Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11359/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 8 May 2018	**On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

M. R.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Behbahani, Solicitor, Behbahani & Co Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran, who entered the UK legally as a student, and whose leave to remain as such was extended until 17 December 2012. In 2012 he married an Iranian national who had been granted DLR alongside the other members of her family, and then sought to vary his leave as her dependent spouse. That application was refused, and his appeal rights against that decision were exhausted in 2014. The Tribunal's conclusion was that neither he, nor she, faced any risk of harm in Iran, that they could return to Iran upon their own legitimate Iranian passports in safety, and that they could properly be expected to pursue their married life together in Iran.

2. Following the exhaustion of his appeal rights against that decision, and notwithstanding the terms of that decision, the Appellant claimed asylum in July 2014. The appeal against the refusal of that claim was dismissed by the Tribunal on the basis that the evidence that had been provided by both his wife and himself of a risk of harm in Iran was a fabrication. His appeal rights in relation to this decision were exhausted in 2015.

3. On 19 October 2016 the Appellant made a fresh claim to asylum on the basis that he and his wife were now genuine converts to Christianity, and that as perceived apostates they faced a real risk of harm in Iran. The appeal against the refusal of that claim came before the First-tier Tribunal at Taylor House, when it was heard by First-tier Tribunal Judge Gaskell. The appeal was dismissed on all grounds in a decision promulgated on 15 January 2018.

4. The Appellant's application for permission to appeal asserted a failure to properly consider the evidence of the two witnesses relied upon by the Appellant as to whether his Christian faith was genuine, and, a failure to give adequate reasons. Permission was granted by First tier Tribunal Judge Foudy on 8 February 2017 on the basis that although the Judge had made detailed findings on all of the issues in the appeal, it was arguable that the reasons given were inadequate. No application has been made to introduce evidence under Rule 15(2A) of the Upper Tribunal Procedure Rules. Thus the matter comes before me.

5. As the grant of permission identified, it is not open to the Appellant to argue that the Judge has failed to make a finding upon any of the disputed issues with which he had to engage. Those disputed issues were rather narrower than would otherwise have been the case, because of the previous decisions of the Tribunal, upheld upon earlier appeals. Those previous decisions also meant that the Tribunal was obliged in this appeal to approach the Appellant and his wife with significant caution because they had been found to have fabricated evidence in the past.

6. As Mr Behbahani accepts, the primary issue for the Tribunal in this appeal was whether the Appellant and his wife had undertaken a genuine conversion to the Christian faith, or, had deceived those who believed that they had.

7. It was not in issue before the Judge;

   (i) that both the Appellant and his wife had been brought up in the Muslim faith,

   (ii) that both the Appellant and his wife had sought to deceive the Tribunal in the past with false evidence,

   (iii) that the two witnesses, the Reverend Lambert and Mr Hird, genuinely believed that the Appellant and his wife had abandoned their Muslim faith and embraced the Christian faith, and,

   (iv) that the couple's first exploration of the Christian faith post-dated the exhaustion of the Appellant's appeal rights in 2015.

8. Whilst the Judge's decision is indeed relatively brief, the reasons given for the key conclusion are in my judgement adequate within the current guidance as to the meaning of that term; MD (Turkey) [2017] EWCA Civ 1958 and VV (grounds of appeal) Lithuania [2016] UKUT 53. The reader can easily see why the Appellant failed, and as Mr Behbahani's argument developed it became increasingly clear that this was not a complaint about a lack of reasons, but in reality merely a disagreement with the reasons that were given. The evidence that the Appellant and his wife gave to the Judge upon their religious faith was quite simply disbelieved. Five reasons were given for that conclusion.

9. Although Mr Behbahani said everything that could be said on the Appellant's behalf the challenge offered to the Judge's decision is in reality no more than a disagreement with it, and an implicit assertion that the Judge was not entitled to go behind the opinions of the two witnesses from the Church. The Judge rejected the explanation offered to him by the Appellant and his wife for why they first came to explore the Christian faith after the exhaustion of the Appellant's appeal rights, and he was entitled to do so for the reasons he gave. He was entitled to note that it was the Rev Lambert himself during a telephone conversation with the Respondent who had alerted her to the reduction in frequency of Church attendance of the family after the Appellant and his wife had been accepted for baptism. He was entitled to find that the frequency of attendance had increased as the date of the appeal hearing approached. Indeed, that at least, appears to have been admitted before him. The Judge then quite properly looked at the explanation he was offered for why the attendance of all three members of the family had reduced, and then increased in that fashion. He was entitled to reject that explanation for the reason he gave. Finally the Judge was entitled to look at the explanations offered to him by the Appellant and his wife for their failure to put their daughter forward for baptism, and reject them for the reasons that he gave.

10. Having found that the Appellant and his wife had not undertaken a genuine conversion to Christianity the Judge was not obliged to consider what would be likely to happen in Iran if they sought to worship as members of a Christian congregation. Equally, in the light of the Judge's finding upon the core issue of fact, there was no reason to suppose that the couple would be perceived by anyone in Iran as apostates. Mr Behbahani's reliance upon RT (Zimbabwe) [2012] UKSC 38 was misplaced; the evidence before him did not suggest that the Appellant and his wife would be required upon return to demonstrate that they genuinely embraced the Shia faith. But even if they were required to do so, given they had both been brought up in that faith, and had not abandoned it, it is very difficult to see why they would be unable to do so. Equally misplaced was his reliance upon AB (internet activity - state of evidence) Iran [2015] UKUT 257; as he accepted the evidence before the Judge did not suggest that any material had been made publicly accessible upon the internet that identified them as apostates.

11. In the circumstances I am satisfied that it was open to the Judge upon the evidence before him to conclude, for the reasons that he gave, that the Appellant and his wife were not apostates, and that they would not attract any adverse attention or enquiry

from the Iranian authorities upon their return to Iran. That conclusion was not perverse, and adequate reasons were given for it. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.

12. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 15 January 2018 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

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 8 May 2018

Deputy Upper Tribunal Judge J M Holmes