



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

Appeal Number: PA/03942/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

On 22nd March 2019

**Decision & Reasons
Promulgated
On 4th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MHA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R O’Ryan of Counsel, instructed by Alison Law Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge M J H Wilson (the judge) of the First-tier Tribunal (the FtT) promulgated on 4th May 2018.
2. The Appellant is a national of Iraq. His claim for international protection was refused by the Respondent on 3rd March 2018. He had claimed that

he would be at risk if returned to Iraq because he was sought by a terrorist group, because he had converted from Islam to Christianity, and because he legally left Iraq. The appeal was heard on 23rd April 2018.

3. The judge heard evidence from the Appellant and two witnesses in relation to his claimed conversion to Christianity. The judge noted that there had been a previous appeal hearing and took the findings from that previous hearing as his starting point in accordance with the principles in Devaseelan [2002] UKIAT 007021. The judge found that the Appellant relied, in the main, upon his conversion to Christianity as being the reason why he feared return to Iraq. The judge found that the Appellant had not given a credible account in relation to his claimed conversion, and did not accept that the evidence of the witnesses proved that there had been a genuine conversion. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

4. The grounds seeking permission to appeal were settled by Counsel and contain 33 paragraphs. The grounds are summarised below.
5. It was submitted that the judge had erred by having “a negative approach to the Appellant’s credibility by placing heavy reliance upon the determination of FtT IJ Lloyd-Smith”. It was submitted that the judge had failed to make findings on fresh evidence before him of the Appellant’s baptism, confirmation, evangelising, and activities within the church.
6. It was submitted that the judge had erred at paragraph 28 in finding the Christian conversion to be entirely bogus. The judge had given inadequate reasons and placed too much weight on the Appellant’s failure to recollect the date when the Appellant began to attend church, despite the Appellant in re-examination stating that it was eighteen or nineteen months previously.
7. It was submitted that the judge’s consideration of the conversion to Christianity is inadequate and insufficient and the judge had failed to make findings upon the length of time that the Appellant had been attending church, and his commitment and activities with the church, and evidence of his evangelising.
8. It was submitted that the judge had applied too high a standard of proof. It was further submitted that the judge had erred at paragraphs 42 and 43 in not accepting the evidence of the two witnesses to the effect that the conversion to Christianity is genuine. The judge had given inadequate reasoning for finding that there were difficulties with understanding and communication between the witnesses and Appellant.
9. It was submitted that the judge had erred by failing to attach weight to the evidence of Reverend Close, who was one of the two witnesses, who had stated that she was aware that the Appellant had publicly proclaimed his faith and had been evangelising.

10. It was submitted that the judge had erred at paragraphs 44 and 45 in attaching little weight to a letter written by Reverend White. The Appellant in his statement had confirmed that he spoke with Reverend White, and Susan Bray, one of his witnesses, had confirmed in her statement that she and the Appellant had met with Reverend White. It was submitted that Reverend White has first hand experience of persecution as a Christian in Iraq, having written a book about his experience entitled "Vicar of Baghdad".
11. It was submitted that the judge had erred by failing to consider an important aspect of the case, in that the Appellant was a Muslim who had converted to Christianity, and therefore the claim before the judge was not just about the treatment of Christians in Iraq, but the treatment of Muslims who have converted to Christianity in Iraq.

The Grant of Permission to Appeal

12. Permission to appeal was granted by Upper Tribunal Judge Perkins in the following terms;
 - “5. In the most recent appeal the First-tier Tribunal Judge has given very full reasons for concluding that the Appellant’s conversion (he has been baptised as a Christian and confirmed by the Church of England) is one of convenience.
 6. I did not expect to give permission to appeal when I read the Decision and Reasons. However, after reading the statements of the supporting witnesses, Ms Susan Bray and the Reverend Carol Close, I find it arguable that the First-tier Tribunal did not have proper regard for their expertise and/or their opinion based on their experience of him as a person.
 7. I also find it arguable that insufficient regard has been given to the evidence of his having a ‘well-used’ Kurdish Bible (page 12 in the bundle, paragraph 20 in the statement) and his expression of joy during Christian worship (page 12, paragraph 16 and, perhaps, page 14 paragraph 30).
 8. Additionally it is arguable that there is inadequate consideration of how he might be perceived in Iraq given his apparent evangelism amongst the Muslim community in the United Kingdom (page 7, paragraph 13) and his being baptised and confirmed in the United Kingdom even if, contrary to his case, he has behaved cynically.
 9. I give permission on each ground.”

Following the grant of permission to appeal the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

13. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

14. At the oral hearing Mr O’Ryan relied upon six points to demonstrate that the judge had materially erred in law. Mr Tan argued that there was no material error of law, and the decision of the FtT should stand. I consider the six points raised on behalf of the Appellant below.
15. Firstly it was submitted that the judge had erred in failing to make findings on the claim that the Appellant had been evangelising. This had been confirmed by Susan Bray and Reverend Close in their witness statements. Although Susan Bray had stated in paragraph 13 of her witness statement that the appellant spoke to his Muslim friends about the different prayers in church including the Lord’s prayer, and advised his friends that when they pray they must understand what they are praying and not just recite the prayers, the judge noted and recorded at paragraph 31 of his decision that in her oral evidence Susan Bray said that she did not know whether the appellant told his Kurdish friends that he was a Christian.
16. The judge does not make a specific finding in relation to evangelising. I note in paragraph 3 of the judge’s decision that he confirms considering all the evidence in the appeal and if a particular document is not mentioned in the decision, this does not indicate that the judge has failed to consider it or give it appropriate weight. It is emphasised at paragraph 4 that the judge has carefully considered all the evidence and all the arguments placed before him. After reading the decision as a whole I have no reason to doubt that.
17. At paragraph 28 the judge describes the Appellant as “an evasive and inconsistent witness in his evidence”. The judge found that “simply put, the total evidence persuades me that the Appellant was willing to do that which was necessary in order to secure status in the United Kingdom. I find that he was prepared to go through the motions.”
18. At paragraph 43 the judge finds “I am satisfied in the light of the whole of the evidence that such was his poor credibility that his attendance and participation in church services was no less capable of contrivance.”
19. In my view it is clear from reading the decision that the judge considered all aspects of the evidence, including the claim that the Appellant had been evangelising, and rejected the claim that he was genuinely evangelising. My reading of the decision is that the judge’s view was that any evangelising carried out by the Appellant was done not because he genuinely believed in Christianity, but because he was using Christianity in an effort to remain in the UK.
20. The second point made on behalf of the Appellant relates to paragraphs 19-20 of the judge’s decision, and the contention that the judge gave no weight to the Appellant’s evidence, which he gave in re-examination, that he recalled that he had been going to church for eighteen or nineteen months.

21. The judge had found that the Appellant's failure to remember the date, month or even the part of the year in which he started going to church lacked credibility. However the judge does record at paragraph 20 that the Appellant stated in answer to his representative's re-examination that he had been going to church for eighteen or nineteen months. I do not find that the judge attached no weight to this. The judge goes on to record that

"... even if this were true his repeated failure to recall when it was he first experienced a Christian Church, or to even have the slightest idea in which part of the year it happened, casts doubt upon the sincerity of his claim to be a genuine Christian convert. I also note the reason he gave for not knowing was because he had 'so much else going on' in his life. However, I find that this does not credibly account for his complete failure to recall when, what would be expected to be a meaningful life changing event in his life, occurred."
22. The judge did take into account what the Appellant said in re-examination, but found that notwithstanding that, the Appellant had initially stated that he could not remember when he started attending church and the adverse credibility finding made by the judge was open to make on the evidence.
23. Thirdly it was contended that the judge had erred when considering communication between the Appellant and the two witnesses who gave oral evidence. It was pointed out that Reverend Close in her witness statement at paragraph 21 had stated that the Appellant "asks pertinent and interesting questions about Christianity that are thoughtful and confirms his eagerness to learn fully about Christianity." It was submitted that this had not been taken into account by the judge.
24. I do not agree that the judge erred when considering the issue of communication between the Appellant and witnesses. The judge considered this issue, together with other issues at paragraphs 30-43. The judge found at paragraph 35 that both witnesses had failed to credibly explain how they managed to communicate with the Appellant sufficient to be in a position to gauge the level and sincerity of his commitment to his professed religious conversion. Neither of them spoke or understood Kurdish Sorani or Arabic, and Reverend Close confirmed that the Appellant's English was very poor. At paragraph 36 the judge found in relation to Susan Bray's evidence, that she attempted to gloss over the language problem, claiming that she understood most of what the Appellant said but failing to explain how this was possible in the circumstances where his English was acknowledged by Reverend Close to be so very poor that it took weeks to understand why he came to the church in the first place.
25. The judge, in my view, was entitled to find at paragraph 36 that the witnesses had not adequately explained how it was possible to communicate and understand from the Appellant issues directly and indirectly bearing upon Christianity, no matter how simply explained without an interpreter, or anyone else at the church with knowledge of the

Kurdish or Arabic languages prepared to assist. The judge did take into account at paragraph 30 that Susan Bray had said she communicated with the Appellant by using Messenger, but when in church and on other occasions she communicated with him face to face. The judge records Susan Bray indicating that she believed the Appellant understood most of what was said but sometimes he answered incorrectly.

26. The judge took into account not only the witness statements made by the witnesses, but their oral evidence when they were specifically questioned about communication with the Appellant, and was entitled to find at paragraph 35, the language issue was not the only point of concern, but was highly significant.
27. The fourth point made on behalf of the Appellant relates to paragraphs 19-20 of the witness statement of Reverend Close in which she refers to the Appellant having two Bibles, which she described as being well used. There is no specific finding by the judge in relation to the Bibles, but when considering this submission, I take into account paragraphs 3 and 4 of the judge's decision, which I have referred to previously, in which it is confirmed that even if a particular document or piece of evidence is not referred to, it has been considered. At paragraph 28, which has been referred to previously, the judge found that "the Appellant was willing to do that which was necessary in order to secure status in the United Kingdom. I find that he was prepared to go through the motions." The lack of a finding upon the Bibles, does not amount to a material error of law, when the decision is read as a whole.
28. The fifth point made on behalf of the Appellant relates to a letter written by Reverend White, a former Vicar of Baghdad. It was submitted that the judge had erred in law by placing minimal weight on this letter. The judge considered this letter at paragraphs 44-45. The judge records at paragraph 44 that "it is unclear as to whether Reverend White had ever met the Appellant or even spoke to him." That may have been unclear from the letter, but Susan Bray in her witness statement at paragraph 20, contained at page 8 of the Appellant's bundle confirmed that she, together with a small group from the church, including the Appellant, did speak with Reverend White following a presentation. That meeting was not taken into account by the judge but I do not find that to be a material error of law for the following reasons. The judge did take into account that Reverend White did not attend the hearing. The judge also analysed the brief letter written by Reverend White. The judge found that the letter was undated, and it was unknown when it was written, it was unspecified to whom the letter was directed, the letter was brief, containing one six line paragraph. Reverend White had failed to confirm in the letter on what basis he was able to confirm that the Appellant was a committed converted Christian and the judge found that Reverend White had made unsupported assertions for which he cited no authority. The judge had been provided with no evidence to indicate that Reverend White was in a position to provide an expert opinion on Iraq. He failed to acknowledge that there are areas of Iraq in which Christians are safe.

29. Overall, I find that the judge conducted an adequate analysis of the letter written by Reverend White, and was entitled, having provided sustainable reasons, to attach minimum weight to it.
30. The sixth and final point made on behalf of the Appellant at the hearing was that the judge had not considered the risk to the Appellant as a convert to Christianity but had simply considered the risk to Christians. I do not find there is merit in this challenge. It is clear from reading the decision as a whole that the judge understood that the Appellant's claim was to have converted from Islam to Christianity. The point made by the judge was that he was not satisfied to the lower standard of proof applicable that the conversion was genuine. The judge gave adequate and sustainable reasons for finding that the Appellant was not a genuine convert to Christianity, but was attempting to use Christianity in order to remain in the UK.
31. The decision prepared by the judge is comprehensive. It is not suggested that the judge has made irrational or perverse findings, and it is clear that he has not. The judge has reached conclusions open to make on the evidence and given sustainable reasons for those conclusions. I find that the judge has examined all the evidence, and the grounds and arguments submitted on behalf of the Appellant amount to disagreements with the conclusions reached by the judge, but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

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 his 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 29th March 2019

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 29th March 2019

Deputy Upper Tribunal Judge M A Hall