



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03041/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 2 May 2017

Decision & Reasons Promulgated
On 3 May 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singh of Birmingham Law Practice Limited
For the Respondent: Mrs Aboni Senior Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Shergill ('the Judge') promulgated on 14 October 2016 in which the Judge dismissed the appellant's appeal against the respondent's refusal to grant him international protection and/or leave to remain on human rights grounds.
2. The appellant is a national of Iran who claimed asylum based upon an alleged genuine conversion to Christianity.
3. The Judge considered the evidence from all sources and sets out findings of fact from [16] of the decision under challenge.

4. The appellant stated he attended the Oasis Church and, by the date of his asylum interview, had been baptised. The Judge thereafter sets out a number of findings which are specifically challenged by Mr Singh.
5. These include:

19. I have carefully read the interview and note that it was conducted some months after the appellant arrived in the United Kingdom. He had in those months started attending the 'Oasis Church' and by the date of interview had been baptised there. I later heard that the appellant would have undergone some pre-baptism classes there.
20. It is unsurprising therefore that the appellant was able to give an account of certain aspects of Christianity by the time of interview.
21. I was somewhat sceptical about the appellant's relatively recent conversion in Iran and then what appears to have been a period of time before being interviewed during which he could have, in effect, perfected his claim here in the United Kingdom. That was certainly my concern from the papers.
22. I had previously heard the case involving a similar background; represented by the same solicitors on 9 September 2016. Indeed, it was the same representative and same witnesses from the Oasis Church. There was a sense of *déjà vu* but of course in fairness to the appellant I put material matters to him/Mr Johnson to deal with.
23. As I was aware of certain matters relating to Iranian Christians in Birmingham, I asked the appellant about the Church of Light/Noor Church which is the Iranian Church in the city. That was because through judicial notice, I was aware that they have a six-month wait time in place before baptising people to avoid people abusing the process. The series of questions is reproduced below:

"Have you heard of the Noor Church in Birmingham? Not heard of it; I have heard about it but not been; been going to Oasis.

How did you hear about Oasis? When I was in the hostel the people there got the address and went to Oasis.

Were they Iranians Christians as well? Y

Did they not mention the Church of Light in Birmingham? No not mentioned anything to me.

Just Oasis that you go to? Yes; Oasis in Birmingham

I have heard the Noor Church has a six-month wait time before baptising is that anything you heard of? Not anything about this matter but when I went to the church and going regularly; the priest registered us Rob; after 10 Nov went and few months and was called for baptism."

24. There was a change of heart as to whether the appellant had heard about the church or not; and I was not persuaded by his responses. I do not consider that his fellow Iranian Christians that he knows would not have mentioned anything about it. I was dubious as to the appellant's motives for 'airbrushing' his evidence to me about this.
6. Mr Singh submitted that [21] suggested a procedural unfairness as the Judge had clearly made his mind up about how he was going to determine the appeal before hearing evidence from the appellant.

7. Such an assertion has no arguable merit. A Judge is entitled to form a preliminary view of the merits of the case from the pre-hearing reading, provided the judge does not thereafter shut his or her mind to the evidence as a whole, to the extent that an appellant does not receive a fair hearing. See *AM (fair hearing) Sudan [2015] UKUT 00656 (IAC)* in which it was found that judges are entitled to form provisional views in advance of a hearing provided that an open mind is conscientiously maintained.
8. Mr Singh also submitted that the reference in [22] supported the argument of procedural unfairness as it was not right for the Judge to determine the merits of the case by reference to a previous case or another church in which the appellant had no knowledge.
9. The Judge was not entitled to determine the merits of the appeal based upon evidence that had not been brought to the attention of the parties and in relation to which they had not been given an opportunity to comment. It cannot be said that the appellant's legal team were unaware of the matters referred to in [22] as Mr Singh confirmed that he was the representative who appeared before the Judge in the case on 9 September 2016 and that the Judge's recollections in relation to that previous matter are accurate.
10. At [23] the Judge clearly asked questions of the appellant about the Church of Light to enable the appellant to comment upon any knowledge he had of that church. The fact the appellant was unable to comment, combined with the fact Mr Singh was aware of that evidence through previous litigation, supports a finding that in relation to this aspect there has been no arguable procedural unfairness. In *AM (fair hearing) Sudan [2015] UKUT 00656 (IAC)* it was held that if a judge is cognisant of something conceivably material which does not form part of either party's case, this must be brought to the attention of the parties at the earliest possible stage. This is what the Judge did.
11. The Judge sets out at [25] the reason he wanted to find out if the appellant had been to the Church of Light, as in the Judges view they will be best placed to assess the genuineness of his claim in accordance with their understanding of the particular circumstances in Iran. At [26] – [31] the Judge finds:
 26. The best evidence would have been from the Church of Light in terms of them having been satisfied that the appellant had received instruction and was a genuine believer. In my view it would have been difficult for the respondent to disregard cogent and reliable evidence from a Minister from an Iranian church; as such a person would be best placed to speak of the customs and circumstances'. That is particularly so given the wait time operated by them before baptising people to avoid abuse and the inherent risk of fabricated claims.
 27. On the opposite end of the scale, the Oasis Church being willing to baptise much earlier and with a seemingly less stringent approach to filtering would-be converts was of concern to me. It has the potential to be abused by those wishing to fabricate evidence of conversion, a general concern which has long been recognised by this jurisdiction (see for example the IAT case of *Dorodian v SSHD* dated 23/08/01 (CO/16974/00)).
 28. I have evidence from Oasis Church before me. I note the photographic evidence purports to show the appellant being baptised. The copy I have is poor but out of fairness to him, I accept it shows what is claimed i.e. the appellant's baptism. There is also a baptism certificate. For the reasons set out below, I will consider these pieces of evidence 'in the round' as I am not satisfied they are conclusive in their own right.

29. I have no issue with the benevolence of the pastor or witness from Oasis Church. I am sure they are genuine and kind-hearted people doing their best to 'spread the word'. In particular, I do not attach the significance that Ms Pearson did that somehow they are campaigning advocates for asylum seekers. However, I note that they are non-Farsi speakers (I had previously been told the church relies on interpreters) and from a religious persuasion that wants to convert and evangelise. In those circumstances, I cannot rule out the potential for new 'converts' being able to take advantage of the goodwill of the church. In my view, the witness evidence relied on will be from no better position to assess 'customs and circumstances' about an appellant's background than anyone else, including myself. That is particularly so given Mr Johnston's relatively recent interaction with the appellant and the broad statement in Mr Hooper's letter.
 30. I accept Mr Johnston 'genuinely believes' the appellant's account and that he "firmly believe[s] what [he is] telling me is the truth and significant obstacles involved in arriving here and trauma leaving his family and child; central aspects of his testimony were true". I also note that Mr Johnston would not attend for everyone. However, the time period and circumstances under which he has assessed the appellant are not particularly significant in my view. There is also the issue about Rev Hooper having written in terms that Mr Johnston was unable to comment on and the lack of recording of attendances etc.
 31. For all these reasons, the evidence from Oasis Church is not sufficiently persuasive on its own and I will assess it in the round with the other evidence.
12. What these findings show is that the Judge does not decide the weight he is willing to place upon the evidence from Oasis Church solely by reference to the Church of Light, although the practices of the Church of Light were clearly found by the Judge to give weight to a claim by a member or representative of that church that a person who may have baptised is a genuine convert, i.e. a person who wishes to convert from their previous religion to become a follower of the Christian faith. Those comments therefore relate to observations about the quality of the evidence that will be received from the Church of Light.
 13. The Judge noted the Oasis Church were willing to baptise earlier and with a less stringent approach to filtering would-be converts which is arguably good reason for why the Judge did not place the weight upon the evidence from the Oasis Church that the appellant is suggesting he should have, such as to find that that was determinative of not only the fact of conversion but also the appellant's motives.
 14. The Judge clearly considered the evidence from the Oasis Church with the required degree of anxious scrutiny and has given adequate reasons for the findings made. As such the weight to be given to that evidence was a matter for the Judge. No legal error material to the decision to dismiss the appeal is made out in relation to the approach of the Judge to the evidence from the Oasis Church.
 15. The Judge thereafter went on to assess the appellant's conversion at [32] – [45].
 16. Mr Singh in his submissions attacked the Judge in relation to the finding at [44] where the Judge records the following:
 44. When assessing all of the evidence in the round at the lower standard, I am not persuaded that the appellant has genuinely converted to Christianity. Furthermore, I am not persuaded that he has genuinely been evangelising. I am not persuaded at the lower

standard that he is a Christian or would be perceived to be a Christian based on his claimed evangelising activity in the United Kingdom.

17. It was submitted by Mr Singh that the Judges reference to 'considering all the evidence in the round' would include the evidence relating to the Church of Light and the deficiencies he argued existed in relation to that material which, therefore, impacted upon the overall assessment. The problem for the appellant is, as stated above, that no arguable legal error has been made out in relation to the way the Judge dealt with the Church of Light issue or assessed the weight he was willing to give to the evidence from the Oasis Church. It is also the case that the Judge was required to assess all the evidence 'in the round' for a failure to do so may well amount to arguable legal error.
18. The Judge sets out several concerns that he had in relation to the evidence of the appellant which led to the finding the Judge was not satisfied the appellant had shown to the lower standard that he was a genuine convert before he came to the United Kingdom, based on discrepancies and non-persuasive interview answers said to be detailed in paragraphs 15 to 32 of the Refusal Letter.
19. The Judge noted the appellant was unable to answer basic issues arising in Christianity in the interview and at [33] - [43] sets out several factors which it was found undermined the appellant's claim to be a genuine Christian convert. This includes at [42] when the Judge asked a hypothetical question of the appellant in relation to what he would say if he stopped the Judge to evangelise and what he would tell the Judge to convince him to come to his church, the full response to which is recorded in the record of proceedings, it is noted that the appellant did not once mention Jesus Christ, God or any real religious element. The Judge in fact describes the response as "a lacklustre attempt at conveying what should be a heartfelt motivation for conversion and evangelising".
20. Mr Singh was invited to make further submissions in relation to these previous paragraphs, the content of which would have been considered 'in the round' within the assessment referred to at [44], but no adverse submissions were made and the findings set out by the Judge appear to be in accordance with the evidence provided and fully available on the facts.
21. The Judge accepted the appellant had been through a ceremony of baptism but did not find that he did so as a result of a genuine desire to follow the Christian faith. Hence it was not made out that the appellant would act in a manner on return to Iran, by evangelising, such that would give rise to a real risk.
22. The appellant raised a sur place issue, claiming that he had carried out activities in the United Kingdom and posted them on Facebook himself. If those activities relate to church-based activities, the finding by the Judge that he is not a genuine convert means that those activities do not demonstrate or represent a fundamentally held belief which it will be unlawful to expect him to remove from his Facebook pursuant to the principle established in *HJ (Iran)*. There is no evidence such entries have come to the attention of the Iranian authorities or any evidence that if the appellant provided the password that enabled the authorities to access his Facebook account if questioned on return, that they would be able to discover any deleted evidence.
23. The conclusion by the Judge that the appellant had failed to discharge the burden of proof upon him to the required standard to show a reasonable degree

of likelihood of a well-founded fear of persecution for a Convention reason has not been shown to be a decision infected by a material error of law. The same applies to the dismissal of the appeal on human rights grounds.

- 24. No procedural unfairness is made out sufficient to support a finding the appellant did not receive a fair hearing before the Judge.
- 25. The appellant shall be returned to Iran as no more than a failed asylum seeker.

Decision

- 26. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

- 27. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 2nd May 2017