



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05047/2013

THE IMMIGRATION ACTS

Heard at: Manchester
On: 12th March 2015

Decision Promulgated
On 20th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

LJ
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Khan, Counsel instructed by Broudie Jackson and Canter
Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of the Islamic Republic of Iran who is now aged 44 years old. Her appeal has taken far too long to be resolved, and apologies must be offered to both parties for that. The Appellant's appeal was dismissed by the First-tier Tribunal (Judge Brunnen) on the 14th July 2013. Permission to appeal was granted by Judge JM Lewis on the 8th August 2013 and on the 11th October 2013 I heard submissions on whether the decision of the First-tier

Tribunal contained an error of law. Finding that it did, I directed that the matter be re-listed before me so that the decision could be re-made. So far so good. Then an unfortunate administrative error meant that the file was then sent into storage. Repeated requests by the Appellant's solicitors for the matter to be relisted went unheeded. It was not until February 2015 that the error was rectified, bringing the matter back before me. As I say, apologies are offered to both parties for this delay.

Background & Error of Law

2. When the Appellant claimed asylum back in April 2013 the basis of her claim was that she faced a well-founded fear in Iran for reasons of her imputed political opinion/ membership of a particular social group. Her case was that she had felt trapped in an unhappy and sometimes violent marriage to a man whose family had disapproved of what they perceived as her lax adherence to Iran's strict dress codes for women, and, by inference, her morality overall. Male members of his family were in the Eteelaat. The Appellant had an affair, this was discovered by her husband and she was taken to court and accused of adultery. She managed to escape detention after her father paid a fine and her husband withdrew the allegation against her. Having been returned to her difficult domestic situation, and fearing that further allegations would be made against her, the Appellant left Iran.
3. The Respondent did not believe the account given and the claim was rejected on the 6th May 2013¹.
4. When the matter came before Judge Brunnen in July 2013 he had an opportunity of hearing live evidence from the Appellant. Having done so he gave a number of unassailably sound reasons why he did not accept the Appellant's account as credible. Whilst he accepted that she had been unhappy in her marriage, he rejected her evidence that members of her husband's family were in the Eteelaat, that she had been caught having an affair or that she had faced criminal prosecution as a result. The Appellant had on appeal stated that she had taken an interest in Christianity. Although at that stage she did not put it any higher than that, she was resolute in her evidence that she no longer considered herself to be a Muslim. She objected to having to conform to strict Islamic dress codes and felt it an infringement of her rights to have, for instance, to cover her head. Of this last matter Judge Brunnen said this [at 41]:

“With regard to the issue arising from religion and the Iranian dress code, I accept Miss Khan's submission that the Refugee Convention protects the right to hold no religious belief as much as the right to hold a particular belief. However I do not accept that this right is infringed by being compelled to dress in a particular way. I accept that the dress code enforced in Iran is based on the Islamic foundation that underpins all

¹ The appeal is brought against a decision to remove the Appellant pursuant to s10 of the Immigration and Asylum Act 1999 dated 14th May 2013.

aspects of Iranian society. However the dress code is not simply a matter of religion. It is also a matter of culture and social mores. For a woman to have her head uncovered in public, for example, would not merely be in contravention of Islamic ideas but also an offence against public decency. All societies have standards as to how it is or it is not acceptable for people to dress and these are not merely manifestations of religious belief. I do not consider that being compelled to comply with the locally acceptable standard constitutes persecution for reasons of religion or any breach of any protected human right”.

5. It was against this reasoning that the appeal was brought to the Upper Tribunal. At the hearing in October 2013 Ms Khan successfully argued that the First-tier Tribunal had erred, in the context of Iran, in seeking to distinguish social expectations about dress and behaviour from religion. There had been before the Tribunal an expert report by Dr Kakhki who had explained in detail the relationship between the state and religion in the Iranian theocracy. The dress code enforced by the laws of that country were universally described as “Islamic”. I, and indeed the Respondent, agreed that this was so. There was a clear causal nexus between the harm feared – for instance being attacked in the street by Baseeji or being sentenced to flogging – and the Convention reason. If the Appellant were to be seriously harmed for refusing to comply with Iranian dress codes that would be persecution for reasons of her (lack of) religious belief. There was further an omission in that the determination contained no findings of fact about how the Appellant *would* in fact act if returned to Iran. This was an important consideration. I noted in my written decision on ‘Error of Law’ that I remained to be satisfied that if she chose to comply and cover her hair, albeit with internal objections, that this would be so fundamental a breach of her core human rights so as to amount to persecution: the ‘HJ (Iran)²’ point would therefore need to be addressed in the re-making. The decision was set aside to that limited extent.

The Re-Made Decision

6. Perhaps inevitably, given the delay, the Appellant’s case had developed considerably by the time the appeal was reconvened. The central plank of her case was now that she has formally converted to Christianity, having been baptised at Liverpool Cathedral. As such she was an apostate from Islam and faced a real risk of harm as a result. Permission was sought to adduce evidence on this matter. Mr Harrison did not object. He rightly accepted that this was not an entirely new basis of claim. Part of the Appellant’s case had always been her antipathy towards Islam, and she had expressed her nascent interest in Christianity before Judge Brunnen. As such this new material was part of a continuum of evidence. Permission was granted for the new evidence to be admitted. This comprised a letter from Liverpool Cathedral, her baptism certificate and pictures of the ceremony, and a statement from the Appellant.

² HJ (Iran) and HT (Cameroon) [2010] UKSC 31

7. Live evidence was called from the Appellant and from Canon Richard White of Liverpool Anglican Cathedral. Canon White worked as a missionary with young people for many years before he trained as a vicar and took a degree in Theology. The Appellant first attended the Cathedral in the Autumn of 2013. That was when Canon White first met her and he has seen her regularly – at least on a weekly basis – since then. The Appellant attends the Cathedral at least twice per week. She comes to the standard Sunday service and on Monday evenings comes to the Farsi service. There are about 60 Iranians who attend this service. The congregation on Sundays is usually between 350 and 400 people. Canon White thought that the majority of the Iranians do not have any settled status in the UK. As far as he is aware about 15 of them have leave to remain.
8. The Appellant has completed the Alpha course. This course is designed as an introduction to Christianity. It lasts for about 14 weeks and the Church of England would ordinarily expect people to have completed it before they are baptised. The Canon delivered the course that the Appellant took. It was delivered through interpreters in Farsi, and it has been adapted specifically to answer questions often raised by people who had formerly been Muslims, for instance particular questions about the nature of the trinity. Part of the message of the Alpha course is that it is important to spread the faith. Although he has not personally witnessed the Appellant evangelising he has no reason to doubt that she would.
9. Canon White said that the Cathedral would not baptise someone if they were unsure as to whether that individual had genuinely converted. They are of course aware that there is an advantage to be gained for some nationalities who may be able to make asylum claims because of their conversion. As a result the Cathedral is rigorous in its approach. They have produced a leaflet in Farsi which explains to new congregants that they cannot expect anyone from the Cathedral to attend court for them, nor that they will inevitably be baptised. In the case of the Appellant part of her preparation was a weekend course where the former Bishop of Tehran attended and spoke with the participants – he also helped to baptise her alongside the Bishop of Liverpool. Whilst it can never be said with 100% certainty that anyone is definitely genuine neither Canon White nor any other member of clergy at the Cathedral have any doubts about the Appellant. He has had many opportunities to talk to her about her faith. She takes an active role in the life of the Cathedral and she appears to him to understand and believe in what she is doing. In response to Mr Harrison's questions Canon White confirmed that the Cathedral has refused to baptise people, and that he has personally refused to baptise an Iranian asylum seeker. The Appellant is one of the exceptional cases where the clergy at the Cathedral have decided that they should support her case. In all the years that he has been ministering to the Iranian congregation Canon White has only attended court on four other occasions. All of those four individuals continue to attend the Cathedral regularly. He has refused to attend numerous asylum appeals including in three cases those

of Iranians who had been baptised – in each of these cases something had given rise to doubt about their faith after the baptism and Canon White therefore refused to support their claims.

10. Having heard the evidence of the Appellant and Canon White, and having had an opportunity of cross-examining both witnesses, Mr Harrison said that he was not going to seek to persuade me to reject the claim that the Appellant had converted. Notwithstanding that her earlier evidence had been rightly rejected by Judge Brunnen this was not a claim that came ‘out of the blue’; the Appellant as she presented today was a natural progression from the woman that had claimed asylum two years ago. Canon White is a man of considerable experience and it is clear from his evidence that he and his fellow clergy at Liverpool Cathedral are all too well aware that some Iranians might seek to “fake” conversion in order to make unfounded asylum claims. That is something he is alive to and it has indeed led him to refuse to baptise, and attend court, for others. Over a period of two years he had come to know the Appellant well, seen her and spoken with her on a weekly basis and he had formed the view that he was as sure as he could be about her claim to be a Christian. Mr Harrison accepted that I would be entitled to attach substantial weight to his opinion. In the absence of any evidence to the contrary, the Appellant has shown on the lower standard of proof that she is in fact a Christian.
11. It follows that the Appellant’s appeal must be allowed on asylum grounds. I, like Mr Harrison, was left in very little doubt that the Appellant has genuinely converted to Christianity. Having left Islam she is by operation of Islamic law as it is applied in Iran and apostate and would very likely suffer serious harm on return as a result.
12. In respect of the Appellant’s objection to wearing the hijab she was ambivalent about what she would actually do if returned to Iran. Although she consistently said that she has objections to being forced to cover her hair, she was not able to say with certainty what she would actually do if faced with the dilemma. She initially said that if returned to Iran she would wear the headscarf because if she did not there would be serious consequences. She then adamantly said that she would refuse. Finally she said that she did not know what she would do. It would be a difficult decision. She was unable to articulate why she objected to the garment beyond saying that she did not like it. God had made her like she was and she did not want to hide that. She then accepted Mr Harrison’s point that God had made us all naked and that it was probably not socially acceptable for us all to walk around with no clothes on. Having heard the Appellant’s evidence Ms Khan chose not to make submissions on the hijab point, notwithstanding that her solicitors had provided a very erudite report by Dr Anna Enayat of Oxford University. Although Dr Enayat’s report raised interesting points I find that Ms Khan was wise not to pursue this point in this case. Although it was clear from the Appellant’s evidence that she did not *like* the hijab she was unable to say

whether she would in fact wear it, or why she would object to it if she did. She did not, for instance, couch her objections in terms of gender discrimination or religious belief. Nor did she claim that having to wear it would amount to a flagrant breach of her personal and moral integrity. For those reasons that plank of her case was rightly not, in the end, pursued.

Decisions

13. The determination of the First-tier Tribunal contains an error of law and it is set aside only to the extent identified above.

14. I remake the decision in the appeal as follows:

“The appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection because she is a refugee.

The appeal is allowed on human rights grounds”.

15. In view of the subject matter of this appeal I make a direction for anonymity having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

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

Deputy Upper Tribunal Judge Bruce
10th May 2015