Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07594/2014**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 22 December 2015

Decision Promulgated
On 21 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

N K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Brown counsel instructed by GMIAU
For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was previously made and will continue.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

© CROWN COPYRIGHT 2016

3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Devlin promulgated on 10 March 2015 which dismissed the Appellant's appeal against a decision to remove him from the UK for reasons set out in a refusal of asylum decision dated 8 September 2014.

Background

4. The Appellant was born on 9 April 1988 and is a national of Iran and was born a Shia Muslim.

5. On 11 May 2015 the Appellant applied for asylum on the basis that he had to leave Iran illegally because he wanted to convert to Christianity.

6. On 8 September 2014 the Secretary of State refused the Appellant's application. The refusal letter can be summarised that in essence:

   (a) It was not accepted that the Appellant was a Christian convert.

   (b) The Appellants credibility was generally undermined by his failure to take the opportunity to claim asylum in Spain and he had destroyed his passport.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Devlin ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :

   (a) He considered in considerable detail the discrepancies raised in the refusal letter and found there were indeed a number of discrepant responses which made the evidence of the Appellant unreliable.

   (b) He identified a number of other discrepancies between the screening interview, the asylum interview and his oral evidence.

   (c) He considered the points made in respect of the Appellant's claimed conversion to Christianity in the refusal letter and while finding some of the points to be well made he was unwilling to draw adverse inferences from other claims made by the Respondent which he did not consider well founded.

   (d) At paragraphs 301- 363 he set out in detail the submissions of the HOPO and Mr Brown who also represented the Appellant in the First-tier which included from both consideration of the evidence of [H] in relation to the Appellant's conversion.

   (e) He identified at paragraphs 345-361 the concerns that he had about the evidence of [H].

   (f) His conclusions as to the events that the Appellant claimed led to his flight from Iran are at paragraph 364 – 372 and he finds a number of discrepancies.

   (g) He considered the credibility of the Appellant's decision to become a Christian in Iran and whether he was a genuine convert at the date of hearing and confirmed that he looked at the evidence in the round.

   (h) While acknowledging that the Appellant had completed the Alpha course and been baptised and was a regular attendee at Church and noting that the Dorodian witnesses were aware of the possibility of false converts he found that

he was not satisfied to the lower standard of proof that the Appellant was a genuine convert to Christianity .

(i) He considered whether the Appellant would be at real risk on return as a failed asylum seeker who had left Iran illegally claiming he had converted to Christianity noting in detail the submissions made by Mr Brown. He considered whether Mr Brown had adduced very strong grounds supported by cogent evidence to justify him departing from the CG case of SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 and concluded at paragraph 419 that he had not.

(j) At paragraph 423 he concluded that he could not be satisfied that the Appellant left Iran illegally but rather was someone facing forced return.

(k) He concluded that there was no evidence of risk on return as someone who had fabricated a claim to have converted to Christianity.

8. Grounds of appeal were lodged and initially permission to appeal was refused. Grounds were renewed and on 16 June 2015 Upper Tribunal Judge Perkins gave permission to appeal stating:

> "... it is arguable that he misdirected himself when he was critical of the length of the Alpha course because it is arguable that he had sufficient details in the unchallenged evidence of [H]. It is arguable that this error, if established, is material although it might be thought that it did not matter because the Judge did have a clear idea of the time [H] spent with the appellant …
>
> I am however more concerned about the risk on return … the appellant must be careful to show how the Judge erred, if at all, in considering the material that was before him and not merely rely on appeals or applications on apparently similar facts being allowed."

9. At the hearing I heard submissions from Mr Brown on behalf of the Appellant that:

(a) He relied on the grounds of appeal that raised two issues in relation to the evidence of [H] and the Judge's assessment of the Alpha Course and how the Judge dealt with the current unsettled issue of risk on return to failed asylum seekers.

(b) In relation to risk on return the Judge missed the point which was that prison conditions in Iran breached Article 3 and a failed asylum seeker would be detained and therefore there would be a breach of Article 3.

(c) He argued that in SB it was not accepted that detention facilities breached Article 3 but the Home Office now accepted this. If the Appellant was detained the Judge was required to consider the breach of Article 3.

10. On behalf of the Respondent Mr McVitie submitted that:

(a) The Judge accepted that the Appellant attended the Alpha Course but concluded that the Appellant was not a genuine Christian.

(b) In relation to the risk on return the Judge set out in detail why he did not find that the Appellant was at risk on return.

11. In reply Mr Brown on behalf of the Appellant submitted that the Judge failed to consider, having accepted that he would be questioned on arrival, whether such questioning would occur while the Appellant was detained.

The Law

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

13. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

14. The first challenge was to the Judges finding that the Appellant was not a genuine convert to Christianity and in particular how the Judge factored the evidence of [H] in relation to the Appellants attendance at the Alpha Course into that assessment. In particular it is suggested that the Appellant should have been given the opportunity to address the concerns expressed by the Judge about the course at paragraph 354.

15. The Judge set out the oral evidence of [H] in detail at paragraph 20-22 (xii) and this included at 22 (vi) that the Appellant had attended 12 weeks of Alpha classes 1 hour each and the meetings that followed that were about 3 hours long He found that the witness gave his evidence 'openly, honestly and conscientiously' (paragraph 330).He did not say, although it would have been open to him, that an honest and genuine witness can be mistaken.

16. He set out in detail why the witness believed that the Appellant was genuine. He noted that the witness acknowledged a number of aspects of his evidence which inevitably affected the weight he attached to the evidence given that they limited the witnesses opportunity to make a meaningful assessment and these included : he had only seen the Appellant 2-3 times a week; the Appellant was one of 30 Iranians in the congregation; evidence of 'fervour' could only carry one so far; the Appellant was one of 50-60 who attended bible classes; the witness did not have much time for individual work with members of the Bible group; the witness barely spoke Farsi; he could not cite contributions by the Appellant in Bible class that had 'impressed' him and the Appellant came to his home for lunch on 3 occasions.

17. The Judge gave reasons at paragraph 342-344 why he was unpersuaded by [H]'s suggestion that the 'fervour' displayed by the Appellant could not be 'faked'.

18. The Judge does state that he found it difficult to know what weight to attribute to the fact that the Appellant had completed the Alpha course as there was no evidence of the nature and content of the course or how the genuineness of faith is assessed on the course and how the Appellant performed or why it was determined that he had progressed sufficiently for him to be baptised. The Judge makes clear in his decision when addressing the genuine nature of the Appellant's claimed conversion that although he accepted the evidence given that the Appellant was a participating member of the Church and had completed the Alpha course these were not determinative as Mr Brown suggested of the issue of his conversion: the Judge looked at all of the evidence in the round. The Judge however in acknowledging that the Appellant had completed the Alpha course also identified that Canon White did not feel able to say any more than that '*nothing in [the Appellant's] behaviour caused him to doubt [that he was a participating member of the Christian Church]'* and this was despite that fact that the Appellant had completed the Alpha Course. It seems to me that the Judge was entitled to say that if completion of the Alpha course was not determinative of the Appellant's faith for Canon White it had to affect the weight he gave to the Appellant's completion of it.

19. More importantly I am satisfied that what the Judge said in this paragraph 354 must be read in the context of the decision as a whole but specifically in the context of many paragraphs that deal with the credibility of the Appellant generally and the credibility of his claim to have converted to Christianity. If his concern about the length and content of the Alpha course was the sole basis for him not finding that the Appellants claimed conversion was genuine I accept that the Appellant should have been given the chance to address it but it was one brief observation against a swathe of other findings that undermined his claim.

20. Thus in an extremely detailed and well-reasoned analysis of the evidence I am satisfied that the Judge gave more than adequate reasons for why he did not find the Appellants claimed conversion to be genuine by reference to all of the evidence in the round and not just the evidence of [H] and these included:

    (a) The Judge considered at paragraphs 61-185 various responses that the Appellant had given in the asylum interview. He set out in detail those answers that he found were discrepant. These undermined the Appellants general credibility and the Judge was entitled to conclude rendered his evidence unreliable.

    (b) The Judge additionally identified at paragraphs 186-208 further discrepancies between the Screening Interview, asylum and oral evidence in relation to his claimed desire to convert in Iran. The Judge was entitled to conclude as he did that this undermined the Appellant's evidence generally and rendered the account he had given of events in Iran unreliable.

    (c) The Judge at paragraphs 209-300 specifically considered the Appellants account of his conversion to Christianity as it was challenged in the refusal letter. He rejected a number of challenges including those relating to the failure to take steps to convert on arrival, in relation to his apparent inability to recite verses or name the Apostles concluding fairly that he had no benchmark against which to test the Appellants understanding. Nevertheless he found that there were discrepant answers setting those out in detail at paragraphs 243-264.

(d) He found at paragraph 284-293 that it would be reasonable for someone who had decided to convert to be able to identify differences between their old and new religion and found that the Appellant was unable to do so.

(e) He found that the reasons given by the Appellant for choosing to convert were vague and lacking in clarity (paragraphs 293) and then went on at paragraph 295-298 to cite examples of the lack of clarity. These were conclusions that were open to him.

(f) He considered that the evidence of the Reverend Canon Richard White who did not attend court but provided a supporting letter. He set the contents of the letter out in some detail and gave clear reasons for his conclusion at paragraph 318 that the Canon's letter was 'hardly a ringing endorsement of the Appellant's claim to be a genuine convert to Christianity' concluding that it added little weight to his claim.

(g) He recognised that there may be an incentive to those facing removal to demonstrate outward manifestations of faith.

21. The second argument is that the Judge failed to assess the risk on return as an undocumented failed asylum seeker. In essence Mr Brown argued that the Appellant would be detained for questioning on return and that given the contents of the OGN of October 2012 conceding that detention facilities breached Article 3 the Appellant would be at risk. The Judge noted the arguments and analysed each case advanced by Mr Brown at paragraphs 393- 428. I am satisfied that the Judge understood Mr Brown's argument but did not accept it. He gave adequate reasons for rejecting the arguments in that he stated that the OGN of 2012 relied on have been superseded by more recent COI reports; he found that SB was still the Country Guidance case and therefore that he needed strong grounds supported by cogent evidence to depart from it; he distinguished at paragraph 400-404 the COI relied on by Mr Brown from this case and concluded that making a false claim of itself would not put the Appellant at risk; he accepted that illegal exit might result in questioning but at paragraph 423 did not accept that the Appellant had exited illegally and therefore it could not be assumed that he would be *detained* for questioning; in relation to those cases where permission to appeal decisions in other Iranian cases had been granted the Judge analysed the reasons and found them to be 'opaque' and did not justify a departure from SB. He also gave reasons at paragraph 427 for finding that given his finding that the Appellant's claimed conversion was fabricated the Iranian authorities were sufficiently astute as to distinguish between opportunistic claimants and persons they regard as subversives.

22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*"

23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

25. **The appeal is dismissed.**

Signed Date 21 1 2016

Deputy Upper Tribunal Judge Birrell