Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08763/2017
PA/08765/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 23 November 2018	**On 3 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

T. H.
E. B.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel, instructed by Elder Rahimi
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

The Appellants are mother and son. Both are nationals of Iran who entered the UK unlawfully, and made a protection claim on 25 March 2017 at an airport upon arrival. Their applications were refused on 25 August 2017, and their appeals against that refusal came before the First-tier Tribunal at North Shields on 26 October 2017, when they were heard by First-tier Tribunal Judge Cope. The appeals were dismissed on asylum and human rights grounds, in a decision promulgated on 2 January 2018.

The Appellants' application for permission to appeal the decision was initially refused by the First tier Tribunal, but permission was granted by decision of Upper Tribunal Judge Plimmer on 18 September 2018 on the same grounds. The Appellants' challenge does not extend to the dismissal of their human rights appeal on Article 8 grounds.

There has been no application to adduce further evidence pursuant to Rule 15(2A) and there has been no response to the grant of permission by way of Rule 24 Notice by the Respondent. Thus the matter comes before me.

Before me Ms Cleghorn abandoned the complaints raised in paragraphs 13 and 15 of the grounds; leaving twelve complaints. Eleven of those were complaints about individual passages within the Judge's decision, arguing that the Judge had failed to look at the evidence holistically, had left material evidence out of account, or, had failed to give adequate reasons for the adverse credibility findings that led to his rejection of their account of their experiences in Iran as a fiction; MD (Turkey) [2017] EWCA Civ 1958.

The twelfth complaint is however of a quite different character. Although it could have been better drafted, it is a complaint about the approach taken by the Judge to the evidence from Pastor Nichols of the Dunston Family Church, on behalf of himself, and the members of his congregation [27]. Pastor Nichols offered both evidence of primary fact in relation to (i) the regular attendance of the Appellants at their Church since they were housed in the North East by the Respondent, (ii) their attitudes and behaviours whilst participating in the congregation, and, (iii) their baptism. He also offered opinion evidence as to whether they were in truth genuine believers in, and followers of, the Christian faith. Upon due reflection it is a complaint that has two limbs. First that the Judge failed to recognise that the evidence of primary fact was unchallenged. Second that the Judge failed to treat the opinion evidence of Pastor Nichols as that offered by someone who should be treated by the Tribunal as an expert in his field. Thus a complaint that the Judge failed to give to Pastor Nichols' evidence the weight that it deserved.

The unchallenged evidence before the Judge was that the Appellants claimed asylum at immigration control having disembarked from a flight, and thus at the first possible opportunity. Their claim from the outset was that they wished to fully embrace the Christian faith, and that they felt unable to worship in the Christian faith in Iran in safety. The current country guidance in relation to Iran, and thus the Respondent's stance at the hearing, was that a genuine apostate does indeed face a real risk of harm in Iran amounting to persecution for a Convention reason.

Although there may have been confusion over the precise date upon which this event had occurred, it was not disputed before the Judge that the Appellants had both been baptised by Pastor Nichols at Dunston during September 2017. Nor was it disputed that he had baptised them whilst holding the genuine belief that they had genuinely embraced Christ and were sincere in their conversion from Islam. Nor was it disputed that they had regularly attended, and participated in the services, held at the Dunston Family Church.

Thus the question for the Judge that lay at the core of both appeals was whether the Appellants were telling the truth when they had declared themselves to be genuine followers of the Christian faith, or, whether they had from the outset sought to deceive their congregation (and the Respondent) as to the true nature of their religious faith.

Since it had not then been promulgated, the Judge did not have the benefit of the guidance to be found in TF and MA v SSHD [2018] CSIH 58, upon the proper approach to evidence of the sort that Pastor Nichols gave to the Tribunal. In my judgement the Judge would have been unlikely to express himself as he did in paragraphs 119-127 of his decision, if he had enjoyed the benefit of that guidance. It is very difficult to identify any adverse consequence for the general reliability of Pastor Nichols' evidence (whether factual or opinion) that followed from an innocent clerical mistake in the mis-dating of the baptism certificates by a week. (It was not suggested that there was anything other than an innocent clerical mistake in this respect). The correct date of the event was a matter of no consequence in these appeals, since it was not disputed that those baptisms had occurred on either 17th or 24th September 2017, and nothing turned upon whether the baptisms had occurred on one date or the other. Certainly such a clerical slip would not, of itself, justify the Judge's conclusion that he could not "*place anything but minimal weight*" on either Pastor Nichols' evidence of fact, or, his opinion evidence as an expert [127].

The Judge had, in my judgement correctly, expressed concerns about the approach taken by the interviewing officer, and the decisionmaker, to the extent that they had tried to assess whether the Appellants were genuinely followers of the Christian faith by pursuing an examination of their knowledge of the Bible [34]. As he identified, the problem with such an approach is that there is no objective standard for biblical knowledge before a candidate may be accepted for baptism. Nor does knowledge of the Bible equate to either belief in, or, acceptance of Christ. Many who genuinely profess to believe in, and follow, Christ have never read the whole Bible and will never do so. Moreover for those whose ability to learn, or whose exposure to Christianity, in their country of origin may be limited by the situation within that country, it is not always realistic to expect detailed knowledge either upon the occasion of their arrival in the UK, or, within a few months of it. In this case the Appellants were interviewed within four months of entry to the UK, and of course in developing their knowledge whilst in the UK they had to cope with a language barrier since Pastor Nichols had no Farsi, and English was not their first language. What then was left upon which to base a decision that Pastor Nicholls had been the subject of a deception?

Pastor Nichols told the Judge that he had taken the view that attendance upon the usual seven week pre-baptismal course would neither be appropriate, nor effective, since he could not be sure an interpreter would be available for the entirety of such a course. Instead he booked an interpreter, and then used him to speak to the Appellants for about three hours on one occasion, in order to satisfy himself that they had both understood and accepted what he considered to be the key points that would have been covered by the pre-baptismal course. Thus his evidence was that he had thereby satisfied himself

that the Appellants' conversion was sound and sincere. On the face of it, this was nothing more than a pragmatic response to the difficulties that Pastor Nichols understood he would face if he sought to put the Appellants through the usual pre-baptismal course. Since it was not disputed that the Pastor had undertaken this exercise, nor that that he had as a result genuinely formed the view that the Appellants' conversion was sound and sincere, nor that he was entitled to do so, I am unable to identify in the decision any reason offered by the Judge for his conclusion that it was an opinion upon which he could not "*place anything but minimal weight*" [127].

It is clear from the decision, when read as a whole, that the Judge reached the conclusion that the Appellants had created a fictitious account of their experiences in Iran. Whether or not he was entitled to do so, that did not, of itself, answer the question that lay at the heart of the appeal; were the Appellants telling the truth when they had throughout declared themselves to be genuine followers of the Christian faith, or, had they sought to deceive Pastor Nichols and his congregation from the outset as to their true nature of their religious faith?

There were a number of indications that the Appellants held a genuine interest in Christianity before they arrived in the UK. They had immediately declared that as the basis for their protection claim, and they had made that claim at the first available opportunity. They had immediately found a local Church to attend, once housed by the Respondent, and they had continued regular attendance to the date of the hearing of their appeals. Since the Judge's decision does not record otherwise, I infer that cross-examination had failed to disclose any inability on their part to explain why they had been attracted to the Christian faith, or had embraced it. As set out above, they had satisfied Pastor Nichols that their faith was genuine and sincere, and he had accepted them as candidates for baptism on that basis. There is no suggestion in the Judge's decision that he concluded Pastor Nichols was inexperienced, or otherwise unable to make that assessment. Thereafter the Appellants had done nothing to indicate to him, or his congregation, that they had been deceived.

In the circumstances I am satisfied that the Judge's approach to the evidence does disclose a material error of law. That begs the question of whether the appeals should be remitted for a full rehearing, or, whether it is possible to simply set aside the decisions and remake them without hearing evidence. Neither party has sought to introduce new or further evidence in the remaking of the decision, and as set out above I am not satisfied that it was ever disputed before the Judge that Pastor Nichols genuinely formed the opinions he described, or, that he was entitled to do so. I note that it was the Judge himself who considered the points taken by the Respondent in the course of reaching his decision that the Appellants had not undertaken a genuine conversion, were without substance. In the circumstances, even if the Judge's decision that the Appellants had not told the truth about their experiences in Iran should stand, I am satisfied that it would still be inevitable upon any remittal that the appeals should succeed. Thus a remittal would serve no practical purpose. Once it is recognised that the Appellants are genuinely members of the Christian faith, which is in my judgement the only rational finding open to the

Tribunal upon the unchallenged evidence of Pastor Nichols, then the Respondent for his part accepts that the appeals must succeed. In the circumstances it is unnecessary for me to deal with the eleven other challenges raised to the Judge's findings.

I therefore set aside the decision of Judge Cope upon the asylum appeals, and remake the decision upon the asylum appeals, so as to allow them.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 2 January 2018 did involve the making of an error of law that requires the decision upon the asylum appeals to be set aside and remade.

The appeals are allowed on asylum grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are 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 Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 26 November 2018
Deputy Upper Tribunal Judge J M Holmes