



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

Appeal Number: PA/11893/2016

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 29th October 2018

Decision & Reasons

Promulgated

On 19th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[G M]

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegami (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge O'Hagan, promulgated on 18th January 2018, following a hearing at Birmingham Sheldon Court on 9th January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on [~] 1968. He appealed against the decision of the Respondent dated 18th October 2016, refusing his claim to asylum and humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he was raised in the Orthodox Islamic tradition of his country, but his difficulties began in February 2013, when he adopted a girl called [A], who was born on 27th July 2012, and was then about 7 months old. She was now aged 5. His family disapproved of the adoption. They thought this was contrary to the teachings of Islam. Following an attack on him and his wife, the Appellant took his brothers to the Shiraz Family Court. The judge told the Appellant he should marry [A]. After this, the Appellant was disillusioned with Islam. About this time he was introduced to Christianity. He and his wife converted to Christianity in May 2015. They began to attend a house church in August 2015. He attended three times at monthly intervals. The church was then raided in March 2016, and some members were arrested and detained. The Appellant and his wife fled Iran.
4. In the United Kingdom, the Appellant began to attend the Walsall Christian Centre and there was evidence in this support from Mr [LB] and Mr [JK], the senior leader at the Walsall Christian Centre and the cross-cultural community worker at the Walsall Christian Centre, respectively.

The Judge's Findings

5. The judge observed how the Appellant failed to mention Christianity during his screening interview, and had in fact described himself as a Muslim, and had only subsequently gone on to say that he was a Christian (paragraph 19). Consideration was also given by the judge to the Appellant's conversion to Christianity. There was no-one from the Oasis Church that the Appellant had attended. His explanation was that he did not ask anyone to attend. There were also no supporting letters from them. The Appellant offered to send such evidence afterwards, but the judge properly declined to take it into account, given that the Home Office would not have had the opportunity to consider such evidence (paragraph 21).
6. On the other hand, there was evidence from both Mr [B], and from Mr [JK] before the Tribunal. The judge was critical of the evidence given from these witnesses, and this is set out at length by the judge (at paragraphs 31 to 35). In particular, the judge's conclusions (at paragraph 66) were that the church officials had perhaps acted in a manner that was not becoming of them (see paragraph 66).
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge, in his treatment of the two independent witnesses, had applied the incorrect standard of proof and

placed too much weight on inconsistencies. In addition, if regard is had to paragraph 67 of the decision, it was arguable that the judge speculated about the motivation of the members of the congregation, who had co-signed a letter produced by Mr [K], the cross-cultural community worker at the Walsall Christian Centre, and if there was a concern about his motivation, this was a serious accusation, that should have been put to the witness. Also, there appears to have been a discrepancy about the number of Iranians attending the church, but if there was a discrepancy about this, in terms of an answer that some Iranians had moved away after being granted status in this country, this may well have been on account of the change of accommodation, which inevitably meant that their previously Home Office funded accommodation was withdrawn, such that the criticism could not then be upheld from the judge.

9. On 19th March 2018, permission to appeal was granted by the Upper Tribunal on the basis that the judge had arguably failed to address the fact that the Appellant was a genuine convert, and that the two church witnesses have not been properly considered in terms of their evidence.

Submissions

10. At the hearing before me on 29th October 2018, Mr Bandegani, appearing on behalf of the Appellant, submitted that there were a number of areas of concern because the judge had accepted the core account of the Appellant as being plausible (at paragraphs 47, 48, 50, 51, 69, 70 and arguably 64). However, he had then focused on the negative aspect of the claim, in a manner that appeared to show that the judge was striving to refuse the appeal notwithstanding that which had been found in favour of the Appellant. Against this general submission, Mr Bandegani went on to make the following three submissions.
11. First, the account given of how many Iranians there were in the congregation engaging in services was one that had been properly explained (at paragraph 64) but the judge had then proceeded to reject this on the basis that Mr [B] had told him of a Farsi speaking lady who came on a Friday evenings in 2016 to enable people to tell their stories, but had neglected to mention this earlier, such that it could not be said on this basis alone that the account given off the numbers in attendance was to be rejected for this reason alone. Further, the judge stated that Mr [K] had contradicted the numbers of Iranians attending given by Mr [B], and when this had been put to him “he changed his account” (paragraph 65). This was a serious attack upon the credibility of these two church witnesses. The members of the congregation would move on. The fact that, upon the matter being put again to Mr [K], he had corrected himself, did not mean to say that the evidence was for that reason unreliable.
12. Second, at paragraph 54, the judge refers to the threats to the Appellant and his wife from his brothers. He observes that the Appellant was unable to explain the discrepancy between his evidence and his statement. He had said that although his brothers did not attack him or his family following the hearing at the Shirazi Court, “his brothers continued to make

threats, and discount at the interview that they did nothing at all post-hearing” (paragraph 54). It was difficult to see, submitted Mr Bandegani, what was meant by this. An attack is different from a threat. The Appellant’s account here was that they continued to threaten him, although they did not attack him. Furthermore, it was not clear what account the judge is referring to in the interview.

13. Third, the judge had failed to refer to an important piece of evidence from [ML] who had provided a headed notepaper letter of four pages, as the associate pastor at the Jesus Fellowship Church, who stated that she had actually spoken to the Appellant about his fate, and this letter, which is dated 5th August 2017, is nowhere referred to by the judge, although it appears in the bundle.
14. For his part, Mr Mills submitted that, this was a complicated case, as is clear from the background evidence, which involved a threat to the Appellant on account of his having adopted a small child of a few months, which his family did not agree with. The Appellant had expressed disillusionment with Islam and with Iran whilst he was in his own country. Mr Mills, however, stated that, “I have to accept that the way that the judge dealt with the witnesses is troubling”. The criticism of how many asylum seekers were attending the church, and whether there were six Iranians and four Kurds, or not (see paragraph 65) was neither here nor there. Importantly, however, to say that no weight whatsoever was to be attached to what this witness said, on account the difficulties in which they found themselves in, was unsustainable. He would have to agree that there was an error of law.

Error of Law

15. 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.
16. This is a case where the judge has unfortunately approached the evidence of Mr [B] and Mr [K] in a manner that is unfortunate. This is clear from what appears at paragraphs 63 to 67. The explanation is given early on at paragraph 64 about the steps taken to enable Iranians in the congregation to engage in services, and it is unclear, why the reference to a Farsi speaking lady who came on a Friday, should make that account lacking in credibility is difficult to see.
17. In the same way, after both witnesses have explained what the number of Iranians and other asylum seekers are in the congregation, the judge proceeded to say that Mr [K] had “changed his account” when what he had done was to give an explanation, is a feature of the fact-finding process that is also unfortunate. The church witnesses are not people claiming asylum. They have no reason to set out to mislead the court whether deliberately or inadvertently.

18. However, perhaps the most concerning aspect of the appeal in this regard, is the description of the judge of how Mr [K], who had provided a letter of support for the Appellant for the Tribunal, had then gone on to elicit the names of other people, who could attest to the Appellant going to church services, and their names are written below the letter of Mr [K] in a list. The judge went on to say that, "I am concerned by the way in which the list was compiled". When this was put to Mr [K] the judge recorded that, "he said that the witnesses were happy to confirm that the Appellant attends church". The judge had gone on to say that the witnesses "may well have felt under considerable pressure to put down their names, whether they were happy to do so or not". He had then concluded that, "I do also question the ethics of compiling a list of this kind by putting people on the spot" (paragraph 67).
19. This amounts to an accusation that the church witnesses were not proceeding with the best of motives in relation to the appeal before the Tribunal. There is no basis for this. Another church official may well have simply put forward a letter signed under his or her name. In this case Mr [K] chose, for reasons that he may well have been able to explain, to also have the names of other people attending the church, confirming that they have seen the Appellant come to church services, and if he had gone the extra hog in doing so, this did not necessarily raise an ethical question about what he was doing, provided he was satisfied himself that the Appellant was a genuine convert, which was the critical issue that such church officials attend a court to give evidence on.
20. Given that the error of law is conceded by Mr Mills, I proceed to make a finding accordingly that the judge has fallen into error for the reasons that have been given.

Notice of Decision

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 allowed by the Practice Statement 7.2(a) to the extent that it is remitted back to a judge other than Judge O'Hagan at Birmingham CJC at the next available opportunity.

The appeal is allowed.

An anonymity direction is made.

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

Deputy Upper Tribunal Judge Juss

17th December 2018