



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/06070/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2016**

**Decision & Reasons Promulgated
On 6 May 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**SBA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Counsel instructed by Elder Rahimi Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

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

I was not addressed on the issue of anonymity by the parties and it is not clear to me whether such a direction has been made by the FtT. In any event, it is appropriate in the circumstances that there is such an order and I make one.

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

1. The appellant is a citizen of Iran and her date of birth is [] 1987. The appellant made a claim for asylum based on her conversion to Christianity and this application was refused by the Secretary of State in a decision of 5 August 2014. The appellant appealed against that decision and her appeal was dismissed by Judge of the First-tier Tribunal Herwald following a hearing on 23 September 2014. The decision was promulgated on 29 September 2014.
2. The Upper Tribunal refused to admit the decision on 1 January 2015. Following on from that, that decision was quashed by order of the High Court on 9 June 2015 following an order on 16 March 2015 where permission was granted because it was arguable that the decision of the Judge of the First-tier Tribunal to refuse the application for permission to appeal and the Upper Tribunal to not admit the application were decisions that were wrong in law. Following on from that, permission was granted by the Vice President of the Upper Tribunal on 15 July 2015. Thus the matter came before me.

The Decision of the FtT

3. The issue of the concept of Taqiyya where Muslims are permitted to lie was raised by the judge at the hearing in the First-tier Tribunal. The matter was put back for the parties to consider this issue. The Presenting Officer, when the hearing was reconvened that same day, relied on printouts from a website. It is clear having read the decision of the judge that he attached significant weight to the concept of Taqiyya which he recorded was a matter of judicial knowledge (see paragraph 3) and to the documents submitted by the Presenting Officer (see paragraph 13(b), (c) and (d).)
4. The judge heard evidence from the appellant and witnesses relating to the appellant's claim to have converted and made the following findings;
 - “(g) I must say that the Appellant, superficially, made a good witness. She cited scripture. She said that she was a Christian ‘according to Christian sayings. I have never lied’. It was put to her that in 2011 she was found not to be a credible witness. To put it bluntly, she was found to have been lying. Mr Dillon suggested to her that if she was able to produce an ‘asylum story’ by lying then, she might be doing so now as well. This was her response: ‘In my previous case I said the truth. And from the time I became a Christian and the Holy Spirit is within me, I have never lied and never would’.
 - (h) Thus it became apparent to me that the Appellant was maintaining that the history which she had recited beforehand, and which Judge Nicholson found to be a catalogue of untruths, was indeed the truth.
 - (i) Mr Gayle suggested to me that it was possible that Judge Nicholson got it wrong. I am not bound by the findings of Judge Nicholson, but nothing I heard today

persuades me to depart from his initial findings that so far as I can tell, before him, this Appellant did not tell the truth.

- (j) The case before me today, is whether or not she is indeed a genuine convert. The fact that she maintained that her earlier story was the truth, does not help. It was put to her that she came to the United Kingdom, made an asylum claim which was refused, appealed, and this was refused, and then looked for other ways to say in the United Kingdom. I note incidentally that she failed to claim asylum in Germany, and that this was found to have damaged her credibility by Judge Nicholson.
- (k) The Appellant insisted that this was not the case. I did however find her at some stages of her evidence to be somewhat evasive, and, I might say, very reliant on constantly repeating the mantra that Christianity does not permit lying. She was asked what else she did at the church, and this is the sort of answer which I became used to: 'We have a duty to see and know about each other. I said if I could help anyone I would be happy. With regard to someone who has certain duties, that's all'.
- (l) There was however copious evidence from others that this Appellant has not only attended church but also helped with coffee mornings, uses her IT skills to assist with the newsletter, and has attended other church groups.
- (m) The concept of takieh was put to the Appellant. She was reminded that given the concept of takieh, if and when she returned to Iran, she would be free to become a Shi'a again and takieh would explain away her apparent conversion. This was her response:- 'I am a Christian, wherever I am in the world, takieh belongs to the Shi'a faith. I am not a Muslim, I am a Christian. I have never had a reason to lie. I won't denounce my faith'.
- (n) I found the Appellant to be somewhat evasive, somewhat reliant on Christian mantras (if I may call them that) and therefore I had to look to the other witnesses to gain some sort of insight into their understanding of her claimed conversion.
- (o) Reverend [T] is Rector of [L]. She had written a lengthy letter, and maintained, very clearly, that this Appellant 'radiated Christianity'. This was very powerful evidence. However, on the other hand, it soon became apparent during cross-examination of Reverend [T], that she knew next to nothing about the background of the claimant, and knew nothing about the initial claim of the Appellant, which, I find, would have been helpful in the circumstances. She insisted that she had spoken to the Appellant on many, many occasions, and has reason to know her, and yet she had no idea that the Appellant had, for example, failed to claim asylum in Germany or elsewhere. The Reverend knew nothing of the concept of takieh, and had little time before me to assimilate any information about it, or to comment upon it. She conceded that she knew insufficient about Islam to be able to comment.
- (p) She was asked by Mr Dillon how many other Iranian converts attended her church and she said that she had only been there a year in all, and did not know about other Iranian converts.
- (q) The thrust of questioning from Mr Dillon to her and others, was that successful Iranian convert refugees might well bring that idea to the attention of other unsuccessful refugees, and this might lead to a successful asylum claim.

- (r) I note that the Appellant had been in the UK for nearly a year before she entered the church in June 2012, and although she claimed that at that stage she was at a low point in her life, no realistic reason was given for her suddenly turning to the church on that occasion, or at that time.
- (s) I am grateful to Reverend [T] for coming to court and sharing her powerful views on this young woman. But I am also persuaded that the Appellant is an intelligent, well educated, well-read, and articulate young woman. I note that she is capable of leaving Iran as she did, concocting a story to put before the authorities in this country, spending nearly a year in Turkey beforehand and then failing to claim asylum in Germany. I note that Reverend [T] knew nothing of the concept of takieh.
- (t) Insofar as anyone can look into the heart and soul of another, in this case I am not persuaded that the Appellant is a genuine convert to Christianity given her history, and her presentation before me. I am however persuaded that she has managed, to put it given in the vernacular, to 'pull the wool' over the eyes of the trusting and perhaps, with respect, slightly naïve Reverend Throup, who did not have experience of asylum seekers beforehand.
- (u) Dr [G] was equally convinced that the Appellant was a true asylum seeker, in that she had genuinely converted to Christianity. I remind myself that others said the same in writing, but their evidence was not tested before me. Dr [G] gave evidence that he had come across previously, an insincere Pakistani claimed convert, who was nothing of the sort. Dr [G] suggested that he was therefore 'on his mettle' he said that he knew something of the concept of takieh but this was 'an intelligent woman who has learned the Bible, and once she had started one lie, she would have to continue with it and people like that usually come unstuck'. He reminded me that he had known her for more than two years.
- (v) Again, on the face of it, this is powerful evidence, and I was grateful for his evidence and do not seek to suggest that he was attempting to mislead the court. Rather, I am, sadly, persuaded that the Appellant is someone who has sought successfully to mislead him. Dr [G] was perhaps a little too emphatic in his belief he could not possibly be wrong. I am not persuaded that he was right in his analysis of the Appellant's motives for conversion.
- (y) I did not hear from Mr [A] as to whether or not he agreed it was March 2012 or March 2013, but frankly, in my view it makes little difference. During that time, it is perfectly possible that the Appellant would have met other Iranian asylum seekers. Whether or not she did, as I have said, this is an articulate clever young woman, with great IT skills, who would not have found it difficult to work out that by claiming to be a Christian in this country, one could avoid being sent home to Iran.
- (z) My analysis is that here, these nice people who have all written generous testimonies for this Appellant, have never considered that this might be a woman who has deliberately set out to deceive them over time, with a view to ensuring that they came to give evidence that she was a genuine convert. During that period she has had time to 'learn the script' and be able to present as a genuine Christian. In short, I find that the Appellant has maintained a sophisticated ploy, (as she did in a different way before Judge Nicholson) and I am not persuaded that she is a genuine convert to Christianity."

The Grounds of Appeal and the Oral Submissions

5. Mr Gayle submitted that he made oral submissions at the hearing relating to the source of the background materials produced by the Presenting Officer. He conceded that there was no application for an adjournment made. Mr Gayle has now produced evidence that would support the assertion that at least some of the material relied upon by the Presenting Officer was from a partial website. The grounds do not establish that the judge himself was biased, but I agree with the grounds that the assessment of credibility was flawed because there was unfairness caused to the appellant because of the judge's reliance on unsourced and potentially partial background evidence. I accept that Mr Gayle made submissions about the source of the material with which the judge failed to engage. It is clear from the decision of the judge that he was heavily influenced by the material (and the concept) and this had significant impact on the credibility assessment. In hindsight Mr Gayle should have asked for an adequate adjournment to consider the background evidence relied on by the respondent and which was obtained at the eleventh hour.
6. Whilst it is the case that there is a previous determination and Devaseelan applies (Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702), which may not assist this appellant in terms of credibility, in my view there was a material error of law in the decision of the judge for the reasons identified above and the decision to dismiss the appeal is set aside. The matter was remitted to the FtT for a de novo hearing.

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Signed Joanna McWilliam

Date 2 March 2016

Upper Tribunal Judge McWilliam