



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06958/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
Reasons Promulgated  
On 1<sup>st</sup> February 2018  
2018**

**Decision &  
On 9<sup>th</sup> April**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MR R E  
(ANONYMITY DIRECTION MADE)**

Appellan  
t

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr McGowan of Quinn, Martin and Langan.  
For the respondent Mr Miles Mathews, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

Introduction

1. The appellant is a national of Iran born in June 1974.
2. He made a claim for protection in April 2015 which was refused. His appeal was heard by First tier Judge Bradshaw on 30<sup>th</sup> October 2015 and dismissed in a decision promulgated on 9<sup>th</sup> December 2015. His claim was that he was taking part in the Char Shanbeth Sourì

celebrations when he was encountered by the Basiji and detained. After being released he left Iran. The judge found that the celebrations were legal but were opposed by certain factions including the Teheran police. The judge concluded that his extended detention and abuse was implausible given the country information about how the authorities view the celebrations. The judge also commented on his failure to produce evidence to support his claimed detention which he said had been sent to his family. The judge's conclusion was that the account had been fabricated.

3. He then made further submissions in March 2017 which were refused in July 2017. These related to a claimed conversion to Christianity which was rejected as not being genuine. His appeal against that decision was heard by First tier Judge David Clapham SSC at Glasgow on 15 September 2017. In a decision promulgated on 31 October 2017 it was dismissed.
4. The appellant was given permission to appeal to the Upper Tribunal on the basis it was arguable First-tier Judge Clapham made a material misdirection of law. The original claim had been based upon imputed political opinion. The second claim was based upon a claimed conversion to Christianity after the appellant started attending church shortly after his previous appeal. First-tier Judge Clapham did not find the appellant credible and referred to Judge Bradshaw's determination as his starting point. However the two appeals were dealing with separate issues.

### Consideration

5. Judge Clapham had to deal with the difficult issue of deciding the genuineness of the appellant's conversion. His account was that he met another Iranian in Glasgow who was evangelising. He spoke to her and she introduced him into the Tron church, where he was welcomed.
6. In the reasons for refusal letter it was accepted that if the claims were true he would be entitled to protection. He had provided letters of support from church members and it was accepted he went to the church on a regular basis. It was also accepted that he was baptised on 23 October 2016. However, the genuineness of his conversion was an issue and it was pointed out that he had joined the church shortly after his appeal on the earlier claim.
7. Church members give evidence supportive of the appellant's conversion. The judge pointed out that his attendance could be explained as a wish to support his claim and did not necessarily mean the beliefs were genuinely held. The judge accepted he attended church and did various activities for the church. This was confirmed by the witnesses. However, the judge did not find their evidence indicated how the genuineness of his beliefs had been tested.

8. At para 55 the judge referred to the low standard of proof applicable. At paragraph 56 the judge stated:

`Given the low standard of proof, if the evidence in front of me were simply the evidence of the Appellant and the evidence of the witnesses from the church, it might be that it could be argued that the low standard of proof would allow the Appellant to succeed. However, there is a difficulty for the Appellant in that he has already had an appeal which was heard by Judge Bradshaw. Judge Bradshaw said that he had considered all of the evidence and had had the opportunity of observing and listening to the Appellant. Judge Bradshaw did not accept that the Appellant's account of what happened to him at the time of the alleged incident including his subsequent arrest was true. Judge Bradshaw said that an account had been provided by the Appellant to improve his chances of success in his claim for asylum. Judge Bradshaw concluded that the appellant had fabricated his account of his difficulties with the authorities in Iran to improve his chances of success in his claim for asylum.'

He went on to say at para 57:

In view of the fact that Judge Bradshaw's determination has to be my starting point, I conclude that I am not able to accept the evidence of the Appellant about his Christian conversion. If the appellant was not credible before why should he be credible now? The submission of Mr McGowan of course was that Judge Bradshaw's determination related to an entirely different scenario but in my view, what is key, it is the negative credibility findings and I do not doubt that the church witnesses gave their evidence a good faith but overall I found the evidence of the church witnesses to be lacking in depth and substance. The church leaders were ready to accept the appellant's profession of genuineness but such profession of faith may well be self-serving...'

9. Devaseelan -v- SSHD [2002] UKIAT 000702 at para 37 stated :

The first Adjudicator's determination stands (unchallenged, or not successfully challenged) as an assessment of the claim the Appellant was then making, at the time of that determination. It is not binding on the second Adjudicator; but, on the other hand, the second Adjudicator is not hearing an appeal against it. As an assessment of the matters that were before the first Adjudicator it should simply be regarded as unquestioned. It may be built upon, and, as a result, the outcome of the hearing before the second Adjudicator may be quite different from what might have been expected from a reading of the first determination only.

SK (guidance on application of Devaseelan) Serbia & Montenegro [2004] UKIAT 00282 points out that Devaseelan deals only with the situation where a human rights claim is made by someone whose asylum appeal has already failed and a credibility and factual matrix been found by the first Adjudicator:

### Conclusions

10. The decision of Judge Clapham has to be read in its entirety and the comments at paragraph 56 read in context. This is clearly not a pure Devaseelan situation as the two claims are quite separate. It does not follow that an appellant who has been found to lack credibility in one claim is not to be believed in a different claim. If para 56 is read carefully Judge Clapham is not saying that the appeal would have succeeded but for the earlier decision. Rather, he states 'it might be that it could be argued...' The judge clearly appreciated, by referring to the comments of Mr McGowan, that this was not a pure Devaseelan point. What the judge was addressing was whether the conversion was genuine or was merely an external appearance to further the appellant's claim. In this context, the timing was significant. To an extent, albeit limited, a previous negative credibility finding was a factor but not determinative to the overall assessment. The judge has appreciated this.
11. The judge carefully considered the evidence of the church members. Whilst they supported the appellant's external profession the judge did not find they went to the key issue of testing the genuineness of what he professed. The judge has set out in detail from paragraphs 48 onwards his assessment of their evidence and the overall claim. I do not agree that the judge was imposing too high a standard in trying to assess this difficult issue.
12. My conclusion therefore is that a material error of law has not been established.

### Decision

A material error of law in the decision of First-tier Tribunal Judge Clapham has not been established. Consequently, that decision dismissing the appellant's appeal shall stand

*Francis J Farrelly*

Deputy Upper Tribunal Judge

2<sup>nd</sup> April 2018