



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00596/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 25th June 2018

Decision & Reasons Promulgated
On 12th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR AG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel (Counsel)
For the Respondent: Mr A Tan (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Shergill, promulgated on 11th December 2017, following a hearing at Manchester on 25th October 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, who was born on 21st August 1971. He appealed against the decision of the Respondent dated 5th January 2017, refusing his application for asylum and for humanitarian protection under paragraph 339C of HC

395. The basis of the Appellant's application is that he is a Christian convert from the religion of Islam and fears mistreatment and persecution if returned to Iran.

Background

3. The background to this appeal is that the Appellant, who is a martial arts expert, had been living and working as a trainer in the UAE, where he was training various members of the UAE royal family, and had developed a profile within the martial arts community, where he was also involved in its promotion, including in international competitions. In August 2015 he returned back home to Iran for a visit and stayed with his father. Whilst there, he was summoned by the Iranian Authorities and asked to report to an office. There he was questioned by Etellat and asked to provide intelligence regarding Sheikh Q and Sheikh M in the UAE. He was informed that the Iranian Authorities planned to abduct a member of the royal family and he was required to cooperate. The Appellant returned thereafter back to the UAE.
4. In 2006, the Appellant came to the UK for a martial arts competition. He was due to fly out back to Iran on 19th July 2016, when he was contacted by a friend of his who informed him that the security services were asking about him, whereupon the Appellant decided not to return and made a claim for asylum, on political grounds, to which the claim that he had converted to Christianity was later added.

The Judge's Determination

5. In a long and detailed determination (of 21 pages) the judge analysed the Appellant's claims, both in relation to the alleged kidnap by the Iranian Authorities of a UAE royal family member (paragraphs 18 to 30); his alleged fear for his life thereafter in both the UAE and in Iran on the basis of what he said in his interview (paragraphs 31 to 40); his personal circumstances and work status in the UAE (paragraphs 41 to 52); his finances, accommodation and eventual intension to leave the UAE (paragraphs 53 to 63); before dealing with the nub of his claim before the UK Authorities, namely, his conversion to Christianity. The judge did not find the Appellant to be credible in relation to any of the aspects raised by him. However, she found the Christian conversion aspect of his claim to be "the least persuasive of the accounts", because she saw this as a "tag-on to his political claim" (paragraph 64). Nevertheless, there were the "Dorodian witnesses", before the Tribunal, in the form of Sister Duffy and the Reverend Peter Morgan, from the Catholic Church to which the Appellant had converted, and the judge found that "the Dorodian witnesses are genuine, caring and honest people who have done their best to present a truthful and full picture of what they have observed" (paragraph 67). However, given that the judge then also held that they displayed a "marked lack of knowledge of the background to the Appellant's political claim" (paragraph 68) the judge concluded that the Dorodian witnesses may well have been misled into supporting the Appellant in his religious conversion case before the Tribunal (see paragraph 70 of the determination).
6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in failing to consider the material matters and evidence, and failed to assess the risk on return to the Appellant as a Catholic convert in Iran. In particular, conversion to the Catholic faith requires attendance at mass, participation in sacraments of confession and communion, so that given that this was the case, the judge failed to give due weight to a priest who had known the Appellant for thirteen months at the date of the hearing, before deciding to reject the claim of religious conversion as being a genuine one.
8. On 31st January 2018 the Tribunal granted permission on this basis, adding also that the decision and reasons were lengthy and detailed, and

“There has been a great emphasis on matters that are nonmaterial to the claim and the judge has rejected evidence based on his view of plausibility rather than assessing the evidence in the round. In particular ‘the evidence from the priest has arguably not been accorded due weight and is based on speculation’” (paragraph 3 of the grant of permission).

The Hearing

9. At the hearing before me on 25th June 2018, Ms Patel, appearing as Counsel on behalf of the Appellant, relied upon the grounds of application. These state that the Appellant’s political claim and his religious claim were two entirely separate and discrete claims. The conversion to Christianity was a sur place claim. His evidence was that he considered himself to be a Christian before his meeting with the Arch Bishop of Liverpool on 1st March 2017 when he gave his name to Father Peter Morgan in order for the Appellant to be baptised. At the time that his first statement was completed on 11th February 2017 he was learning about Christianity through attending at Bible studies. He did not convert to the Christian faith at that stage. The judge had failed to consider that the Appellant’s conversion to the Catholic faith involved attendance at mass, participation in the sacraments of confession and communion, and the role of the priest or the pastor, none of which had been properly considered. It had been overlooked that he was baptised on 15th April 2017 which was seven months after he first attended church.
10. For his part, Mr Tan submitted that the judge was entitled to come to the conclusions that he did and give proper reasons for so doing. In particular, the judge had explained how it was that, when the first allocated date of a hearing was set for 20th February 2017, there had been no mention of his Christian faith, and this was not raised in the CMR until 20th February 2017. Yet, the Appellant went on to be baptised on 15th April 2017 (see paragraph 64).

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

12. First, there are the findings of the judge in relation to the two witnesses, Sister Duffy, and the Reverend Peter Morgan, who gave evidence before the Tribunal. The judge held that “the Dorodian witnesses are genuine, caring and honest people who have done their best to present a truthful and full picture of what they have observed”. She went on to state that “their evidence was given with them cognisant of the risks of being duped and with full confidence in the Appellant’s genuine conversion”.
13. However, the judge then goes on to conclude that,

“However, I am not satisfied that this is a genuine conversion because all of the evidence leads me to conclude that the Dorodian witnesses have been duped and/or have failed to sufficiently probe the Appellant’s bona fides in part at least by considering whether there was no ulterior motive to the conversion” (paragraph 70).
14. The basis for this conclusion is the judge’s concern was the fact that “there was marked lack of knowledge of the background to the Appellant’s political claim and I note it was Father Morgan who appears to have prompted the Appellant to raise the issue of being Christian with the solicitors” (paragraph 68). This is problematic, not just because of the judge’s express recognition of the witness’s statement that they were “cognisant of the risks of being duped” and yet had full confidence “in the Appellant’s genuine conversion” (paragraph 67), which does not sit happily with the judge’s conclusion that the witnesses had indeed been duped (at paragraph 70). It is also problematic because, as the judge pointed out, it was Father Peter Morgan himself, who had “prompted the Appellant to raise the issue of being a Christian with the solicitors” (paragraph 68). Prior to this time, the Appellant was basing his claim simply upon his political risk of persecution.
15. It is also problematic for the judge to have concluded that “Father Morgan may well have been a little too zealous in accepting the Appellant at face value” (paragraph 67), as this fails to take into account the Appellant’s own attendance at mass, participation in the sacraments of confession, and communion. In fact, insufficient consideration is given to the statement of Father Morgan that the Appellant “is as genuine a Christian convert as I have ever known as a priest”. Given that Father Morgan had been a priest for 54 years this was a matter that needed careful consideration before Father Morgan’s evidence was rejected on the basis that he had been duped.
16. Second, aside from the factual issues that I have outlined above, there is the legal question. This is a question of how cases of religious conversion should be approached by the Tribunal. In **SA (Iran) [2012] EWHC 2575**, Gilbert J held that, “it is a dangerous thing for anyone, and perhaps especially a judge, to appear into what some call a man or woman's soul to assess whether a professed faith is genuinely held” and this is especially the case when the person in question “is a frequent participant in church services”. He went on to explain that,

“It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough

to seek to reach firm conclusions about a professed conversion to an Evangelical Church I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church" (paragraph 24).

17. In the circumstances, this was a case where, notwithstanding the Appellant's background and previously raised political asylum claim, it was all the more necessary for the judge to consider first, exactly what it was that the Appellant was doing in terms of his active participation in the new church; and second, to give a more careful consideration to the church witnesses, such as the Reverend Peter Morgan and Sister Duffy, in circumstances where the former had known the Appellant for thirteen months, and was actually the person to have asked the Appellant to add the religious conversion case to his asylum claim. For all these reasons, this matter must be remitted back to the First-tier Tribunal to be determined by a judge other than Judge Shergill for a consideration of these issues.

Notice of Decision

18. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal under practice statement 7.2(a) to be determined by a judge other than Judge Shergill.
19. An anonymity direction is made.

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

Dated

Deputy Upper Tribunal Judge Juss

8th September 2018