



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
PA/05706/2017**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
On: 22 January 2018**

**Decision and Reasons
Promulgated
On: 31 January 2018**

Before

Deputy Upper Tribunal Judge Mailer

Between

**[Y V]
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms N Katambala, Finsbury Law Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.

2. The appellant is a national of Iran, born on [] 1996. He appeals with permission against the decision of the First-Tier Tribunal Judge C H O'Rourke, promulgated on 18 August 2017, dismissing his appeal against the respondent's decision dated 30 May 2017, refusing his asylum, humanitarian protection and human rights claims.
3. The appellant left Iran on 3 November 2016 and entered the UK on 1 December and claimed asylum immediately.
4. His claim was made on the basis of his conversion from Islam to Christianity. Judge O'Rourke stated that the issue before the First-tier Tribunal was "one purely of credibility" - [4].
5. He found that the appellant was generally not a credible witness. He set out his findings from paragraph [24] onwards. He noted that there was no medical evidence of any underlying condition. He found that the appellant's demeanour at the hearing was odd and that he was seemingly distracted and vague. He concluded that the appellant was feigning a medical condition to delay the hearing and explain his lack of grasp of details when giving evidence - [25(ii)].
6. He rejected his account that he had left Iran in 2015 because of a forced "honour" marriage to an ex-girlfriend but was nevertheless able to return there without consequences simply because the girl's family had moved away - [25(iii)]
7. His Facebook entries in relation to Christianity are belated – May to June 2017 - and seemingly entirely generic, without any input from him. He posts pictures and Biblical quotations seemingly downloaded from the Internet including one in Portuguese without comment from him or reaction from anybody who may see them. His name and date of birth are wrongly recorded and his profile photo is taken from some distance away and it is not particularly clear that it is him (and that is when one knows who he is). His use of Facebook in this respect is purely to bolster his claim and to minimise the risk of his actually coming to the attention of the authorities as a consequence - [25(iv)].
8. In the grounds of appeal set out in the application for permission to appeal to the Upper Tribunal, it is contended that there were articles and other photographs of the appellant in the account including clear photographs of him on his Facebook page. With regard to his name being misspelled at B2 of the respondent's bundle, the appellant clearly stated that his correct name is '[YV]', as spelled on his Facebook account. He can therefore be identified.
9. Judge O'Rourke also had regard to the appellant's account of events in Iran. He did not find the appellant's account to be plausible. He set out the basis for that conclusion at [26]. He had regard to his credibility generally. He also had regard to the unlikelihood that he would have been able to give up the practice of Islam from the age of 15 despite living with his devout family. He did not believe that he

would have been able to evade their attentions all the time and that therefore there would have been confrontations about his apparent lack of faith.

10. He referred to the vagueness of his account of what encouraged him to go to a house church and what he did there, simply “praying” and feeling “inner peace.” It was implausible that he would decide to convert on his first visit to a house church, having, apart from some conversations with [S], no knowledge of Christianity before. He also referred to the infrequency of house church meetings, four in three months, which seemed unlikely for people enthused by their religion [26(i-v)].
11. He did not accept that the appellant is a genuine convert to Christianity as evidenced by his activities in the UK – [27]. He again had regard to his findings on the basis of his credibility generally. His inability to name his church at the substantive interview, Swindon Evangelical Church cannot have been a difficult title to recall. He was living in Swindon at the time.
12. He considered the guidance in R (on the application of SA) Iran v SSHD [2012] EWHC 2575 (Admin) as to the inadvisability of peering into a man's soul, but nonetheless some assessment has to be made on the basis of the available evidence, taking into account the appellant's credibility. Simply attending at the church cannot be, of itself, sufficient - [27(iv)].
13. He was conscious of the guidance in the earlier AIT decision in Dorodian (01-T8-01537) in which the relevant test required the appellant being vouched for by a minister of the church, as to church membership; that correspondence from the church should be available so its existence can be established and the oral evidence from the minister and if necessary testing of religious knowledge - [28].
14. He noted that there was correspondence from the church and Mr Childs-Clarke, but not from the pastor. Nor did the pastor attend to give evidence. He did not doubt that Mr Childs-Clarke gave entirely sincere evidence as to his belief in the appellant's conversion but he noted the degree of the unquestioning nature of that belief and that to a very large extent, his knowledge of what the appellant says he knows and believes is reliant on interpretation. In any event, in the face of his findings as to the appellant's credibility generally, and the motivation for his alleged conversion, he concluded that Mr Childs-Clarke has, in this case, “been duped”- [28]
15. He concluded that if the appellant were to be returned to Iran, the UK would not be in breach of the Human Rights Convention or the Refugee Convention.
16. On 30 November 2017, First-Tier Tribunal Judge Frankish granted the appellant permission to appeal. Given that the Facebook picture was said to be indistinct and a distant profile image whereas there was one clear frontal picture of him, it was arguable that an error arose in the assessment of the Facebook evidence.

Error of law hearing

17. Mr Katambala, who did not represent the appellant at the hearing, relied on the grounds seeking permission.
18. She contended that the Judge erred when considering risk on return. The appellant posted evidence on Facebook showing he was in church and talked about Christianity. These acts are illegal in Iran. The Facebook account is illegal as is his conversion from Islam to Christianity.
19. Further, his correct name is “[YV]”. She referred to page 24 showing a copy of a photograph on his Facebook account. There are also various depictions showing Christian images. She submitted that the appellant can be identified. There was a pastoral letter from the pastor in the respondent's bundle. The Judge did not explain how Mr Childs-Clarke had been duped.
20. She referred to BA (Risk on Return) Iran CG [2011] UKUT 36. The Judge failed to give proper consideration to Danian v SSHD [1999] EWCA Civ 3000 regarding reliance on sur place activity, even in bad faith.
21. The above acts are all 'un-Islamic': SB (Risk on return – illegal exit - Iran CG [2009] UKAIT 00053.
22. Although Ground 3 refers to the failure to recognise the difficulties that raped women face when having to talk about their trauma, Ms Katambala accepted that this is entirely irrelevant to this appeal.
23. The Tribunal also referred to sur place activities relating to demonstrations. However it is not asserted that the appellant attended any demonstrations.
24. On behalf of the respondent, Mr Jarvis submitted that the grounds of complaint (1-3) do not go far enough in explaining why the appellant would be at risk. The Judge was entitled to conclude that he would not be at risk.
25. He noted that the appellant's Facebook entries in relation to Christianity are belated, namely, between May and June 2017. His profile is not clear. Whilst there is a clear photograph at [24] it is not clear that the person is the appellant or another. It was open to the Judge to conclude that any entries were generic and without any input from the appellant. He simply posts pictures and Biblical quotations downloaded from the Internet including one in Portuguese.
26. The Judge has found and stated at the commencement of each paragraph, that the appellant has lied and is not a credible witness. Thus, he would tell the Iranian authorities that he is a Muslim from a devout Muslim family and is not a Christian. He lied about events in Iran. He has not told the truth. He has accordingly failed to make his case out.

27. He was found to be a Muslim person who has not genuinely converted. It cannot be that the Islamic authorities would take a persecutory view of someone who had lied and not told the truth about becoming a genuine convert. The authorities do not persecute failed asylum seekers and would not persecute this appellant because he has been found not to be truthful and credible.
28. With regard to sur place activities in the UK, even if the Iranian authorities were aware of this, nothing has been shown as to why the appellant would be subject to a real risk, as his claim was predicated on a false premise.
29. With regard to ground 3, he submitted that the complaint amounts to a disagreement with the findings. There is no merit in that ground at all. There has been no attempt to contend that the findings from paragraphs 25-28 were not sustainable, and in particular he findings at [25(iii)]; [26 (ii)], [27(ii)] and [28] – There is no evidence from the Pastor, who did not attend to give evidence.
30. The fact that Mr Childs-Clarke has given sincere evidence is not enough to show that the appellant told the truth. The Judge was obliged to consider the credibility of the appellant's evidence in the round.
31. Ms Katambala referred in reply to the Home Office guidance set out at A54 of the appellant's bundle relating to Christians and Christian converts dated December 2015 at 2.2.2. It was noted that Sharia law does not allow for conversion from Islam to another religion. Christian converts face physical attacks, harassment, surveillance, arrests, detention as well as torture and ill treatment in detention. She referred to paragraph 6.1.5 and 6.1.7 noting that Christian converts may risk maltreatment at the hands of the State.

Assessment

32. In BA (Risk on Return) Iran CG [2011] UKUT 36, the Tribunal noted that given the large numbers of those who demonstrate in the UK and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.
33. It was noted that there is no evidence of the use of facial recognition technology at the Imam Khomeini International Airport but there are a number of officials who may be able to recognise up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might

well be picked up for questioning and/or transferred to a special court near the airport after they have returned home.

34. It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities, and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of facing persecution on return can be assessed
35. There is no contention that the appellant engaged in any political activities in the UK. He would thus not be liable to interrogation as to any political activities in the UK.
36. The Judge has given a detailed assessment of the appellant's claim. He has had regard to the appellant's documents, his evidence and Facebook entries.
37. He has looked at the evidence in the round when assessing his credibility. He found that he was an educated person having studied accountancy but was unable to establish a coherent record of what happened with at least approximate dates that he could stick to [25(i)].
38. The Judge noted that he had left Iran in 2015 to Greece and then returned. He entered the UK on 1 December 2016 and claimed asylum on the basis of his conversion to Christianity.
39. The Judge noted at [26] that his accounts of events in Iran were not plausible. He set out the reasons for that conclusion, namely that it was unlikely that he would have been able to give up the practice of Islam from the age of 15 despite living with a devout family. He would not have been able to evade their attentions all the time. There would have been confrontations about the apparent lapse in faith.
40. Further, his account was vague as to what encouraged him to go to a house church if all he did there was pray and feel inner peace. It was also implausible that he would decide to convert on his first visit to a house church where he had no knowledge of Christianity prior to that apart from having conversations with a friend, [S]. There was no evidence to suggest that the claimant fell under the Iranian government radar after converting to Christianity in Iran.
41. With regard to his activities in the UK, the Judge again found his evidence to be generally lacking in credibility. He did not accept that he is a genuine convert as evidenced by his activities in the UK. He has fabricated his Facebook activity.
42. At [27] he gave reasons for that finding. Whilst his Facebook entries might have shown a picture of him at page 24, the actual content of his Facebook contained depictions of Christianity. Apart from the fact that they were "belated", between

May and June 2017, the Judge found that they seemed entirely generic and without any input from the appellant. Various pictures and Biblical quotations are posted which were presumably downloaded from the Internet. There is no comment from the appellant, nor any reaction from anyone who may have seen them. Whilst his name might have been correctly spelled, there is no expression of his asserted religious belief or identity as a Christian.

43. The Judge has rejected the appellant's claim that he is a genuine convert to Christianity. He has provided sustainable reasons for his findings.
44. Accordingly, the appellant will be returning as a failed asylum seeker. There is no evidence of any political profile activity in which he was involved prior to seeking asylum in the UK.
45. In the light of the Judge's findings relating to the appellant's credibility and his lack of profile, the finding that that the appellant would not be at risk on return is sustainable.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed

Date 29 January 2018

Deputy Upper Tribunal Judge C R Mailer