



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00170/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 May 2017

Decision & Reasons Promulgated
On 16 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

AH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hodson, instructed by Elder Rahimi solicitors
For the Respondent: Mr Norton, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1977. There is a dispute about his date of arrival which was either on 10 April or 10 June 2016. On 30 June 2016 he was encountered by police at a named location. He was detained and claimed asylum. The basis of his claim was that he is a convert to Christianity, that he had become interested in Christianity whilst in Iran and since he arrived in the United Kingdom he had begun attending a church and had been baptised.

2. The Respondent refused his application for asylum in a decision dated 23 December 2016. The Appellant's appeal against that decision came before Judge of the First-tier Tribunal M A Khan for hearing on 7 February 2017.
3. The Judge heard evidence from the Appellant and from Reverend H who confirmed that the Appellant regularly attended at his church and that he had been persuaded to baptise the Appellant not because he was asked to but because of his testimony and his behaviour. There is a Farsi interpreter available at this particular church. The Reverend confirmed the Appellant has an understanding of Protestantism and has become close to his church and attended a number of meetings, as well as services.
4. In a decision promulgated on 27 February 2017, the Judge dismissed the appeal primarily on the basis that he found the evidence of the Appellant to be "*vague and evasive*" and he did not accept that evidence. In relation to the evidence of Reverend H he accepted that the Reverend had an honest belief that the Appellant was a Christian convert but this was based on "*mistaken premises*".
5. An application for permission to appeal to the Upper Tribunal was made in time on 9 March 2017. The grounds in support of the application asserted
 - (1) the Judge materially erred in failing to give adequate reasons for his repeated assertions that the Appellant's evidence was "*vague and evasive*" (at [29], [30], [41], [42], [44], [45] and [48]). The judge failed to explain in what way the Appellant's evidence was supposedly vague and evasive and this was a bare assertion with no adequate reasons provided or indeed no reasons given at all. Reference was also made to the decision of the president in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC);
 - (2) the Judge failed to take all of the Appellant's evidence into account. It was asserted the Judge materially erred in failing to take account of the Appellant's detailed appeal statement, despite the fact that this had been adopted at the outset of the hearing in order to stand as his evidence-in-chief. In particular, the Judge erred materially in taking account of the Appellant's evidence as to the date of his arrival, it having been asserted that the Home Office interpreter at his screening interview made a mistake in converting the date of arrival which was 10 Tir 1395, as 10 April 2016, rather than 30 June 2016 which was the date the Appellant was encountered by West Mercia Police;
 - (3) the Judge erred materially in law in his treatment of the supporting evidence of the church witnesses. It was submitted the Judge erred materially in law in that Reverend H makes it very clear in his letters of 13 December 2016 and 17 January 2017 that he believes the Appellant to be a sincere Christian convert and he gives detailed explanations and reasons for his assessment. In finding that Reverend H's belief is based on mistaken premises [at 47] the Judge erred in that the events in Iran were not the basis of Reverend H's views and reasons for accepting the genuineness of the Appellant's conversion, but were based on the evidence to which he could attest as to the Appellant's knowledge of Christianity and secondly the Judge erred in his approach in that having found

the Appellant not to be credible, he then disregarded the testimony of Reverend H and the Judge failed to take all the evidence in the appeal into account in the round before arriving at conclusions on the matter of the Appellant's faith;

- (4) the Judge materially erred in failing to carry out any meaningful assessment as to the risk to the Appellant on the point of return to Iran, given that which the Judge accepted the Appellant has been attending church regularly in the UK, has been baptised and has been undertaking Bible classes.
- (5) In light of the country guidance decision in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) as regards practice at the airport, the Appellant would be liable to be questioned on return and would be asked about his activities whilst in the United Kingdom and his reasons for claiming asylum. It was also clear in light of the principles upheld by the Supreme Court in RT (Zimbabwe) and Others [2012] UKSC 38 that it was unreasonable to expect returnees to lie to would be persecutors in order to protect themselves from ill-treatment. Consequently there was a risk to the Appellant on the point of return which the Judge failed to address.

Hearing

6. At the hearing before me, I heard submissions from Mr Hodson which were in line with his grounds of appeal. He provided a copy of the decision in *MK (Pakistan)* (op cit) and also documentary evidence as to the names of the months in the Iranian calendar and how these relate to dates within the Gregorian calendar. He submitted that the Judge has taken the mistranslation of the date from one calendar to another as a credibility point and this was thus a material error. Mr Hodson also relied strongly on his third ground in relation to the treatment of the evidence from Reverend H.
7. In response, Mr Norton submitted that the point in relation to the translation of the date was not particularly determinative, that the Judge was essentially entitled to place reliance on this in relation to an assessment of the credibility of the Appellant, given that it was raised in the refusal letter at C4 and that was based on the Appellant's answers at his asylum interview at B2 which records that he said he arrived on 10 April 2016 and in any event, this was not the lynchpin of the Judge's credibility findings.
8. In relation to the treatment by the Judge of the evidence of Reverend H, Mr Norton submitted that this was essentially an irrationality challenge and the Judge was not obliged to accept Reverend H's views of the genuineness of the Appellant's conversion and he had not erred in so doing.
9. In relation to the adequacy of the reasons provided by the Judge, Mr Norton drew my attention to paragraphs 39 onwards of the judge's decision where reasons are given. Mr Norton submitted whilst another Judge could have decided the case differently the Judge had not acted irrationally in rejecting the evidence before him.

10. In relation to the fourth ground, Mr Norton submitted that this does not stand by itself and would fall in any event if the Appellant were not believed.
11. In his reply, Mr Hodson denied that ground 3 was a rationality point, in light of the decision in Dorodian 01/TH/01537 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 this country: as we have said, it is church membership, rather than mere belief, which may lead to risk.*” He submitted that the evidence of the witness goes to the core issue in the appeal and must be taken into account along with the other evidence. What the Judge has done is in fact reverse the correct approach and having found the witness was not credible then rejected the evidence of the Reverend and that finding in respect of his rejection of Reverend H’s evidence on the basis he was mistaken was an error of law.
12. In relation to the first ground and the duty to give reasons Mr Hodson submitted that it is not correct to just use the stock phrase such as “*vague and evasive*” without an explanation as to why he found this to be the case. In relation to ground 4, Mr Hodson indicated although he placed more reliance on the first three grounds, he did consider that this was a standalone point because the questioning that the Appellant would have to face upon return to Iran would cover activities in the United Kingdom, there would be a *sur place* element and regardless of whether or not that activity had been carried out sincerely it was clear in the light of the decision in Danian [1999] EWCA Civ 3000 that this would not make any difference, given that the Appellant would have to endure up to two hours of interrogation and would be unable to lie in order to protect himself.

Notice of Decision

13. I indicated to the parties that I found a material error of law in the decision of First-tier Tribunal Judge M A Khan and that the matter would be remitted back to the First-tier Tribunal for a hearing de novo. I now give my reasons.
14. I find there is merit in the grounds of appeal upon which permission to appeal was granted. It is the case that the Judge found the Appellant not to be credible and the reasons provided for that finding are from [41] onwards *viz* the Appellant’s evidence was vague and evasive. The difficulty is that that is not an end in itself, in that the Judge failed to set out why the evidence was vague and evasive.
15. The key issue in the asylum claim and the appeal is the issue of the Appellant’s conversion to Christianity which was supported materially by the evidence of Reverend H who not only provided two detailed letters in support of the Appellant’s claim in that respect but also attended before the First-tier Tribunal and gave oral evidence and was cross-examined by the Respondent.
16. I find that the Judge erred materially in law in failing to assess the credibility of the Appellant’s account of his conversion to Christianity in light of the evidence of Reverend H, rather than the other way round. It is clear from the Judge’s findings as to that evidence at [47] that he fell into error in this respect.

17. I further find that the Judge erred materially in law in failing to properly assess and take into account the issue of the conversion of dates from the Iranian to the Gregorian calendar and I find in light of the Appellant's explanation and having had sight of the calendar that the Appellant has not given an inconsistent account as to the date of his arrival, which properly converted, is 30 June 2016, thus this is not a matter that should have properly impacted upon the credibility of his account.
18. I further find that for the reasons set out by Mr Hodson both in ground 4 of the grounds of appeal and in his oral submissions, that the Judge failed to consider the separate albeit related issue of risk on return as a failed asylum seeker in light of the Appellant's involvement with Christianity in the United Kingdom, particularly given that if asked about this during the process of questioning upon return he cannot reasonably be expected to lie about having attended a Church and Bible classes in the United Kingdom, let alone the fact that he has as a matter of fact been baptised as a Christian.
19. For these reasons I find that the Judge's decision cannot stand and the appeal is remitted for a hearing de novo before the First-tier Tribunal to be heard by a Judge other than First-tier Tribunal Judge M A Khan.
20. As indicated at the outset there is an anonymity order in place.

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

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.

Signed *Rebecca Chapman*

Date 12 May 2017

Deputy Upper Tribunal Judge Chapman