



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03682/2018

THE IMMIGRATION ACTS

Heard at Field House
On 8 October 2018

Decision & Reasons Promulgated
On 12 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

[H J]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford (for Elder Rahimi Solicitors)

For the Respondent: Mr A Lindsay (Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of [HJ], a citizen of Iran born 28 June 1988, against the decision of the First-tier tribunal of 6 June 2018 dismissing her appeal against the refusal of her asylum claim by the Respondent (on 16 February 2018).
2. Her asylum claim as advanced to the Tribunal below was based on her religious conversion to Christianity. She had been born a Muslim and

forced to practice Islam by her family. She thus had no faith by the time she became an adult, though she was nevertheless forced to adhere to the Islamic dress code. She had met an old friend, [D], at a party, who had been imprisoned for three years after the presidential election in 2009. During her imprisonment [D] converted to Christianity. She disclosed this to the Appellant around August/September 2016.

3. The pair continued to meet until [D] invited the Appellant to a house church meeting, which followed an incident which encouraged the Appellant to look into spiritual matters more closely. One day the Appellant was taking her dog to the vet in her car. It was necessary to do so discreetly because the Iranian authorities disapproved generally of dog ownership. The security forces stopped her car, forcing her out of the vehicle and beating both her and her dog. A crowd gathered and in the ensuing confusion she and the animal escaped by returning to the car and driving away.
4. Following this incident [D] introduced the Appellant to the house church. The Appellant attended the house church some 15-16 times before it was learned of by the authorities and raided: she was absent on that occasion because she was attending a family event around the birth of Imam Rezza. She learned of this when she sought to contact [D] and rang [D]'s mother, who told her that her friend had disappeared. She had then switched off her mobile phone and left Iran with her family's help, her brother sending her to stay with a friend of hers. Her mother had told the Appellant that the authorities had once visited the house looking for her following her departure from Iran.
5. In the UK she now attended St Thomas Church, having previously frequented the Iranian North Church of London. She evangelised via Instagram.
6. The Secretary of State refused the asylum claim. The decision maker considered that the Appellant's account was generally not plausible; for example it was thought unlikely that [D] would take the risks arising from her conduct in relation to a person whose own religious commitment was uncertain or that the Appellant would risk learning about Christianity; and her account of her emotional journey to Christianity was unpersuasive. Furthermore at her screening interview she simply referenced involvement in anti-government propaganda and anti-Islamic activities, without mentioning any religious problems.
7. Before the First-tier tribunal the Appellant's case was supported by three witnesses who had written letters or statements in her support. Each gave live evidence in the Appellant's support.
8. [SC] said he had been a Minister at St Thomas Church for 10 of his 25 years in the Christian ministry; and that in the Appellant "I have seen someone who seeks to follow Jesus Christ." In his opinion the genuineness

of the Appellant's conversion was "not in doubt" and unrelated to her immigration status she was in the process of baptism.

9. [GC], a serving police officer and deacon, gave evidence that he had known the Appellant since January 2018 and had experienced her enthusiasm to share her Christian faith; his wife had also befriended her. The Appellant was keen to find out more about her new found faith and had recently encouraged a close friend to attend the church. [OK]'s witness statement explained he was a non-practising lawyer presently working in catering. The Appellant was very keen on Christianity and attended church services regularly with him; she was very keen on searching and learning about the faith. They had lived together in Newton Abbot and her social media account was followed by hundreds of people.
10. The First-tier tribunal did not accept the Appellant's account of her conversion as genuine, concluding that it was likely to have been concocted post arrival in the UK as she would have appreciated such a claim had the best chance of success. The Judge held against her the fact that there was absolutely no reference to her asserted conversion in her screening interview, and her explanation that that failure was because en route to the UK she had been accepted the advice of individuals themselves swayed by the unreliable advice of smugglers and agents was unpersuasive. Furthermore it was absurd that she would move from having no faith to adopting Christianity when that might entail a risk of persecution, and it was inexplicable that someone who hated Allah would fall in love with the God of another religion.
 - (a) Her account of the miracle of the Dog was presumably predicated around the public domain information that the Iranian authorities were opposed to dog ownership; it was unexplained how it was that the dog was discovered by the authorities if travelling in a box;
 - (b) It was not plausible that she would forgo attendance at the house church on the occasion that it was to be raided by the authorities because of an alternative family event given her previous dedication to worshipping there;
 - (c) It was implausible that her brother could secure her exit from Iran within a matter of days after [D]'s disappearance and that the authorities would only visit the family home once;
 - (d) The brother's letter supporting her claim was "astonishing" in its detail - he had stated on 5 August 2017 that his mother had contacted him to say that the house church had been raided by intelligence officers and its members arrested, whereas the Appellant's account had been relatively vague. There was no doubt that this was contrived evidence which was one more part of a well-orchestrated effort to falsify an asylum claim, and his statement regarding the dangers to an apostate in Iran "could not have been better written by a country expert";

- (e) Whilst the witnesses supporting her claim at the hearing doubtless “did so with the best of intentions”, they had no personal knowledge of her background in Iran and had simply taken her Christianity at face value.
11. Overall the Judge concluded that she was not a credible witness and thus her claim to be a Christian convert was rejected. Her evangelising on Instagram did not corroborate her claim – that behaviour was presumably contrived simply to suggest that she might be in danger, and in reality she would not have so acted had she believed the authorities might read those messages, as that would have endangered herself and her family. Besides, there was no objective evidence that the authorities monitored every single posting on a social network.
12. Grounds of appeal contended that the First-tier tribunal had erred in law:
- (a) Taking an unduly negative approach to the Appellant's account and failing to take account of the relevance of the supporting witnesses;
 - (b) Failing to take account of the fact that the brother's letter was expressly stated by him as predicated on the inference of the possibility that the church had been exposed and its members arrested;
 - (c) Making findings which were unduly predicated on plausibility, which was inherently objectionable.
13. The First-tier tribunal granted permission to appeal on 24 August 2018, on the basis that the grounds of appeal were generally arguable.
14. Before me Ms Radford submitted that the Judge had approached this appeal on the basis that the Appellant's account was not credible and thus discounted potentially corroborative evidence. Amongst the evidence relied upon by the Appellant was a court notice of 19 September 2017 requiring the attendance of [SH] (who Ms Radford explained had been identified early in examination in chief), the house church pastor, requiring his attendance within 3 days at a branch of the Islamic Revolutionary Court. This was a significant structural failure and not just a simple matter as to the order in which the appeal had been addressed.
15. There was no material discrepancy between the evidence of the Appellant and her brother's letter: both said that the house church had been raided, and the Judge had made a significant mistake of fact in finding this to be discrepant. The occasional use of an exclamation mark typified the response of the First-tier Tribunal, which was unduly focussed on essentially subjective notions of plausibility. The judge was wrong to impose a framework predicated on his own theology, whereas the Appellant had given a nuanced and detailed account of her reasons for abandoning Islam and her preference for Christianity over the Muslim

faith. Indeed it was the Appellant's own perception of the dog incident as an unlikely event that caused her to attribute it to divine intervention.

16. Mr Lindsay submitted that the documents needed to be established as genuine by cogent evidence from the Appellant. The Judge had made findings to which he was entitled having regard to the full span of the evidence before him. It was not accepted that the Judge's own beliefs infected his decision making; it could not seriously be disputed that the Gods of the Islamic and Christian faiths were one and the same. The finding that the Iranian authorities did not exhaustively monitor social media was a reasonable one.

Findings and reasons

17. It seems to me that the grounds of appeal were made out in this appeal.
18. Firstly, a failure to make findings on the evidence of material witnesses is likely to be fatal in the vast majority of asylum appeals, which must be approached applying the appropriate anxious scrutiny. As Carnwath LJ explained in *YH* [2010] EWCA Civ 116 that term "has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account."
19. Here the evidence of the witnesses was hardly assessed at all. Such treatment as they received was only after the credibility of the Appellant's account had been considered and found wanting. Doubtless a Judge must come up with a sensible order by which to assess the evidence, and the fact that corroborative witnesses are assessed second rather than first is not inherently objectionable. However, what may be legally untenable is to adopt an approach which compartmentalises the evidence, such that material that is relevant to a key conclusion is excluded from assessment. I fear that is the case here. The genuineness of the Appellant's Christian conversion was in issue. The assessment of her beliefs by witnesses who had personal knowledge of her conduct in the UK was relevant to that assessment. This was particularly so when a Minister and a police officer had given evidence based on their personal knowledge of her. The witnesses were clearly aware that the Appellant's credibility was in dispute, and did not simply take her word at face value. The Minister made this particularly clear in his oral evidence cited above.
20. Secondly, it is always necessary to take some care when assessing credibility on the basis of plausibility. Neuberger LJ in *HK* [2006] EWCA Civ 1037 §28: "in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the

appellant has said before, and with other factual evidence (where there is any).” Keene LJ in *Y* [2006] EWCA Civ 1223 identified a critical principle when credibility is assessed in an asylum claim:

“The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham ... from an article in *Current Legal Problems* ...

‘An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done.’”

21. The assessment of religious belief is an exercise that must be conducted with particular care. Lord Nicholls stated in *Williamson* [2005] 2 AC 246, §22:

“When the genuineness of a claimant's professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. ... emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its 'validity' by some objective standard such as the source material upon which the claimant founds his belief on the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual ... religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising.”

22. In the same vein, the Administrative Court in *SA (Iran)* [2012] EWHC 2575 (Admin) warned that “it is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not

when it was and is agreed that she was and is a frequent participant in church services.”

23. Having regard to the principles identified in *Williamson* and applied in *SA (Iran)*, a Judge should be relatively circumspect when adjudicating upon the beliefs of a person who espouses adherence to a particular religion. An assertion of Christian faith is not, of course, immune from assessment as to its veracity, but the assessment needs to take account of the various dangers identified in those authorities as to the propriety of making particular assumptions as to why an individual may come to adhere to a particular belief system and to the manner in which they exercise their religion.
24. The decision of the First-tier Tribunal is unfortunately pervaded by value judgments as to how a person would act in particular circumstances according to the Judge’s own world view, and cannot stand.
25. Accordingly the appeal is remitted to the First-tier Tribunal for re-hearing afresh; no findings are preserved.
26. I note that the First-tier Tribunal relied heavily on its view that the Appellant had failed to mention her Christian conversion at her screening interview. However, she is recorded as stating that she was involved in activities which were “anti-government and anti-Islam.” Given that the stated purpose of the screening interview is to simply provide the very briefest summary of an Appellant’s claim, it seems to me that a Judge re-hearing the appeal should take some care before finding that the phrase “anti-Islam” could only be intended to précis political rather than religious activities.

Decision

The appeal is allowed, as there was a material error of law in the reasoning of the First-tier Tribunal.

Signed

Date 8 October 2018



Deputy Upper Tribunal Judge Symes