



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

Appeal Number: PA/07454/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 16 August 2018**

**Decision & Reasons
Promulgated
On 13 December 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE MACLEMAN**

Between

ALI [G]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Stein, instructed by Quinn, Martin & Langan Solicitors.
For the Respondent: Mr Govan, Home Officer Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of Iran. He appealed to the First-tier Tribunal against the decision of the Secretary of State on 18 July 2007 refusing to grant him asylum. He claims to have converted to Christianity whilst in the United Kingdom and to be at risk of persecution in Iran as a Christian convert.
2. Judge A M S Green dismissed his appeal. His application to the First-tier Tribunal for permission to appeal against that decision was refused. On renewal to the Upper Tribunal permission to appeal was granted on one point. For the avoidance of doubt we record that there was no attempt

before us to enlarge the appeal to encompass any of the other grounds submitted.

3. It is part of the appellant's evidence that he took an interest in Christianity when living in Aberdeen and started to attend St Mark's Church, Aberdeen, a Parish Church of the Church of Scotland. He was baptised by a Minister of that Church. The Secretary of State contends that his claimed conversion to Christianity is not genuine. The appellant, as might be expected, seeks to prove his conversion by evidence, including evidence of his baptism.
4. The assertion made on his behalf and which forms the subject of ground of permission to appeal is that the Tribunal is prevented from considering the genuineness of his conversion to Christianity because its jurisdiction to do so is excluded by the Church of Scotland Act 1921. That point was raised before the First-tier Tribunal and rejected by Judge Green: it now falls for consideration by this Tribunal.
5. The purpose of the Church of Scotland Act 1921 is to declare lawful the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual and to secure the independence of the Church of Scotland from secular interference in such matters. Section 1 of the Act provides that the Declaratory Articles are lawful; but s 3 provides that "nothing in this Act contained shall affect or prejudice the jurisdiction of the civil courts in any matter of a civil nature".
6. The declaratory articles provide for the constitution of the Church and its independence of the State; at article IV is this:

"This Church ... receives from [the Lord Jesus Christ] alone, the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government and discipline in the Church, including the right to determine all questions concerning membership and office in the Church"
7. The argument is that the question whether the appellant is genuinely a Christian convert is a matter reserved to the jurisdiction of the Church by article IV.
8. Having heard the brief but comprehensive submissions of Ms Stein and having considered the authorities, we reject that assertion, for a number of reasons. The first is that although there is evidence that the appellant has been baptised by a Minister of the Church of Scotland, there is no evidence that he is a member of the Church of Scotland. The second is that whether he is or is not a member of the Church of Scotland is irrelevant to the present proceedings: the question is whether he is or is not a convert to Christianity in such circumstances as would expose him to a risk of persecution in his country of nationality. The third is that the question whether he is at risk of persecution is a single composite question, to be answered on all the evidence and to be determined by the decision-maker on that evidence: there is no scope in answering the

secular question of his refugee status for deferring part of the assessment to another Court.

9. A similar question arose in Percy v Church of Scotland Board of National Mission [2005] UKHL 73. The issue there was whether the Church's claim to have exclusive jurisdiction in a matter of discrimination in employment based on the same provisions of the Church of Scotland Act, should be upheld. Much of the discussion in the speeches related to the nature of the pursuer's employment; but Lord Nichols, Lord Hope and Lord Scott specifically decided that the jurisdiction of the Secular Courts was not excluded by the 1921 Act. As Lord Hope said at [132], "a claim of unlawful discrimination in the employment field has nothing to do with matters of doctrine, worship or government or with membership in the Church". The same, in our judgment applies to a claim for refugee status, even where part of the evidence supporting the claim is an assertion that the claimant is a member of the Church. The Tribunal does not purport to determine any issue relating to that membership.
10. We are fortified in our view that the 1921 Act does not exclude the jurisdiction of the Secular Court and Tribunals on this issue by two further factors. The first is that in Irfan Ali (P1266/17) a similar argument was raised before the Lord Ordinary on an application for judicial review. In refusing permission on the papers Lord Woolman said this:

"The suggestion that the Church of Scotland should determine the issue of religious conversion for immigration purposes is wrong. If the F-tT Judge had received it in that matter she would have abrogated her duty."
11. On oral review Lord Pentland agreed, saying that the argument to the contrary was "fanciful". Thus, there is sound Scottish judicial opinion, albeit only in relation to a permission application, in agreement with the view which we have reached. The second factor tending to confirm our view is that there has been no suggestion in the present case that the Church of Scotland itself asserts any right of determination in this or any other similar case.
12. For the reasons we have given we conclude that the jurisdiction of the secular courts in relation to the determination of whether a person has converted to Christianity is not excluded by the Church of Scotland Act 1921 even in cases where the appellant has been baptised by a Minister of that Church. That being the only ground argued before us, this appeal is accordingly dismissed. The determination of the First-tier Tribunal stands as the decision on the appellant's appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 5 December 2018.