Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05426/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision & Reasons Promulgated**
On 5th October 2018	**On 29 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MEHRDAD [D]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Uddin (Counsel), Bankfield Health Solicitors
For the Respondent: Mr M Diwnycz (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Barber, promulgated on 26th July 2017, following a hearing at Sheldon Court on 18th July 2017. 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 matters comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 1st January 1990. He appealed against the decision of the Respondent Secretary of State dated 16th May 2016, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he had a girlfriend in Iran, who had been engaged to be married in Iran, and he fell under suspicion of adultery. This was the claim that the Appellant raised in his screening interview, where the Appellant had said that he had no religion. By the time that the Appellant went to his substantive interview on 18th April 2016, and by the time that his asylum application had been refused on 16th May 2016, the Appellant had changed his claim to include the fact that, two days before he left Iran, he was introduced to Christianity and decided, on the day he left, that "I could class myself as a Christian" (see AIR 21 to 23). He did not have time to investigate Christianity in Iran as he had left so soon. The judge considering this aspect of the claim, justifiably treated it with some scepticism, at the outset of his determination (paragraph 1).

The Judge's Findings

4. The judge was not satisfied that the Appellant was introduced to Christianity by a man called Ahmed just before he left Iran (paragraph 15). The question of whether the Appellant had then "converted to Christianity in the UK" was addressed by the judge (paragraph 15). Here it was held that, "the Appellant may or may not have converted to Christianity in the UK. However, on balance," it was said, " that he is probably relying upon Christianity as a means to substantiate his claim to asylum for the following reasons" (paragraph 16).

5. Thereafter, the judge provides extensive reasons for why the Appellant could not substantiate his claim for asylum on the basis of his conversion to Christianity. Looking at these reasons, it cannot be said that the judge was not entitled to come to these conclusions, as the Tribunal of fact, and having heard the evidence.

6. However, there were two further matters. First, the Appellant said that he had joined his church "and started evangelising on the streets of Birmingham shortly afterwards" and that there were letters in support of this. The judge observed that, "I place no weight on these letters at all" (paragraph 18).

7. Second, at the hearing before the Tribunal, the pastor of the church had sent a supporting letter, which was to the effect that the church was "confident of his belief as a Christian …", and that accordingly the Appellant had been baptised into the faith. The pastor himself did not

attend the hearing. The judge observed that the pastor "will not be attending any future hearings as there are too many Iranian members of the church claiming asylum on the basis of their conversion to Christianity …" (paragraph 23).

8. In looking at this letter from the Oasis Church from the pastor, the judge observed that, "I place no weight on what the pastor states in either his letter of 26th May 2017 or his letter of 28th May 2017. He has not attended to have his evidence tested …" (paragraph 24).

9. The appeal was dismissed.

Grounds of Application

10. The grounds of application state that the judge engaged in two fundamental errors. First, he applied the wrong standard of proof when stating that: "On balance I think he is probably relying upon Christianity as a means to substantiate his claim to asylum …" (paragraph 16). Second, the judge went on to say that, "the Appellant may or may not have converted to Christianity in the UK". That did not demonstrate the judge having come to a firm conclusion either way. If the judge was not persuaded that the Appellant had converted to Christianity it was incumbent upon him to so find (paragraph 9 of grounds). Third, the judge rejected evidence in the form of photographs and letters observing, "I place no weight on these letters. There was written evidence from Rob Hooper, and the judge concluded (at paragraph 24) that, "the letter is of no evidential value" because of the failure of the witness to attend and subject himself to cross-examination. This, it was contended, was wrong because the judge may well have been entitled to say that the non-attendance of the witness went to the weight to be given to his evidence, but he was not entitled to reject such a letter outright simply on account on non-attendance. Further, it was said that the judge had no evidential basis to say that Mr Hooper, the pastor, "is producing these letters on demand for the Iranian Christian converts to attend his church" (paragraph 23).

11. On 19th December 2017, the Upper Tribunal granted permission on the grounds that the judge's findings concerning the claimed adultery had "no arguable merit" to it but that the matters raised in the grounds concerning the judge's disbelief in the Appellant's conversion to Christianity raise arguable issues.

Submissions

12. At the hearing before me on 5th October 2018, Mr Uddin, appearing on behalf of the Appellant, submitted that he would not rely upon the grounds of application insofar as the claimed adultery was alleged (at paragraphs 19 to 27 of the grounds) because no permission to appeal had been granted on this basis. However, he would rely upon the conversion part of

the challenge in the grounds, where the Appellant had alleged that he had converted to Christianity.

13. First, whereas it is the case that the judge at the outset of the determination did correctly set out the standard of proof as there being "a real risk or reasonable degree of likelihood of the Appellant suffering persecution in the country of return" (see paragraph 5), by the time that the judge came to making his findings of fact, he had used the civil standard of proof referring to "on balance", and concluding that the Appellant probably was relying upon Christianity in order to substantiate his claim. In fact, the judge did not come to a firm finding on the Appellant's conversion from Islam to Christianity because in the same paragraph the judge had said, "the Appellant may or may not have converted to Christianity in the UK", whereas this was precisely the crux of the claim that the Appellant was making as the basis for his asylum claim.

14. Second, insofar as there had been a non-attendance by Pastor Rob Hooper from the Oasis Church, the judge was wrong to have concluded that attendance at the Tribunal hearing of the so-called "Dorodian witnesses" was essential for a religious conversion case to succeed. This was because of a recent decision by the Court of Session in Scotland, which made it quite clear that written support from the church, together with the church's firm belief in the Appellant's conversion to its creed, could be entirely probative of the claim that was made, even where church witnesses had not attended court.

15. For his part, Mr Diwnycz submitted that he would have little to add, and that he could "not boldly resist" the application that was being made today because of two reasons. First, the judge had stated that, "I place no weight on what the pastor states …" (paragraph 24) which was going too far; and second, because he had arguably not applied the correct test and not decided that which needed to be decided, namely, the Appellant's conversion to Christianity, by stating that "the Appellant may or may not have converted" (paragraph 16).

Error of Law

16. 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 and remake the decision. My reasons are as follows. First, this is a case where the judge had evidence before him from Pastor Rob Hooper of the Oasis Church supporting the Appellant in terms that it was "confident of his belief as a Christian" and the judge recognised that in his letter of 26th May 2017, the Appellant had "found [the Appellant] to be a genuine believer in Jesus Christ" (paragraph 23). In the light of this, it was important for the judge to have concluded whether the Appellant was a person who had actually converted to Christianity. The observation that he may or may not have converted "to Christianity in the UK" was precisely what was in issue and needed determination. It was not enough to say that "on balance" he is properly relying upon

Christianity to remain here. Once that question was determined by the judge, it was then open to him to consider whether the Appellant upon return to Iran would be a "open Christian" or a "closet Christian", given that only the former would engage the principles in **HJ (Iran)**, but the latter would not.

17. Second, insofar as it is the case that the pastor did not attend the hearing because upon the demands on the Oasis Church on a weekly basis to come and in person support Claimants before the Immigration Tribunals alleging a conversion of faith, it was also an error to say that, "I place no weight on what the pastor states" because of his non-attendance at the hearing (paragraph 24). This is particularly given what has been decided by the Court of Session in Scotland in **TF and MA [2018] CSIH 58**. These are matters which will now need to be reconsidered again by the Tribunal.

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 remitted back to the First-tier Tribunal to be determined by a judge other than Judge Barber, pursuant to practice statement 7.2.(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. No anonymity order is made. This appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd October 2018