Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11251/2018**

THE IMMIGRATION ACTS

Heard at North Shields **Decision & Reasons Promulgated**
On 31 May 2019 **On 04 July 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MRS ZEYNAB RANJBAR FARSHAMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn, Counsel, instructed by Halliday Reeves Law Firm
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 31 October 2018 Judge Moxon of the First-tier Tribunal (FtT) dismissed the appeal of the appellant against a decision made by the respondent on 7 September 2018, refusing her protection claim.

2. The basis of the appellant's claim was that she had been forced to leave Iran because of increasing difficulties she was experiencing as a result of her three children, and then in November/December 2016 herself, converting to Christianity. She claimed her house has been raided and her eldest daughter's Bible and documents taken away. In addition, since

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arrival in the UK the appellant had been baptised at Wakefield Cathedral and she was attending church in Stockton Baptist Church.

3. The respondent did not accept that the appellant had given a credible account either of her adverse experiences in Iran or of being a genuine Christian convert as evidenced by her baptism and church attendances in the UK.

4. The judge arrived at the same conclusion.

5. The appellant's grounds take issue with the judge's decision in two main respects, it being contended first of all that the judge's adverse assessment of her claimed experience in Iran was legally flawed (Ground 1); and secondly that the judge failed to assess events post-arrival which amounted to a sur place claim evidenced by her church activities and membership, her baptism and commitments to her faith (Ground 2). In submissions ably advanced by Ms Cleghorn in amplification of the written grounds, particular issue was taken with what the judge stated at paragraph 45 relating to the witness statement evidence of a Dr Toop:

> "45. Whilst I give Dr Toop's evidence significant weight, and similarly the evidence from Mrs Toop, I would expect that the very thought of questioning the faith of someone attending worship and other church activities with apparent enthusiasm would be unpalatable to them. They may not consider that there is any reason to doubt the Appellant and would not subject the Appellant's motives to the anxious scrutiny that I must undertake nor are they likely to have sight of all of the evidence that is before me. Whilst the Appellant may spend considerable time at the church, she cannot legally work in the United Kingdom and therefore she has an abundance of time. It was clearly not the court's intention that a Tribunal must consider assertions of faith, together with active participation, in a vacuum with no consideration of the other evidence in the particular appeal."

6. In reaching my assessment of the grounds, I must bear in mind that I should not interfere in the fact-finding of the First-tier Tribunal unless persuaded that it is not within the range of reasonable responses. It is important not to consider specific paragraphs in isolation but to have regard to the decision as a whole.

7. I set out these two well-established propositions because in my judgement the judge's decision is not one that is vitiated by legal error, notwithstanding Mr Cleghorn's valiant attempts to persuade me otherwise.

8. As regards Ground 1, Ms Cleghorn has sought to argue that the judge's reasons for finding the appellant's account lacking in credibility were unsound. She focussed particularly on what the judge stated at paragraphs 48 and 49:

“48. The Appellant’s evidence credibility is also significantly undermined by the following aspects of the evidence:

a. The Appellant has been inconsistent about her own father’s Christianity. She answered that he was a Christian in answer to question 137 of the asylum interview but the in answer to question 149 stated that he is not a “true Christian”. Whilst she sought to clarify her answers within her amendments to the interview, she failed to explain the reason for her inconsistency. She confirmed at the interview that she was fit and well to be interviewed and that she understood the interpreter. There is therefore a clear inconsistency as to her father’s religion which is undermining to her credibility;

b. The Appellant was inconsistent in her oral evidence about whether her eldest daughter has left Iran;

c. I do not consider it credible that the Appellant, who had not at the time converted to Christianity and knowing the consequences of criticising the prophet Mohammed, would then compare him unfavourably to Jesus at work. Further, whilst such comments were clearly disapproved of as she is said to have been dismissed, I note that the police were not involved. I do not accept that this account is credible. Further, I note that in response to criticism of this in the Refusal she has sought to amend her account of why she was dismissed, and I note that these amendments were not included in her post-interview, pre-decision, witness statement; and

d. I consider it incredible that despite the authorities seeking the whereabouts of the Appellant’s daughter on account of her own religious conversion, which had included a raid upon the Appellant’s home and threats that she should not withhold the whereabouts of her daughter, the Appellant would then start to attend a house church and keep in her house Christian documents, notwithstanding whether they were well hidden. I do not accept that she would have put herself in such danger, knowing that the authorities were interested in her family.

49. I have stood back and considered all of the evidence in the round and given as much weight as I feel able to the evidence that is supportive of the Appellant’s claim, particularly the evidence of Dr and Mrs Toop. I have reminded myself of the low standard of proof to be adopted. However, even upon that low standard of proof I am not satisfied that the Appellant is a genuine convert to Christianity, or is believed to be by the Iranian authorities. I find that this is a fabrication to pursue an unmeritorious claim for asylum. I reject her narrative account in its entirety.”

9. Ms Cleghorn's oral submissions do not fit well with the written grounds which do not take issue as such with the judge's findings as set out it is these paragraphs: the complaint made in the written grounds concerns the judge's failure to counterbalance these points with the "positive evidence" which the judge accepted from the senior church figure, Dr Troop, who had provided several witness statements. Nevertheless, taking each of the main points in turn, I consider it was open to the judge to find the appellant inconsistent in her evidence about her father's Christianity, that evidence veering between stating he was a Christian (Q AIR 136, 137) and that he continued to practice Islam by sometimes going to the mosque. The judge considered the appellant's explanation for this inconsistency and was entitled to reject it.

10. Likewise I consider that the judge had a reasonable basis for finding inconsistency in the oral evidence the appellant gave about whether her eldest daughter had left Iran, setting out at paragraph 33 that:

> "33. In cross-examination the Appellant referenced her eldest daughter's Christianity and stated: '… my daughter paid for the path she had taken at that time and had to leave the country'. She then said that she did not know where her children were and when I sought to clarify she stated that she did not know if any had left Iran or remained in that country. It was noted that she had earlier stated that her daughter had left the country and she replied that she did not know if she had or not. She was asked if she knew anything of her children's wellbeing and she replied: 'no, not at all'. She was asked if she knew that they were safe and she replied that she does not know and that she prays for them. It was noted that Dr Toop had indicated that she had received some information that they were safe and she replied that neither she nor Dr Toop are aware of her children. She said that one of her friends in Iran had told her not to worry and this was in November 2016. She clarified that this was slightly less than two years ago."

11. As regards the judge's findings that it was not credible the appellant would have compared the Prophet unfavourably to Jesus at work, the focus of paragraph 48c was on whether the appellant had given a credible account of being dismissed from work for her Christian beliefs. Her claims regarding this were the subject of specific questions during her asylum interview where at Q138 it was the appellant herself who introduced the claim that she had made an unfavourable comparison, stating that "I was sacked from my job because I compared Jesus to Mohammed in favour of Jesus" and she confirmed she had made such a comparison in Q140. Whilst she then sought to resile from that somewhat in Q142 and in subsequent statements and in her oral evidence (as set out by the judge at paragraph 31), it was reasonably open to the judge to consider that her evidence regarding this was not credible, given she would know the consequences of criticism of this kind.

12. As regards paragraph 48(d), not even Ms Cleghorn sought to raise any argument against it and indeed it seems to me a particularly telling criticism of the appellant's claim that her own shift to active involvement in Christian activity in Iran should occur after her house had been raided and specific threats made to her regarding the consequences. If such a raid had happened she would know her own activities would be under scrutiny.

13. Further, as Ms Pettersen correctly observed, these were not the only reasons why the judge found the appellant's account of her experiences in Iran not credible.

14. This brings me to the main thrust of the written foundation of Ground 1, which was that in assessing the credibility of the appellant's account of her experiences in Iran the judge should have counted in her favour the evidence of Dr Toop. The first thing to be said about this contention is that it is crystal clear that in assessing the credibility of the appellant's account of her experiences in Iran the judge took account of the evidence of Dr Toop. Indeed, for the judge, features of that evidence added to the reasons to doubt the credibility of the appellant's account since in the judge's view the account she had given Dr Toop about her experiences in Iran had been significantly inconsistent and also different again from the evidence she gave to the judge. At paragraph 47 the judge identified the relevant inconsistences as follows:

> "47. Dr Toop's first statement gives an account of the catalyst for the Appellant fleeing Iran which is inconsistent with the Appellant's own account. I do not accept that this can be simply dismissed as a problem with interpretation and I would have thought that he would have taken care to ensure that any content of his statement was accurate and that he would have clarified areas that he was not sure about. I am satisfied that he correctly recorded the account he had been given by the Appellant last year and then this year and that she has been inconsistent when relating her account to him. I also note the material inconsistencies between them in relation to how long the Appellant attended the House Church and whether she has been notified of the wellbeing of her children. I note his account that the Appellant has been told that her children are safe and I do not accept that this is a result of translation errors between the two of them and note that he gave specific information about the fact that she had friends in Iran who were intermittently giving information and the last time was a few months ago, whereas the Appellant stated that she has had no update from almost two years, which was before she travelled to the United Kingdom. I therefore find that the Appellant has given materially inconsistent accounts in her evidence before me and in her account to Dr Toop. This significantly undermines her credibility."

15. The grounds contend that such an assessment was at odds with the "unchallenged evidence of Dr Toop", but it is clear that whilst the judge described Dr Toop as a "suitable witness in light of his seniority in the church" and said that he gave "substantial weight" to his evidence (paragraph 42), it is equally clear that the judge considered that his evidence as regards the appellant's account to him of her experiences in Iran was undermined by discrepancies "both between his two statements and between himself and the Appellant". Any doubt as to exactly what the judge was not prepared to accept about his evidence is dispelled by the very particular terms of paragraph 47. (Paragraph 32 also refers to the inconsistency between her account last year to Dr Toop and that given at the hearing.) Hence, so far as Dr Toop's evidence was to be considered positively, that could only be in relation to his evidence about the appellant's Christian faith as perceived by him and his wife on the basis of their own observations of her since she joined their church in the UK.

16. Ms Cleghorn makes the point that the judge's criticisms of Dr Toop's evidence represents an about face from his statement at paragraph 42 that "there is no challenge to Dr Toop's credibility". Whilst I accept there is a slight tension between this statement and the criticism made in paragraph 47, I am entirely satisfied that the judge was properly responding to the fact that he had in fact two accounts from Dr Toop about what the appellant had said, one this year and one last year, and he preferred that of last year.

17. Turning to Ground 2, the way this is pleaded is to argue that the judge failed to engage with the evidence regarding the appellant's religious state of mind post-arrival, particularly in the form of Dr Toop's unchallenged evidence that she had been an active church member, had been baptised and was committed to her faith. In amplifying this ground, Ms Cleghorn, as already observed, took particular exception to the judge's reference in paragraph 45 that "I would expect that the very thought of questioning the faith of someone attending worship and other church activities with apparent enthusiasm would be unpalatable to them". She submitted that it was unreasonable of the judge to assume that Dr Toop and his wife, both experienced Christians, would not be alive to the possibility that asylum seekers might contrive a Christian conversion to aid their case.

18. The first difficulty with Ms Cleghorn's submission is that neither Dr Toop nor his wife attended the hearing and whilst the judge said that he accepted his explanation for being unable to attend, Mrs Toop's evidence was "somewhat undermined by the failure to attend court" (paragraph 46). One way or another, the failure of these two witnesses to attend meant the judge was left to assess the weight to be given to their evidence in relation to whether the appellant was a genuine convert, by reference to their statements alone. Significantly neither of their statements attest to expertise in being able to test sincerity (as attributed to them by Ms Cleghorn). Indeed Dr Toop's letter of 3 February 2018 was non-committal, stating that "she tells me she converted to Christianity from the Muslim faith". Dr Toop's other statements do assert that he is

"sure" and "convinced of her Christian faith", but that was not the same thing as asserting that he had specific expertise in being able to distinguish between true and contrived beliefs. The judge clearly had regard to the detailed reasons given by Dr Toop for being sure she was a Christian, but was entitled, taking the evidence as a whole, to come to a different view.

19. A further difficulty with this submission is that the judge specifically reminded himself of the very detailed guidance given by the Scottish Inner House of Court of Session in **TF (Iran)** [2018] CSIH 58 particularly what was said in [59] of this decision, which the judge quoted at paragraph 44:

> "44. When considering Dr Toop's evidence I also have particular regard to paragraph 59 of **TF**, which details:
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> > 'Of course it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal. To this extent it is legitimate to question the experts on their opinions and as to the basis upon which they have reached those opinions. In some cases it may be appropriate to question the objectivity of the assessment made by the witness, or to suggest that there may be an element of wishful thinking given the evangelical mission of the particular church. But, as we have already made clear, that exercise should not start with any predisposition to reject the evidence because it does not fit in with some a priori view formed as to the credibility of the appellant. The evidence should be considered on its merits and without any preconception, based upon an assessment of the individual appellants, that it is suspect or otherwise falls to be disregarded'."

20. It was these words that the judge quoted immediately prior to the assessment he made at paragraph 45. Given that the judge only had the Toops' statements to go by, I consider it was wholly in accord with the guidance given by their Lordships in **TF** for the judge to consider that their own observations were not likely to be informed by an investigative approach of anxious scrutiny, particularly given the well-known fact that no-one, church witness or judge, can "peer into another's soul" and so any decision-maker must make do with assessing such claims in the context of the evidence as a whole.

21. The written grounds aver that if the judge was going to reject the supporting evidence of Dr Toop "a full explanation was needed". However, no further explanation was needed beyond that given and, in the words of the court in **TF,** "it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal".

22. For the above reasons I conclude that the grounds are not made and that, being unimpaired by legal error, the decision of the FtT judge must stand.

No anonymity direction is made.

Signed Date: 1 July 2019

Dr H H Storey
Judge of the Upper Tribunal