IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000752
First Tier Tribunal: PA/52191/2023
LP/02500/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 July 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NH (IRAN)
(Anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Brown, Counsel instructed by GMIAU
For the Respondent: Ms Newton, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1966. He appeals with permission against the decision of the First-tier Tribunal (Judge Dilks) to dismiss his appeal on human rights and protection grounds.

2. The Appellant is a vulnerable witness. In the hearing of this appeal he did not attend court but was represented by Mr Brown.

Case History and Matters in Issue

3. The Appellant has lived in the United Kingdom since 2006 when he entered the country illegally and claimed asylum. He claimed to be at risk in Iran because he was a member of a trade union who had been arrested and accused of anti-government activity, that is failing to actively support the government when ordered to do so. That claim was rejected for a lack of credible evidence and on the 17th January 2007 First-tier Tribunal Judge Alis upheld the Secretary of State's reasoning on that matter and dismissed the appeal.

4. The Appellant was not returned to Iran.

5. In 2016 he made a 'fresh claim' for protection, in which it was submitted that he had converted to Christianity. The Respondent did not believe that he had, and on the 30th August 2019 First-tier Tribunal Judge Jepson dismissed an appeal on these new grounds. Judge Jepson rejected the submission that the Appellant's poor mental health and addiction issues, evident in 2019, could be blamed for inconsistencies in the account given in 2007. On the matter of the claimed conversion Judge Jepson did not agree with the Respondent that an ability to demonstrate knowledge of the bible was necessary to prove such a claim. He accepted that the Appellant had, at that point, been attending various churches for about 10 years and that he had been baptised. He went on however to draw adverse inference from the gaps in the Appellant's attendance at church, the fact that he had moved churches without any explanation, and crucially for the purpose of the appeal before me, that he had failed to produce a *Dorodian* witness from the church he claimed to then attend.

6. The Appellant was not returned to Iran.

7. Furthers submissions were made on the Appellant's behalf in 2021 and on the 22nd February 2023 the Respondent agreed to treat this as a 'fresh claim'. That is to say, he accepted that the material submitted was new, and that although the claim was refused, it created a realistic prospect of success before a properly directed Tribunal. The Appellant appealed for a third time.

8. The appeal came before First-tier Tribunal Judge Dilks. Judge Dilks was asked to determine a series of connected issues:

   i) Was the Appellant a genuine convert to Christianity? Following the decision of the Upper Tribunal in PS (Christianity-risk) Iran CG [2020] UKUT 00046 (IAC) it was accepted that if he was, then the appeal must be allowed on protection grounds.
   ii) Were the Appellant's mental health and addiction issues so serious as to mean that Article 3 would be engaged if he were to be returned to Iran?

iii) Regardless of the answers to those questions, does the Appellant face very significant obstacles to his integration in Iran such that his appeal should be allowed on Article 8 private life grounds[1].

9. Judge Dilks determined all of these issues against the Appellant and the appeal was dismissed.

10. The Appellant now has permission to appeal on the following grounds:

i) Failure to take material evidence into account/misunderstanding the evidence of the key *Dorodian* witness for the Appellant
ii) Failure to conduct a broad evaluative assessment of whether there are very significant obstacles to integration in Iran

11. I start with ground 2, because it is the most straightforward.

Ground 2: Obstacles

12. The First-tier Tribunal found that the Appellant had failed to make out an Article 3 health claim. It was certainly entitled to make such a finding on the basis of the evidence before it, and Mr Brown takes no issue with that. This does not mean, however, that the Appellant's mental health and addiction issues had no relevance to the appeal. They were, says Mr Brown, plainly relevant to the Article 8 assessment to be made under paragraph 276ADE(1)(vi), and had to be weighed together with the fact that the Appellant has not been in Iran since at least 2006. It is Mr Brown's submission that this the Tribunal failed to do, and that is why it unarguably failed to properly undertake the broad evaluative assessment required by the rule: see for instance NC v Secretary of State for the Home Department [2023] EWCA Civ 1379.

13. What the First-tier Tribunal said about 276ADE(1) was this:

> 83. Although the Appellant has been outside of Iran since 2006, in my assessment he would still be familiar with the language and the culture having lived in Iran until he was around 40 years old.
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> 84. It was stated in the fresh submissions that the Appellant's family had disowned him as a result of no longer following the Islamic faith, and although I must look at the Appellant's circumstances as they were at the date of application, I note that there is the recent email said to be from the Appellant's sister in support of his claim and I reject that the Appellant would have no family in Iran. I find that the Appellant has also been able to build support and establish friends in the UK such as at the church that he currently attends such that he would be able to re-establish himself in Iran.
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> 85. It is accepted by the Respondent that the Appellant is a seriously ill person, but the Appellant has not adduced evidence that is capable of demonstrating that substantial grounds have been shown that demonstrate a real risk of either an absence of

[1] The fresh claim was made in May 2021: paragraph 276ADE(1)(vi) remains applicable to all claims made before the 20th June 2022.

> appropriate treatment in the receiving country, or, an inability by the Appellant to access it and I find that the Appellant has not established that he will face 'very significant obstacles' to integration into Iran.

14. In defence of the decision Ms Newton pointed to the Tribunal's paragraph 85 to say that the evidence about the Appellant's ill health was plainly taken into account in the context of Article 8. I agree with that submission up to a point. The Tribunal here does indeed remind itself of the facts whilst considering 276ADE(1), but it is to my mind clear from this passage that it then conflated the very high test under Article 3 with the factual existence of obstacles that might be relevant to whether the decision is proportionate. It is worth reminding ourselves of what the evidence showed. GP records demonstrated that over the years the Appellant had variously been diagnosed with Schizophrenia, Adjustment disorder, and mental and behavioural disorder due to opioids dependency syndrome. These were, separately and cumulatively, serious mental illnesses likely to have an impact on someone's daily life. The Tribunal was entitled to find that the Appellant had not discharged the burden upon him in respect of Article 3, but it still had to consider what effect these illnesses might have on the ability of the Appellant to re-establish himself in Iran. Instead, it treated its own Article 3 finding, that there would be treatment available, as the only relevant factor. It was not. This is particularly so since the evidence demonstrated that these illnesses continued to have an impact on the Appellant's life here, notwithstanding the interventions of the NHS. It was important to consider the consequences of that once he was transplanted to Iran. Accordingly I accept that this ground is made out.

Ground 1: Christianity

15. Judge Dilks acknowledges that the evidence was significantly different from that which had been relied upon before Judge Jepson in 2019. At that time the Appellant's attendance at church had been sporadic, and he had not been able to give a coherent explanation as to why. He had not called any supporting evidence from the church in the form of a *Dorodian* witness. Now, in 2024, the Appellant produced evidence that he had been regularly attending church services for some 4 years at a particular church in Altrincham. He makes the effort to go there every week despite now living some distance away. This evidence came in the form of letters from several church elders, and from oral evidence called at hearing by Reverend Nick Stirling, a senior minister of over forty years standing. Reverend Stirling gave live evidence recorded in the decision as follows:

> 39. In essence, Reverend S has confirmed in his written evidence which he adopted at the hearing that he is well acquainted with the Appellant and whilst he has witnessed spurious conversions in the past, in his opinion, the Appellant is genuine regarding his Christian faith. It is Reverend S's evidence that he first met the Appellant in 2019 and I note the first letter in which Reverend S expressed this opinion was in his first letter in support dated 24 May 2021 (HB 233-234) which was two years after he met the Appellant. Reverend S has continued to express the same opinion since 2021 and as Reverend S has known the Appellant for some time now and is a senior minister I place weight on his opinion.

16. The decision then noted the written supporting evidence of other pastors and elders of the church to the same effect. Taking all of that evidence together the Tribunal accepted that the Appellant has been attending this particular church regularly for over 4 years; it was not in issue that he had been baptised in 2007 and no issue was taken with the *bona fides* of the church witnesses. Judge Dilks was not however satisfied that these matters were a sufficient basis to find that the Appellant had discharged the lower standard of proof and shown himself to be a genuine Christian. There were two central reasons for that conclusion.

17. The first concerned the fact that the Appellant has to travel a significant distance to get to this church. From this the Tribunal drew an inference as follows:

> 44. With regard to why the Appellant does not attend a more local church, Mr Brown submitted that the Appellant simply does not want that important relationship with Christianity and the church to be severed. It seems to me though that it is not the Appellant's claimed Christianity that would be severed by attending another church but the Appellant's relationship with this particular church and the people there.
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> 45. I take into account that there is no evidence from the Appellant which his representatives states is because they have been unable to take a witness statement from him due to his severe mental health condition (HB102) but it does seem to me that there is some force in the argument that the Appellant has gone to these lengths to maintain the support he has from Reverend S for his asylum claim and the people at that particular church.
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> 46. Mr Brown also submitted that the danger of moving church would be that it would impact on the Appellant's mental health but again it seems to me from this argument that it is the relationships with the people at this church rather than Christianity which are more important to the Appellant as his claimed Christianity could be continued at a more local Christian church.

18. The second reason given by Judge Dilks is this:

> 53. I take into account that Reverend S is a Dorodian witness who has observed the Appellant for four years and I have placed weight on his evidence but against that I also take into account Reverend's S's oral evidence that whilst he was aware that the Appellant's claim was dismissed in 2019 he was not aware of any particular reason for the dismissal and he said that the Appellant had said to him that he would be making another appeal and he would need fresh evidence. Reverend S is not aware of what had been said in the determination of Judge Jepson, including the lack of any mention of religion in the Appellant's asylum claims until 2016, or indeed what had been said in the determination of Judge Alis and, as the Presenting Officer submitted, it would appear that Reverend S was also not aware that this is the Appellant's third attempt to regularise his stay in the UK.

19. Mr Brown took exception to this reasoning. He points out that it was clear from his statement that Reverend Stirling was aware that the Appellant had been in this country a long time (for instance having been baptised in 2007) and that he was aware that he was failed asylum seeker. Under cross examination he had been asked whether he had been aware that Judge Jepson had rejected the Appellant's claim to be Christian, and if not whether that would have made a difference: Reverend Stirling had replied that it would have made no difference at all. Mr Brown submits that the Tribunal's reasoning fails to recognise that this was his evidence. The evidence of the Reverend was clear. He remained of the firm view that the Appellant was still a genuine Christian notwithstanding the reasons given in the previous Devaseelan decisions. He stated that he had no doubt that the Appellant was a true and genuine convert to Christianity, and that this remained his view even when he was made aware that it was the Appellant's third attempt to remain in the UK.

20. In response to my questions about these submissions Mr Brown acknowledged that he has not produced a note of the exchange between the Reverend and the HOPO on the day; nor had he produced a witness statement setting out that this was the evidence given. I am however satisfied on reflection that the position of Reverend Stirling about the Appellant's case history is sufficiently clear from his witness statement and the decision of the Tribunal itself. I accept that he must, when swearing his witness statement, have been aware that the Appellant's claims to be a Christian had been rejected on earlier occasions, albeit that he was not aware of the detailed reasoning. I also accept that the Judge does not appear to have taken that into account in the reasoning at her paragraph 53, which is somewhat incongruent with her acceptance that Reverend Stirling was an honest witness. The fact that he had not hitherto been aware of the detail of Judge Jepson's decision does not logically diminish his insistence that his position remained the same even after those details were explained to him.

21. As for the question of why the Appellant was making the journey to Altrincham once a week I am satisfied that there is an obvious matter of relevance that the Tribunal fails to weigh in the balance. That is the importance of community, and community worship, in Christianity. The Tribunal was, on the facts, in my view correct to conclude that it is this particular church, and this particular congregation, that appears to mean a lot to the Appellant. There was however more than one explanation for that. It may well be that this man, who has struggled with addiction and serious mental illness, is genuinely comforted and supported by *this* group of Christians. It is part and parcel of his private life, and seen in this way it is perfectly understandable why he makes the effort that he does. It is true that the Appellant could attend a church nearer to his current residence, but in my view drawing adverse inference from his failure to do so somewhat reduces the importance of these longstanding friendships. The fact that these people give him support – in life as well as in this appeal – does not negate the fact that he has been joining them for collective worship for over four years.

Decisions

22. The decision of the First-tier Tribunal is set aside for the reasons set out above.

23. The decision in the appeal is to be remade in the First-tier Tribunal by a Judge other than Judge Dilks.

24. There is an order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
20th June 2024