



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07619/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 November 2018**

**Decision & Reasons Promulgated  
On 30 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MR SH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss M Harris, Counsel instructed by Elder Rahimi Solicitors (London)

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer of the Specialist Appeals Team

**DECISION AND REASONS**

**Background**

1. The appellant is a citizen of Iran who appealed to the First-tier Tribunal against the decision of the respondent dated 5 June 2018 to refuse the appellant's protection claim. In a decision promulgated on 3 August 2018 Judge of the First-tier Tribunal Parkes dismissed the appellant's appeal on all grounds.

2. The appellant appeals with permission, to the Upper Tribunal, on grounds that the judge gave inadequate reasons for his credibility findings and erred by failing to make findings upon risk on return stemming from the appellant's evangelical activities on social media. In granting permission Judge of the First-tier Tribunal Grant concluded that whilst there were credibility issues with regard to the appellant's claim of events that took place in Iran, it was arguable that the judge had erred in failing to make any findings upon risk on return arising out of the appellant's sur place activities which include attendance at church and social media activities including his posting upon Facebook.

### **Submissions**

3. Miss Harris relied on what were essentially narrative grounds addressing each and every paragraph of the decision. Miss Harris took me through the evidence that was before the First-tier Tribunal including the evidence in support from the previous church and the oral evidence from his current church and that both churches consider the appellant to be genuine; in particular she relied on the witness statement from Mr Baillie. She emphasised the context Mr Baillie had known the appellant in. Miss Harris submitted that there were two separate church organisations testifying about both the appellant's attendance at church and the genuineness of his fear and that these were factors which, coupled with the appellant's social media activities, should have been engaged with. Miss Harris reminded the tribunal of the relevant background in relation to the judicial guidance on assessment of claims on the basis of religion.
4. In respect of ground 1 Miss Harris pointed to the judge's findings at [21] of the decision and reasons and criticised the judge's consideration of Mr Baillie as an expert rather than considering that he was also a witness as to fact. However, as confirmed in **TF and MA [2018] CSIH 58** evidence from Church witnesses in positions of responsibility giving their opinion about the genuine nature of an appellant's conversion, is expert evidence. I also take into account that the judge directed himself that the Mr Baillie's evidence was evidence in the appellant's favour and it was considered in that light.
5. The judge found at [22] that the appellant was unable to explain why his work colleagues were prepared to take the risk that they did in evangelising the appellant which is information that the judge found "might have been expected." Miss Harris submitted that the appellant had provided an explanation at paragraph 17 of his witness statement that there was nothing implausible about being evangelised in the way he was and stated that he felt angry, bitter and resentful and that the three people who evangelised him spent time speaking to him and learning about his unhappiness.
6. Miss Harris submitted that at [23] that the judge relied on the fact that the appellant's church enrolled him on a course for new believers even after the appellant had been baptised in another church which the grounds submitted was to ignore the fact that although the appellant had been

enrolled on a course, the witness from the appellant's current church confirmed that he had no doubt about the genuineness of his conversion. Miss Harris also submitted that it was very unlikely that someone would have no gaps in their religious knowledge. It was pointed out to Miss Harris that Mr Baillie's evidence, as recorded at [20], was that the appellant had some gaps in his knowledge and it was in this context that the judge made the findings he did at [23] that the appellant's knowledge of Christianity was limited to the extent that he was still undergoing instructions in circumstances where it appears that his current church would not have considered him ready for baptism and Mr Baillie's evidence was recorded that "for baptisms there is a ten week course followed by an interview to confirm the candidate is genuine" and Mr Baillie had indicated that the previous church had a "different philosophy and take people more at face value" whereas his church preferred a more informed choice.

7. Whilst the judge considered that in the context of the fact that both Oasis and Mr Baillie's church considered the appellant to be genuine, the judge nevertheless found that it was "troubling" that the appellant appeared to have started a house church with limited knowledge of the religion to the extent that he is still undergoing instruction now and his current church would not have considered him ready for baptism.
8. Miss Harris also questioned the judge's negative findings that it was the appellant who was targeted whereas it was his wife who was the preacher and the judge noted that in these circumstances it was problematic that she was released without charge having blamed it all on the appellant. The judge also reached the finding that if the authorities had been informed by someone who had attended, one would have assumed they would have been told about what had taken place at the meeting including that the appellant's wife was the preacher.
9. Miss Harris and the grounds took issue with the judge's conclusion that Mr Baillie did not fully support the appellant. However she conceded that this was not what the decision said, rather that "the appellant's church attendance in the UK led to his being baptised in circumstances which Mr Baillie did not fully support".
10. It was Mr Whitwell's submission that the judge's findings were adequately reasoned and there were four over all strands of his reasoning:
  - (a) why his work colleagues would take the risk to evangelise the appellant in the way that they did;
  - (b) the appellant's knowledge of Christianity;
  - (c) the circumstances of the appellant's arrest;
  - (d) the lack of risk to his wife.
11. Mr Whitwell submitted that the appellant, although he reported to address the issue of why he was evangelised, did not address why his work colleagues would have taken the enormous risk that he claims they did. Mr Whitwell submitted that it was not that the judge did not accept that the appellant was attending church as he claimed. Indeed the judge at

[32] accepted that it was possible that the appellant had converted to Christianity since his arrival having made out the claim of events in Iran. However the judge's concern was more in the context of the appellant stating that he was an individual who had started a house church yet in the UK he is an individual who continues to undergo instructions and where his existing church would not have baptised him in the time frame in which he was baptised by his previous church.

12. In respect of the appellant's wife Mr Whitwell submitted that the grounds were only a disagreement with the judge's reasoning. The judge took into consideration that at [25] that it was the appellant who had been speaking to his colleagues and despite his being the object of their intentions and the one who received the information on which a decision to convert, it was the appellant's wife who led the meetings at their house "although it is not clear how she would have had the knowledge or understanding to lead a meeting or to inform others."
13. In relation to the appellant's sur place activities Mr Whitwell accepted that the judge had not made any specific findings. At [19] the judge set out that the appellant was asked how he blogged if he was not very literate and he had replied
 

"that he can read short subjects on his Facebook but profile is the sign of the hand and the person who descended from the sky and he then set his profile as his name and surname. A friend set it up and the appellant puts posts up. Items are sent to the appellant's account and if he likes them he posts them, the appellant does not write them. The appellant did not know if his account was closed or suspended, he accesses it daily."
14. In terms of the reported case of **AB and Others (internet activity) - state of evidence) Iran [2015] UKUT 0257 (IAC)** Mr Whitwell submitted that there was insufficient evidence to show that the appellant would come to the attention of the authorities at the "pinch point" discussed in **AB and Others**.
15. In reply Ms Harris again relied on her grounds that the judge had failed to deal with the photographic evidence of the house church in finding at [31] that they did not set up a house church in Iran Miss Harris also referred me to the appellant's evidence at interview including from question 50 to 100 in respect of his evidence on his conversion.

### **Error of Law Discussion**

16. Although, as also identified by the permission judge, the appellant's evidence of the claimed events in Iran is problematic, notwithstanding those difficulties, I am satisfied that the judge erred in his consideration of the appellant's sur place activities in the UK, including in his ongoing practice of Christianity.
17. It was not disputed that two churches consider the appellant to be a genuine convert and the judge heard oral evidence from the appellant's current pastor. Mr Baillie's evidence indicates that he and his wife both speak Farsi. He indicates that he has known the appellant since April 2018

and that the appellant had had a 'rudimentary understanding' of the Gospel when he came. Although the appellant had already been baptised in the UK Mr Baillie sets out the work he has done on his faith since joining Mr Baillie's church. Mr Baillie identified that he had interacted with the appellant primarily before, during and after church meetings. He described the appellant as keen to share his faith and that two further individuals the appellant has invited are now attending the church regularly. Mr Bailli's witness statement concludes that he believes the appellant to be a genuine follower of Christ.

18. Although the judge acknowledged the evidence in favour of the appellant's practice of Christianity in the UK, he fails to give adequate reasoning for his conclusion that the appellant has not genuinely converted or 'that he has in reality embraced the faith'. Although the judge relies on his negative credibility findings in relation to the appellant's account of what happened in Iran, that is insufficient in itself to justify the finding that the appellant has not in reality embraced the faith, when the evidence from the Church was this was in fact what he had done.
19. The First-tier Tribunal rejected the appellant's account of what happened in Iran and because of that rejection, went on to similarly reject the appellant's account, and the account of the supporting evidence, that he is a practicing Christian in the UK.
20. As identified in **TF and MA** (above) such an approach is problematic. The rejection of the appellant's own evidence that he is a genuine convert does not become evidence that he is not genuine, to be set against other, independent evidence, from which the genuineness of the conversion can be inferred, which is the error the First-tier Tribunal has fallen into. That other evidence must be assessed on its own merits without any assumption that it is in some way suspect or of little value.
21. **TF and MA** makes clear that the problem with discounting evidence by church witnesses and in concluding as the judge in this case has done, that participation in church activities was carried out in bad faith, is that it makes a leap from finding that the appellant has told lies to a finding that he is living a lie. I am of the view that the First-tier Tribunal has made such a leap without providing adequate reasons as to the evidence pointing to such a conclusion.
22. In addition, there is a complete absence of findings in relation to the appellant's on-line activities, print-outs of which were before the First-tier Tribunal. Although the judge recorded that the appellant did not know if his account was closed or suspended, he also recorded that the appellant accessed his account daily. The judge failed to make any findings as to the effect of the posts that the appellant had already made and there is an absence of any findings, particularly in light of what was said in the background material about internet activity, including as discussed in **AB and Others** (above).
23. The evidence considered by the Upper Tribunal identifies that although the authorities do not chase everyone who just might be an opponent, if that

opponent comes to their attention for some reason, that person might be in quire serious trouble. The evidence also identifies that some people on return are asked about their internet activity, particularly their Facebook password and that it is clear the Iranian authorities are 'exceedingly twitchy' about blogging activities. Clearly if asked about such activities, a person could not be expected to lie, not only because of the relevant jurisprudence but because it is often quite easy for this to be checked up. If the return of someone to Iran creates a 'pinch point' so that the returnee is brought into direct contact with the authorities in Iran, the evidence indicates that it is quite likely they will be asked about their internet activity and likely if they have any such activity, that will be exposed and if it exposed and it is less than flattering of the government it will lead to a real risk of persecution.

24. Although the appellant's internet activity is of a religious rather than a political theme, there is a lack of any findings by the First-tier Tribunal as to the likely view of the authorities as to that activity. Although the judge rejected the appellant's claim that he left Iran illegally, his alternative findings that such illegal exit by itself is not a source of danger, fails to make any findings as to the effect of illegal exit in the circumstances the appellant claims he will find himself, where he claims to have posted entries about his religion and where the evidence suggests that illegal exit might create a 'pinch point' on return where his claimed internet activities could come to light and arguably create a real risk of persecution. There is an absence of adequate findings in this regard.
25. Although I am much less persuaded by the arguments in relation to the alleged errors in the judge's reasoning about the appellant's activities in Iran, I cannot say for certain that if the judge had applied the correct approach to the evidence of the appellant's religious practice in the UK, as advocated in **TF and MA**, that he would necessarily have reached the same conclusion in relation to the appellant's claim of what happened in Iran.

### **Notice of Decision**

26. For those reasons I am satisfied that the decision of the First-tier Tribunal contains errors of law such that it should be set aside in its entirety. The extent of the findings of fact are such that the appeal is remitted to the First-tier Tribunal, to be heard de novo, other than by Judge Parkes.

### **DIRECTIONS**

- The bundle of evidence before the First-tier Tribunal is not properly tabulated/compiled and is difficult to follow. The appellant's representative is directed to file with the First-tier Tribunal and serve on the respondent, an updated bundle with any and all evidence to be relied on.

### **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

Date: 20 November 2018

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was paid or payable so no fee award is made.

Signed

Date: 20 November 2018

Deputy Upper Tribunal Judge Hutchinson