Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03825/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 October 2019	**On 18 November 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sidhu, Solicitor, Harbans Singh & Co
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge O'Hagan promulgated on 2 July 2019, in which he dismissed the appellant's appeal against a decision of the respondent dated 5 April 2019 to refuse his claim

for asylum and humanitarian protection, made on the basis that his conversion to Christianity would place him at risk of persecution in Iran.

Factual background

2. The appellant, MF, is a citizen of Iran and was born on 14 January 1971. The full factual background to his claim is set out at [3] to [11] of the First-tier Tribunal's decision.

3. The appellant is now 48. He has three daughters and a wife. He had a fourth daughter, but very sadly she died in 2016 from an overdose of drugs, shortly after a period of what the appellant considered to be unjustified detention at the hands of the authorities. That experience led the appellant to question the Shia Islamic faith to which he adhered at the time. He met an old friend, SJ, whom he had known from his military service. SJ had become a Christian and invited the appellant to join his house church. Following a period of approval, the appellant attended seven meetings at the house church and was due to attend an eighth. He was late. Shortly before he arrived, the meeting was raided by the authorities. The appellant thus evaded arrest. This led the appellant to decide to leave the country, which he did shortly afterwards with the assistance of an agent. He then arrived in this country clandestinely, claiming asylum on the same day. The appellant's brother also converted to Christianity in Iran, and sought refuge here, unbeknown to the appellant. The appellant is involved in a local church, and spoke at his brother's baptism service.

4. The respondent did not accept the appellant's claim to have converted to Christianity. She considered that his claim lacked credibility. She did not accept that the appellant's daughter's death would have led him to question his faith in the manner claimed. That the appellant had participated in church life in the United Kingdom did not assist his claim.

5. Judge O'Hagan dismissed the appellant's appeal as he did not accept the central planks of his conversion narrative. The judge rejected the evidence of a Steven [C], the assistant secretary at the [~] Christadelphian Church. He had provided a letter in support of the appellant and had attended the hearing to give evidence to support his case. Mr [C] stated that from the first time he met the appellant, throughout the eight months that he had known him by the time he gave evidence before the First-tier Tribunal, he had considered him to be Christian. Mr [C] described the extent of the appellant's participation in the Christadelphian Church and the instruction classes that he would take on a weekly basis at the Persian language Bible classes.

6. The judge accepted that Mr [C] had a leadership role. He accepted that he was a "sincerely devout" man and he said that his evidence carried weight. However, there were two aspects of Mr [C]'s evidence which the judge did not consider to attract weight. The first was at [49], where the

judge noted that there are many asylum seekers at Mr [C]'s church. The judge said:

> "Such people are likely to include many who will be transient because of the practical challenges that face asylum seekers. These are circumstances which would make difficult the formation of close personal relationships. I do not criticise Mr [C] for these matters, but nor can I ignore them in assessing his evidence."

7. There was another criticism that the judge had of Mr [C]'s evidence, at [50]:

> "When he was asked how he could be sure the appellant was genuine, he said that it was '…quite clear the first time he attended that he was a committed Christian.' I am conscious that someone who forms a view of this kind from the outset can be prone to confirmation bias, viewing all subsequent dealings with the person through the prism of that initial impression of them. I do not know whether that is so here, but it is an obvious possibility that I cannot overlook."

8. The other reasons the judge dismissed the appeal related to what the judge considered to be the "remarkable coincidence" of the circumstances in which the appellant's brother, also from Iran, had claimed asylum on account of his claimed Christian conversion and had done so successfully. It was the appellant's case that he had fled Iran independently of his brother and had not discussed his conversion with his brother until he arrived in this country. In his statement, the appellant wrote that it was only upon contacting his mother in Iran upon his arrival here that he was informed by her that his brother was also in this country and had also claimed asylum on the basis of his conversion to Christianity. The brother was recognised as a refugee by the respondent. The appellant later spoke at his brother's baptism service. The judge said at [58]:

> "…what I am being asked to believe is that these two brothers both abandoned the Islamic faith, converted to Christianity, joined a church, fled the country, and then came to the United Kingdom, and that they did all these things independently of one another at almost exactly the same time. Indeed, on their account they did so not only independently of one another, but in ignorance of what each other was doing until after they were both in this country. The level of coincidence required for this to be so is very great. Indeed, it might be said that it is so great that it is difficult to accept that such a thing might happen by mere chance… In my view, this is an aspect of the case that does substantially undermine the appellant's credibility."

9. The judge was also concerned that the appellant's account of having joined the house church in Iran showed what the judge considered to be a lack of acknowledgement that it was a risky thing to do. He wrote at [61]:

> "The appellant is, as was clear to me on hearing from him, a reasonably intelligent man. He would have been 47 at the time, and his account of himself is that he is a man with experience of life. He was, moreover, a man

> whose account of himself is that he had direct experience that the Iranian authorities were to be feared. That is, after all, the core of his narrative about the death of his daughter … Despite all this, he apparently joined a house church without any particular thought about the risk to himself, his wife, or his remaining daughters."

10. The third operative reason the judge gave for dismissing the appeal related to what he considered to be the conflicting accounts the appellant had provided of the checks that were conducted when he joined the house church in his evidence on the one hand and in his asylum interview on the other.

Discussion

11. Permission to appeal was granted by Upper Tribunal Judge Martin sitting as a Judge of the First-tier Tribunal in these terms:

> "It is arguable, as asserted in the grounds, that the judge's adverse credibility findings are speculative and not based on the evidence. No real reasons are given for dismissing the evidence of the appellant's brother, a refugee on account of his Christianity, photographic evidence of the appellant taking part in his brother's baptism, the appellant's knowledge of Christianity and the evidence of the church leader who had seen him at least twice a week for eight months".

Against that background I consider there to be considerable force in the submissions advanced by Mr Sidhu. Although it is open to the judge to ascribe what weight he saw fit to the evidence of Mr [C], it was necessary for the judge to give clearer reasons as to why he was rejecting the evidence in light of the question the judge himself posed at [47] of his decision. There he stated, "The real issue is [the appellant's] motive for [claiming asylum]; whether it is a matter of genuine belief, or a cynical ploy to gain status in this country".

12. The Inner House of the Court of Session recently considered the weight to be attached to witnesses of this nature. It is common ground in the present matter that Mr [C] was a witness qualified to give expert, as it were, evidence concerning his interpretation of the appellant's manifested belief in Christianity. In TF and MA v The Secretary of State for the Home Department [2018] CSIH 58 at [60], Lord Glennie analysed the implications of the rejection of the evidence of an expert witness in similar circumstances. Lord Glennie held at [60] that "it is legitimate for the Tribunal to regard with suspicion evidence from church witnesses which is based entirely upon what the appellant has told them" (emphasis original). Lord Glennie continued:

> "But save in a clear case, that exercise is not legitimate when the evidence from the church witnesses is based in substantial part on their observations of the appellant when he has been engaging with the activities of the church."

That is precisely the category into which the evidence of Mr [C] in the present matter falls. Lord Glennie in TF and MA did not rule out the possibility that there would be circumstances where an appellant in bad faith had attempted to convey an impression of genuine belief, but in doing so had managed successfully to dupe everyone around him into believing he was a Christian in circumstances when in fact he was not. Lord Glennie continued:

> "The problem with this approach is that it makes a leap from a finding, on the one hand, that, on certain other matters, the appellant has told lies, to a finding, on the other hand, that he has not only done that but has in effect lived a lie, i.e. created a false persona and lived a false lifestyle, over a protracted period, and has successfully duped the witnesses from the [Church] into believing that his new faith was genuine when it was not."

13. The judge was clearly live to the possibility that that was what this appellant had done by virtue of his reference at [47] to the possibility of the appellant's manifested faith merely being a "cynical ploy". However, the judge did not reach an operative finding on this issue. It is clear that the judge did not accept the appellant's claimed conversion to be genuine, but he did not make the necessary finding that he had fabricated the entire narrative that he had deployed before the leadership team at the church at which he was an active member and that he had managed successfully to mislead Mr [C] and the other witnesses who wrote for his support from the church. I consider that to be a material error.

14. Mr Lindsay submitted that the position in the present matter is nuanced. The situation that the Inner House of the Court of Session was concerned with was where there had been discrete lies told by the appellant, which were not related to the fabric of the core claim to be a Christian. In the present case, submits Mr Lindsay, the fact that the appellant has fabricated the entire narrative that he had deployed before the church leadership and before the Tribunal meant that it was not necessary for the judge to reach findings in such clear terms. I reject that submission. In my judgment, the rationale of TF and MA applies with all the greater force in the present matter, where there are no peripheral or subsidiary issues which the appellant may properly be regarded as having fabricated, bolstered or exaggerated – in contrast to there being a kernel of truth at the heart of his claim. There is essentially one claim made by this appellant, based on a single overarching narrative. That narrative is that he is a Christian, that he has attended Christian services and Bible instruction classes, that he has participated in the life and fellowship of the church, that he has spoken at the baptism of his own brother who had been accepted as a refugee in this country by the respondent without an appeal, and that he has lived consistently and pursuant to having made that profession of faith.

15. In the face of that single overarching narrative, the only conclusion which follows from the judge's rejection of the evidence of Mr [C] is that the appellant had fabricated everything that he had done with the church: this

included regular attendance, Bible classes, and speaking at his brother's baptism. There is no halfway category whereby some elements of the appellant's narrative could be true and in relation to those aspects Mr [C] may be forgiven for accepting them as being genuine, whereas elements of his conversion elsewhere were not genuine. There is no support for that proposition. Yet in the absence of clear conclusions on the point from the judge, the reader of the decision is left speculating as to the reasons why Mr [C]'s evidence was rejected.

16. In relation to the concerns of the judge that the coincidental nature of the appellant's brother's claim for asylum and the appellant's own claim for asylum are such that it is not plausible, it is well-established that judges in this jurisdiction:

> "should be cautious before finding an account to be inherently incredible, because there is a considerable risk that [a judge] will be over influenced by his own views on what is or is not plausible" (Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 at [25], per Keene LJ)

It is trite law that judges should be slow therefore to bring their own assumptions as to what is likely to be inherently probable or not probable to their assessment of asylum claims. It is necessary to record that the judge had found at [60] of his decision that the early elements of the appellant's conversion narrative were credible. He said at [60]:

> "In my view, that [the account of the appellant's daughter's death leading to his exploration of the Christian faith] is a credible account for why someone might abandon their old faith, and embrace a new one. Had the account ended there, I would have accepted it, certainly to the lower standard of proof which is applicable here."

17. The judge was in the territory, therefore, of having accepted that elements of the appellant's case were credible. The only basis upon which the judge dismissed the impact and the relevance of the brother's accepted conversion to Christianity was because he did not think it would be probable that two brothers would convert in similar circumstances, but not talk about it between themselves. In reaching that finding, the judge did not appear to have regard to the fact that the brothers at that stage were somewhat estranged due to their wives not getting on with each other and due to the fact as described by the appellant in his evidence that the caution with which he was approaching his new found Christian belief in Iran, given the circumstances of the opposition from the authorities, would have meant that he would be less inclined to discuss such matters openly.

18. In relation to the judge's findings concerning the appellant's admission to the house church, as described in his asylum interview, it is clear that the judge did fall into error. The judge quoted the answer the appellant had provided to question 94 of his substantive asylum interview at [63]. The judge's quote records the following exchange:

> "I note that question 94 reads as follows,

> ‘Did you share personal details with the rest of the group?’
>
> That is, it seems to me, a simple, direct question. The appellant’s reply is recorded as being,
>
> > ‘No, I didn’t even have their telephone numbers. I only had SJ’s telephone number.’”

19. It seems that the judge had not considered the impact, if any, of a letter dated 12 March 2019 which may be found at pages 34 to 36 of the appellant’s bundle. In that letter, as is common in many asylum claims, the then claimant for asylum wrote with various corrections to the interview transcript.

20. In relation to question 94 the appellant had provided a clarification in these terms:

> “I mean I did not share my whole history. The house church were aware of my details as when I wanted to join SJ gave them my details for me to be approved, so at the very least A knew my full details and where I lived, but I was not the one to give it to him, it would have been SJ.”

I should note that the asylum interview took place on 5 March and accordingly this letter was sent under a week later. Mr Lindsay realistically accepted in the hearing before me that the judge erred on this account and that that error was sufficient to infect the safety of his entire credibility assessment. I agree.

21. The judge had the following factors before him which militated in favour of a finding that the appellant was a Christian. He accepted at [60] that the initial narrative concerning the appellant’s conversion featured credible elements. The appellant’s brother was a Christian and had been recognised as a refugee by the respondent. There was the evidence of Mr [C], described by the judge as a sincerely devout man, who gave evidence that carried weight. There was the appellant’s own evidence. The only point at which the judge considered the appellant to be internally inconsistent was in relation to the process for his acceptance into the house church in Iran and as I have already set out, the judge failed to have regard to the materially different corrections that the appellant issued only five days after the interview.

22. Drawing the above analysis together, the reasons given by the judge for dismissing the appeal featured reliance on irrelevant considerations (the number of other Iranians, and general believers, at Mr [C]’s church). The judge failed to resolve a material factual conflict: did the appellant live a lie, or was Mr [C] mistaken on some other basis? He drew upon plausibility findings in circumstances where the remaining evidence, as set out in the previous paragraph, suggested that there was a core of substance to the appellant’s claim. He also failed to take into account material evidence, in the form of the corrections to the appellant’s protection claim. Although

the judge correctly directed himself as to the applicable standard of proof, it appears that, in reality, the judge applied a higher standard.

23. The judge considered at some length the likely risk matrix the appellant would face in light of his findings upon his return to Iran. It is not necessary for me to analyse those findings at this stage, as it is clear that the decision as a whole involved the making of a material error of law and therefore the decision needs to be set aside.

24. As the appellant has been denied a fair assessment of the entirety of his case, the only appropriate remedy is for the entirety of the case to be remitted to the First-tier Tribunal.

Withdrawal of concession

25. Before the First-tier Tribunal, the respondent's representative had conceded that, if the appellant were successful in establishing that he had converted to Christianity, he would be at risk upon return to Iran. Mr Lindsay applied to withdraw this concession ahead of the matter being remitted to the First-tier Tribunal. It was common ground that "mere" conversion to Christianity would be insufficient, in isolation, to provide a well-founded fear of being persecuted in Iran. Something more is necessary, for example involvement in proselytisation. The position has been summarised in a number of authorities. For example, see: FS and others (Iran – Christian Converts) Iran CG [2004] UKIAT 00303 at [187], AS (Iran) v Secretary of State for the Home Department [2017] EWCA Civ 1539 at [36], and the respondent's *Country Policy and Information Note – Iran: Christians and Christian Converts,* version 5.0, May 2019, at, for example, [2.4.13].

26. Having heard submissions from both parties, I considered that it was appropriate to permit the respondent to withdraw the concession. I had in mind the overriding principle of whether it would be fair to the appellant to permit this course of action. The concession was not made in the refusal letter, which maintains the orthodox approach to the risk profile of Christians in Iran. It appears to have been made in the course of conduct of the hearing before the First-tier Tribunal. The appellant prepared his case in anticipation of the proceedings before the First-tier Tribunal on the basis that he would engage in evangelism, and other activities which entailed a risk upon his return to Iran. See, for example, paragraph 5 of the appellant's witness statement dated 19 June 2019 ("*I am regularly talking about my faith to others, trying to make them feel and see the power of Jesus' love. I have evangelised to numerous non-Christians and hope that I will be able to influence people to come to the church and find the power and love of Christ just as I was fortunate to do.*").

27. Permitting withdrawal of the concession would not thrust upon the appellant the requirement to present his case in a way contrary to that which he has done so thus far. Rather would simply require the case to proceed on the basis which the appellant was initially expecting it to

proceed, consistently with the way he has presented his claim for asylum so far, which itself is consistent with the country guidance.

28. There is another reason why it is appropriate for me to permit the concession to be withdrawn. As recently observed by the Court of Appeal in the (admittedly different, but nevertheless relevant) context of the cessation of refugee status enjoyed by the family members of certain persons recognised as refugees, it is necessary for those who are to enjoy refugee status to be at risk of being persecuted. If there is no nexus between the Refugee Convention ground claimed for protection, on the one hand, and the likely risk profile faced by the individual concerned, on the other, the requirements of the Refugee Convention will not be met. See, for example, JS (Uganda) v Secretary of State for the Home Department [2019] EWCA Civ 1670 at [73]:

> "the status of a Refugee Convention 'refugee' is only accorded to a person who themselves have a 'well-founded fear of being persecuted'"

Similarly, as the House of Lords noted in R (oao Hoxha) v Special Adjudicator [2005] UKHL 19 at [86]:

> "The [Refugee[Convention… only avails those unable to return to their home country who have a present fear of persecution."

29. It would not be appropriate me to tie the hands of the First-tier Tribunal judge who will deal with this matter by insisting that consideration of the appellant's putative refugee status takes place otherwise than by reference to whether he does, in fact, face a real risk of being persecuted. Realistically, Mr Sidhu did not have any objections to this approach. In my judgment, it is appropriate to exercise my discretion to permit the respondent to withdraw this concession.

Notice of Decision

The matter will be remitted to the First-tier Tribunal in Birmingham.

No findings of Judge O'Hagan are preserved.

I permit the Secretary of State to withdraw the concession for the reasons that I have given.

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 *Stephen H Smith* Date 14 November 2019

Upper Tribunal Judge Stephen Smith