standard of a reasonable degree of likelihood also applies to past events and to the whole question of the existence of a well-founded fear of being persecuted for one or more of said grounds. The standard has sometimes been described as that of a real risk. This question of whether a person has a well-founded fear of persecution has to be looked at in the round in the light of all the relevant circumstances; or

(b) substantial grounds for believing that he would face a real risk of serious harm if returned to his country as defined in Paragraph 339C of the Immigration Rules.

32. The Appellant is seeking asylum for a Convention reason based on his fear that if he were returned to Iran he would face mistreatment due to his claimed conversion to Christianity.

33. I have considered all the evidence on file, along with the oral evidence led and the submissions made at the Hearing.

[...]

35. With regard to the Appellant's alleged religious activities in the United Kingdom, I accept, as suggested by the Home Office Presenting Officer, that the Appellant has shown a keenness or willingness to be baptised into the Christian faith. However, I note that no further details have been provided in relation to the African pastor who performed this ceremony for the Appellant in December 2015. Moreover, and perhaps more significantly, no evidence has been produced from the Destiny Church to explain how or why the Appellant came to be baptised there in November 2016, despite only attending that church for a period of three weeks. I accept that the Appellant has not been put forward for baptism in the Tron Church as yet, on the grounds that he has not attended the requisite classes for preparation for baptism and has therefore not been recommended for this process. I accept the evidence of Mr. Taylor that the procedure in his Church is not that a person puts him or her self forward for baptism but, rather, that this is recommended by group leaders who have come to know the individual. This had not happened as yet with the Appellant. Finally, in this regard, I note that the Appellant had not disclosed to Mr. Taylor that he had already been baptised in December 2015 whilst in detention. No reason for this omission was suggested on the Appellant's behalf, and I consider that this omission has an adverse effect on my assessment of the Appellant's credibility.

36. Thereafter, I have noted the Appellant's explanation for his irregular attendance at the Tron Church over the past year, which Mr. Taylor appeared to accept as accurate or reasonable. However, I do not find the Appellant's explanations to be convincing, in the absence of any confirmation of his alleged mental health problems or inability to attend church services on the basis of lack of finance. Rather, I draw an adverse inference from the fact that the Appellant chose to attend a different church for a period as a result of which he obtained a baptismal certificate.

37. With regard to Mr. Taylor's evidence, I fully accept that this was given in an honest and careful manner. However, I consider, as suggested by the Home Office Presenting Officer, that Mr. Taylor may have been unduly influenced in his assessment of the genuineness of the Appellant's conversion to Christianity, by the fact that he accepted the Appellant's account regarding the House Church in Iran, which accorded with other background information he had relating to the practice of Christianity in that country. Moreover, it appeared to me that Mr. Taylor was unable to confirm that the Appellant was a genuine convert, but, rather was able to say only that the Appellant was 'on a journey' in this regard. On the basis of Mr. Taylor's evidence, which I considered with great attention, I was unable to conclude that the Appellant was, at this stage, a genuine convert to Christianity.

38. I derive further support for this view from the Appellant's apparent lack of knowledge or awareness of the various denominations of Christianity, exhibited during his Asylum Interview and not advanced in the course of the Hearing, although I accept, as conceded by the Respondent, that he has some basic knowledge of tenets of Christianity. I have noted the suggestion on his behalf that such distinctions might be difficult to understand for a person from a different faith. However, I accept, as suggested in the Refusal Letter, at paragraph 18, that the Appellant should have been aware of the differences between the Catholic and Protestant branches of Christianity, given that he, himself, had previously been a member of a minority Muslim sect in Iran. I find the suggested amendment to his Asylum Interview from 'Catholic' to 'Protestant' to be unconvincing. Finally, in this regard, I consider that the Appellant's apparent unawareness of the Evangelical nature of the Tron Church does not suggest a full knowledge of the faith to which he now claims to adhere.

39. On the basis of the above factors, I have concluded that I do not accept the genuineness of the Appellant's alleged conversion to Christianity, either in Iran or subsequently in the United Kingdom. Accordingly, I do not accept that the Appellant has established, even to the relevant low standard of proof, that the Convention reason claimed on his behalf has been made out. "

...

42. I have accordingly concluded, on the basis of all the above factors, that it has not been established that the Appellant has a well-founded fear of persecution on return to Iran. He does not qualify as a refugee. The Appellant does not require

international protection on the information before me. His asylum claim must fail, as must his claim under Articles 2 and 3 of ECHR, on the humanitarian protection issue, on the same facts, and under the Human Rights Act 1998.”

Submissions on behalf of the petitioner

[19] As noted above, Mr Forrest advanced a more limited challenge than set out in the petition, namely to the FTT’s determination of the question of the genuineness of the petitioner’s professed religious beliefs and his conduct in the UK. Mr Forrest otherwise adhered to his Note of Argument. Mr Forrest’s overarching submission was that the FTT had placed too much emphasis on the petitioner’s conduct (eg his irregular attendance and seeking baptism while in detention and at the Destiny Church) and had placed insufficient weight on the evidence of Mr Taylor. This led the FTT into error. It was not the petitioner’s position that he had converted.

[20] In relation to the expert evidence issue, the FTT had erred in two respects: it misunderstood the *nature* of Mr Taylor’s evidence and it misunderstood its *effect*. Mr Forrest developed these submissions.

The nature of Mr Taylor’s evidence

[21] In terms of the nature of Mr Taylor’s evidence, three questions arose from his evidence: first, what was he speaking to; second, what was his evidence; and third, what did the FTT take from his evidence. Mr Taylor was an experienced Christian church leader. He spoke to the numbers of Iranian asylum seekers coming to The Tron Church and the petitioner in particular. He also gave evidence as to the circumstances in which the petitioner joined the congregation at The Tron Church. He was called as a person who could give evidence as to the matters summarised by the Immigration Appeal Tribunal (“the

IAT") in *SJ (Christian Apostates – evidence) Iran* (2003) UKIAT 00158 at paragraph 22, namely, the "...adherence [by the applicant] to that church's principles...throughout the period covered by [the applicant's] stay...". (para 22). Mr Forrest noted that at no point did Mr Taylor say that the petitioner had converted to Christianity. His evidence was that the petitioner was "...on a spiritual journey..." (*per* the Taylor letter), and that the steps the petitioner appeared to Mr Taylor to have taken on this journey seemed consistent with the practice of the Tron Church. The real question for the FTT to decide from Mr Taylor's evidence was not whether the petitioner had already converted, but whether he might do so in the future. Mr Forrest submitted that it was enough that the petitioner had begun "the journey" and the fact that he had not reached the "destination" (of conversion) was for the moment premature. In other words, the FTT should have been looking not for confirmation that the petitioner had become a Christian but for indications that he was on the road to becoming one, and so far as the evidence of Mr Taylor was concerned, whether there were any indications that he might become "side tracked" in the journey. As to what the FTT had taken from Mr Taylor's evidence, it is apparent that (in paras 32-37 in the FTT Decision), the FTT had been looking for evidence that the petitioner has become a Christian. When it did not find it from Mr Taylor, the FTT concluded that the petitioner's conversion was not genuine. It made adverse findings or observations as to how the petitioner had behaved previously.

[22] Mr Taylor's evidence had been that it is "...not possible to look into a person's heart to ascertain whether or not a conversion to Christianity is more than just words...". Mr Taylor had referred to baptism as affirmation of the difficulty even an experienced Christian will have in determining whether a conversion is genuine. Mr Forrest argued that the FTT erred in concluding from his evidence that the petitioner was not a genuine convert to Christianity.

He referred to the observations of HH Gilbert QC in *SA (Iran) v Secretary of State for the Home Department (Iran)* [2012] EWHC 2575 at para 24, where it was observed:

“Thirdly, there is a matter closely related to the second point of concern. What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant’s conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman’s soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church. But I accept that such judicial boldness as this judge showed does not necessarily undermine a decision in law if he does so, and his decision was not successfully appealed. But that is not the only point. There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, *may* be taken in Iran as evidence of apostasy. On the basis of the Home Secretary’s now stated position, that amounts to a potentially different circumstance from that addressed by the Immigration Judge.”

Mr Forrest emphasised the first part of that passage (ie the inability to look into a person’s soul) whereas Miss Smith laid emphasis on the latter part (ie the emphasis on conduct or active participation). As I understood him, Mr Forrest accepted that if the proper focus was on a person’s conduct, the petitioner was in a weak position.

[23] In *SJ (supra)*, the IAT had observed (at para 10) in respect of an applicant who had claimed to have converted once in the UK, that “there is a reasonable likelihood that this appellant has since coming this country entered into a commitment to the Christian faith and will later this year be baptised into the Iranian Christian Fellowship church”.

Mr Forrest submitted that the FTT, here, had not engaged with that issue.

The effect of Mr Taylor's evidence: the expert issue

[24] Turning to the “effect” of Mr Taylor’s evidence, this raised the expert evidence issue. Mr Forrest’s submission was that Mr Taylor’s evidence should have been treated as a species of expert evidence, on the issue of whether a person has genuinely converted and on the difficulties associated with reaching such a conclusion. He submitted that a finding of fact as to whether or not a conversion was genuine is a particularly difficult issue and one to be approached “...with great caution”, per *Shirazi v Secretary of State for the Home Department* [2003] EWCA Civ 1562 (at para 3). Decisions such as *Shirazi (supra)*, and *SJ (supra)* emphasised that the opinion evidence of those in positions of leadership – such as Mr Taylor – could be treated as a species of expert evidence and weighed as such. This was also consistent with section 4 of the Asylum Policy Instruction dated 6 January 2015 issued by the Home Department (“the Asylum Policy Instruction”), and which provided that decision makers should approach evidence of “...ministers of religion...” as “expert” evidence.

[25] In terms of the *Kennedy v Cordia (Services) LLP* [2016] SC (UKSC) 59 criteria, Mr Taylor’s evidence was plainly of assistance to the FTT. The FTT acknowledged it simply by stating that it was given “...in an honest and careful manner...” (see para 37 of the FTT Decision), but this was to ignore the importance of what Mr Taylor was saying, and to diminish the importance of the issue he was trying to assist the FTT to resolve. Mr Taylor was an expert as to whether the petitioner had converted to Christianity. Too much emphasis had been placed on the petitioner’s evidence and insufficient weight had been placed on Mr Taylor’s evidence *qua* expert. The FTT ignored his status as such.

[26] Reduction of the UT’s decision should be granted. In response to a question from the bench as to whether that would suffice, given the terms of the FTT Decision, Mr Forrest indicated that the court should also reduce the FTT Decision and order a rehearing.

Submissions on behalf of the Secretary of State:

[27] Miss Smith made three preliminary observations:

- 1) She noted that the petitioner only challenged the UT's decision. In practice, if the decision of the FTT were criticised, then a fresh hearing could be ordered but there was no guarantee of that absent a court order.
- 2) The error of law argued for appeared to be no more than that the FTT got the balancing decision wrong, and accorded insufficient weight to the evidence of Mr Taylor.
- 3) The expert evidence issue constituted an additional complaint about the status of Mr Taylor as an expert, although Mr Forrest had stepped back from that to some extent. As she understood it, this was said to compound the error in law.

[28] Turning to address the expert evidence issue first, Miss Smith submitted that the FTT was less prescriptive about this than Mr Forrest appeared to suggest. As for the Asylum Policy Instructions, these were internal instructions for caseworkers. Further, the use of "expert" in that context was not intended to be understood in a *Kennedy(supra)* sense. The Asylum Policy Instructions did indicate that evidence from a minister of religion was to be taken seriously. This had been done by the FTT in this case, in relation to Mr Taylor's evidence.

[29] Mr Taylor was not a minister of the Tron Church, although it was accepted that he was authorised to speak on its behalf. It had not been argued before the FTT that he was an "expert" in the way now contended for. More fundamentally, she argued, the petitioner's criticism was of no moment: the FTT had in fact treated Mr Taylor as an expert in the sense the petitioner contended for. Therefore, this was a moot point. If there was a distinction

drawn between his evidence about the petitioner's attendance at the Tron Church and his evidence about the doctrine of baptism within that church (eg as set out in the Baptism Guidelines), there is nothing in the FTT Decision to suggest that it doubted his expertise in respect of the latter type of evidence. The FTT accepted the *bona fides* of Mr Taylor.

[30] The real purpose in adducing Mr Taylor's evidence was to vouch the petitioner's conversion. That was not an area of expertise. Miss Smith referred to the question put to Mr Taylor (see the underlined passage in para 11 of the FTT Decision, quoted at para [14], above). In response to a direct question as to whether he accepted the petitioner's conversion, Mr Taylor had simply indicated that the petitioner was on a "journey". At its highest, all that he could say was that the petitioner's conduct "was continuing to show that there was light there and he wanted to understand more". This was consistent with the Taylor letter where, again, it was not stated that the petitioner had converted.

[31] Turning to the cases, Miss Smith looked first at the case of *Dorodian v Secretary of State for the Home Department*, 23 August 2001 (unreported). While it was a case dating from 2001, paragraph 8 thereof remained the "benchmark" in the approach to evidence about religious conversion and evidence from third parties relative to that matter. Paragraph 8 stated:

"8. Having between us a good many years' experience of asylum cases, we realize that allowing an appeal on this basis is likely to be treated as an open invitation by other Iranians less sincere than this appellant to take instruction for conversion to Christianity and so secure asylum. We should like to make the following suggestions:

- a) no-one should be regarded as a committed Christian who is not vouched for as such by a minister of some church established in this country: as we have said, it is church membership, rather than mere belief, which may lead to risk;
- b) no adjudicator should again be put in the position faced by Mr Poole in this case: a statement or letter, giving the full designation of the minister, should be sent to the

Home Office at least a fortnight before the hearing of any appeal, which should give them time for at least a basic check on his existence and standing;

c) unless the Home Office have accepted the appellant as a committed church member in writing in advance of the hearing, the minister should invariably be called to give oral evidence before the adjudicator: while witness summonses are available, adjudicators may reasonably expect willingness to do so in a genuine case;

d) if any doubt remains, there is no objection to adjudicators themselves testing the religious knowledge of the appellant: judicial notice may be taken of the main beliefs and prayers of the Church.

This decision, as with all those of this Tribunal, will be published on the Internet through EIN, and we should not expect adjudicators to have any sympathy for professional representatives who claim to be unaware of it."

[32] Points (b) and (c) were procedural. Miss Smith submitted that, for present purposes, the critical point was (a) and the focus on church membership or conduct. It was in this context that Mr Taylor's evidence was relevant. The FTT had followed the *Dorodian (supra)* principles. There was no error. At paragraph 38 of the FTT Decision, it noted a specific lack of understanding on the part of the petitioner as to the different forms or denominations of Christianity (which could fall within para (d) of *Dorodian (supra)*).

[33] Miss Smith also referred to paragraph 22 of the case of *SJ (supra)*, which provided:

"22. In allowing this appeal, we would emphasise that Adjudicators should be satisfied completely as to the bona fide not only of the appellant but of the church to which the appellant maintains he adheres. Were this not so, it would be very easy (and appears to becoming more common) for persons to claim that they would be persecuted on return because they have converted to the Christian faith. We would be inclined to say that the test as to the bona fide of the conversion is more than that of a reasonable likelihood. The Adjudicator should obtain evidence (and more than just a written letter) preferably in oral form, from the pastor, priest or other person who leads the congregation of the particular church to which an appellant maintains he or she belongs. He needs to be satisfied that the adherence to that church's principles has been continuous throughout the period covered by the appellant's stay in this country; in other words he needs to satisfy himself that the claim to adhere to the Christian faith is not a transient claim brought into existence purely for the purposes of pursuing an asylum claim."

In terms of this passage, the decision taker had to be completely satisfied as to the *bona fides* of the applicant and the church official who supported him. There was a need for continuous attendance to displace the inference that this was a form of transient conduct brought into existence for the purposes of an asylum claim. She founded on this passage. The FTT had not been convinced. Its approach was vouched by authority. There was no error.

[34] She accepted that it was not simply a question of an applicant having been converted or having been baptised by the time his asylum claim was considered. The FTT had not fallen into this formalist trap. It had not proceeded on the basis that the petitioner had not been baptised into the Tron Church. She suggested that there were three possibilities:

- 1) a genuine conversion had occurred and was believed and accepted;
- 2) a person was engaged in the process of conversion and there was a reasonable likelihood that conversion would be completed;
- 3) that the claimed conversion was not genuine.

The petitioner argued that he was in category (2) whereas the FTT had concluded he was in category (3). The assessment of the petitioner's credibility was critical. The only way the petitioner could succeed was if it could be shown that the FTT had erred in its assessment of the petitioner's credibility. The FTT had not believed him. There was no error. Reference was also made to para 24 of SA (quoted at para [22], above). That passage confirmed that, given the acknowledged difficulty in looking into a person's soul, the relevant evidence was a person's own conduct. The petitioner's approach here suggested a reversal of that and, seemingly, to place more weight on the evidence of Mr Taylor, as someone who might look into the soul of the petitioner. The sole issue here was whether the petitioner's claimed

conversion was genuine. The FTT had not been deflected by focusing too much on the question of baptism. There was no error of law in its approach.

The reply on behalf of the petitioner

[35] In reply, Mr Forrest accepted Miss Smith's analysis of the three possibilities and he argued that the petitioner was in category 2: someone who was on the road to conversion. He submitted that the evidence (at the end of para 11 of the FTT Decision and the terms of the Taylor letter) went so far as to establish that there was a "reasonable likelihood" of the petitioner converting to Christianity. In respect of the transience of the petitioner's conduct, Mr Forrest submitted that this was where Mr Taylor's evidence was relevant and overcame any difficulties.

[36] In response to questions from the bench, Mr Forrest confirmed that he had no criticism of *Dorodian (supra)* or the other cases referred to and that it did not matter that Mr Taylor was not a minister of the Tron Church. He had considerable experience in Christian leadership.

Clarification of the scope of the challenge maintained by the petition

[37] After I had made avizandum, but later the same day, parties returned to court as Miss Smith quite properly wished to confirm Mr Forrest's position in relation to the old case law issue, as he had not advanced any argument in support of that issue at the hearing.

[38] Mr Forrest accepted that he had advanced no submission. This was because, he contended, the leave interlocutor had determined that issue. Cases had been cited to the Lord Ordinary at the oral hearing on permission. This relieved the petitioner of the need to argue that this was an important point of principle or to set out what that principle was.

When pressed as to what the Lord Ordinary's determination of the old case law issue was, Mr Forrest could not say. He maintained his position that the leave interlocutor not only determined that the old case law issue was important (ie meriting the grant of leave) but that it had also determined that issue, in the sense of precluding any argument on it at the substantive hearing. He declined the invitation to make a submission about any deficiencies in the old cases (of *Dorodian* or *SJ supra*) or what direction the case law should be developed, if the court were to consider this issue, or to have a short adjournment in order to frame such a submission.

[39] Miss Smith rejected Mr Forrest's analysis of the leave interlocutor. All that the leave interlocutor had done was to enable the petitioner to argue the important points of principle at a substantive hearing. It did not relieve the petitioner of the obligation to argue them.

Discussion

The expert evidence issue

[40] I am not persuaded that there is any merit in the petitioner's submissions on the expert evidence point. I prefer the submissions on behalf of the respondent.

[41] There are four reasons that lead me to this conclusion.

[42] In the first place, properly analysed, in my view Mr Taylor was not giving expert evidence, in the sense of expressing his opinion on a matter recognised as constituting a body of expertise and in which he had skill or experience. Most of his evidence was as to matters of fact: what he had observed about the petitioner's conduct (eg the petitioner's irregular attendance at the Tron Church) or it was hearsay as to what the petitioner had told him about that or other matters. Even his evidence about the internal church arrangements (the operation of bible studies and how the leaders of those prompted or promoted

individuals to seek baptism etc) was factual evidence about the practices of the Tron Church in relation to baptism. At most, Mr Taylor was asked whether *he* accepted the genuineness of the petitioner's conversion. (This question, it seems to me, is subtly different from being asked whether in his opinion the petitioner's conversion was genuine.) As noted above, Mr Taylor did not answer that in the affirmative. In his view, the petitioner's conduct (or progress on the journey) was not such that the petitioner would be accepted as ready for baptism, as understood and practised in the Tron Church. While that is Mr Taylor's opinion, and which could hardly be regarded as unequivocally favourable to the petitioner, in my view that is not expert opinion evidence in a *Kennedy*-relevant sense (*supra*). If there had been a query as to doctrine of the Tron Church which were challenged or required explication, then, to that extent, his evidence about this might be expert opinion evidence. However, there was no such issue or evidence of that character before the FTT. It follows that the point of principle does not really arise on the facts of this case.

[43] Secondly, in any event, I am not persuaded that the case of *Kennedy* (*supra*) is relevant, at least to the way this case was presented before the FTT. *Kennedy* (*supra*) identified the requisite qualities of an expert, but it did so in the context of the admissibility of such evidence. No question was raised before the FTT of the admissibility (or even status) of Mr Taylor's evidence. The technical rules about evidence and admissibility are generally not applied with the same rigour in tribunals, such as the FTT, as they are to cases in courts. Further, the FTT is a specialist tribunal and I would be reluctant to be prescriptive as to the characterisation it should make of evidence (eg as "expert" evidence) or how it should approach or weigh such evidence. I accept Miss Smith's submission that the FTT is experienced and well capable of assessing sensitive issues such as whether a relationship is genuine and subsisting, or whether a conversion is genuine. I also accept her submission

that these issues do not require to be spoken to by of expert opinion. Such issues entail the assessment of an applicant's credibility, having regard to the whole evidence available to the FTT. These issues, as presented in this case, do not in my view engage the *ratio* of *Kennedy* (*supra*).

[44] Thirdly, I am not persuaded that the FTT misapprehended the "nature" of Mr Taylor's evidence. I do not accept Mr Forrest's submission that Mr Taylor's evidence went so far as to suggest that there was a reasonable likelihood that the petitioner would convert to Christianity or, to deploy Mr Forrest's metaphor, that the petitioner would complete the "journey". Neither the FTT nor Mr Taylor looked at this in a formal or mechanistic way, judged simply from the fact of the petitioner's two baptisms (which the FTT accepted). Rather, the FTT looked at the whole evidence to consider the genuineness of the petitioner's claimed belief. Critical to that was the evidence of Mr Taylor. I accept Miss Smith's submission that the FTT approached his evidence in a manner consistent with the Asylum Policy Instructions, in other words, precisely in the manner for which Mr Forrest contended. I note that the FTT Decision says in terms (at para 37) that it considered Mr Taylor's evidence "with great attention". In the same paragraph the FTT recorded its conclusion as to the import of Mr Taylor's evidence, which was that he was "unable to confirm that [the petitioner] was a genuine convert, but, rather was able to say only that [the petitioner] was 'on a journey'". Mr Forrest did not suggest that the FTT had mis-recorded Mr Taylor's evidence. In the light of the FTT's conclusion on the import of Mr Taylor's evidence, I do not accept Mr Forrest's submission that the evidence went so far as to disclose that there was a reasonable likelihood that the petitioner would convert to Christianity. Accordingly, I reject the submission that the FTT erred in not giving sufficient weight to Mr Taylor's evidence. It is clear that the FTT considered it with "great attention" and they

did not disregard Mr Taylor's evidence. Nor did they give it less weight, on the basis of (it was said) a failure to accord it the status of expert evidence. Certainly, there is nothing in the FTT Decision to suggest that they gave it less weight on the basis that it was not expert evidence. Furthermore, even if (on Mr Forrest's suggested approach) the FTT had accorded the greatest weight to Mr Taylor's evidence (and gave relatively little weight to the evidence about the petitioner's conduct), given its finding as to what that amounted to (which was no more than that the petitioner was "on a journey") it is unlikely that the FTT would have reached any other view. In my view, the FTT did not err in its consideration of the nature or effect of Mr Taylor's evidence or in the weight it accorded to it. (In expressing this conclusion, I reserve my opinion as to whether it is open to a petitioner to continue to advance at a substantive hearing an error of law argument, shorn of the features that satisfied section 27B (ie of being an important point of principle).)

[45] The fourth reason for rejecting the petitioner's expert evidence and error of law argument, is that the FTT's approach was entirely consistent with the case law cited to me. Mr Forrest did not suggest otherwise. He did not criticise, but indeed accepted, *inter alia* the cases of *Dorodian* and *SJ* (*supra*) referred to by Miss Smith. Neither party advocated that the FTT was obliged to look into the petitioner's soul. The sensible and sensitive approach articulated by HH Gilbert QC in *SA* (*supra*) at paragraph 24 has much to commend it: the focus of the enquiry suggested there was on the applicant's conduct, including membership of and participation in the life of a church or faith community in preference to peering into the soul of the applicant. (In that case, the genuineness of the applicant's conversion to Christianity was accepted. That gave rise to the question of what risk (if any) that might pose for the claimant on return to her country of origin, and a subsidiary issue of whether or not one could be a "closet" Christian or whether membership of a church necessarily

entailed a public expression such as to put one at risk. None of these questions arise in this case.) In terms of *Dorodian (supra)*, strictly, that case was concerned with the question of risk, once the genuineness of the conversion or commitment to a Christian church was accepted. Neither counsel who appeared suggested that that confined the observations in paragraph 8 to that situation. In terms of those observations, the procedural matters in paragraphs (b) and (c) had been complied with before the FTT in this case: Mr Taylor's standing in the Tron Church was vouched by an appropriate letter and, in the absence of any acceptance of the petitioner's committed church membership, Mr Taylor attended and gave evidence before the FTT. (I do not accept that the fact Mr Taylor is not a minister is of any moment.) The critical point was (a) that no one should be regarded as a "committed Christian who is not vouched for as such by a minister of some church established" in the UK. For the reasons already explained (in para [44]), Mr Taylor's evidence did not vouch for the petitioner in this sense. In relation to the observations of the IAT in *SJ (supra)*, the FTT did address the issue of the *bona fides* of the petitioner and Mr Taylor. The fact that it was satisfied with the *bona fides* of the latter did not require it to be satisfied with the petitioner's genuineness. It is in this passage that the IAT in *SJ (supra)* observed that the test for conversion was "more than a reasonable likelihood" and that the supporting evidence would be that the applicant's adherence to the church's principles had been "continuous throughout the period covered by" the applicant's stay in the UK. I do not regard that passage as setting up a mechanistic test or precluding a finding of genuineness, where there are good reasons why there has not been continuous adherence. The critical point is that, as it was put at the end of *SJ (supra)*, the decision taker needs to be satisfied "that the claim to adhere to the Christian faith is not a transient claim brought into existence purely for the purposes of pursuing an asylum claim". Given that the petitioner does not now challenge the FTT's rejection of his account of his

activities before he left Iran or its rejection of the reasons for his irregular attendance at the Tron, and the adverse inference the FTT drew in respect of the petitioner's non-disclosure to Mr Taylor of his baptism while in detention, all that the FTT had before it was Mr Taylor's equivocal evidence and the petitioner's limited or intermittent attendance at the Tron Church. I detect no error of the FTT or one that is at variance with the cases just noted. This ground of the petition fails.

The old case law issue

[46] I do not accept Mr Forrest's submission that the leave interlocutor determined this issue. If his submission were correct, then there would be no purpose in a substantive hearing. That flies in the face of how a gateway provision, such as section 27B of the Court of Session Act 1988, operates. That is also not what the leave interlocutor directs. In my view, the leave interlocutor simply granted leave on the basis that an "important" point of principle had been articulated. It says nothing about, much less did it determine (or preclude determination of), how that important point of principle was to be determined.

[47] It follows that it was incumbent upon the petitioner to advance an argument in support of the old case law issue, eg by identifying a deficiency, or some change in law or practice, that rendered that case law redundant or incomplete, and in need of revision. I have already recorded the parties' submission in relation to the two cases referred to. As noted, there was no real dispute between them about the import of these cases or, even, their application. It follows that, to the extent that it was placed before the court, there is no reasoned basis to revisit or revise the observations in these few cases. This ground also fails.

Disposal

[48] The petitioner's petition falls to be refused. I shall refuse the prayer of the petitioner and find the petitioner liable to the respondent in the expenses of the cause.