



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01853/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 15 July 2013

Determination Sent
On 23 September
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ABDELRAHIM ABDELRAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Daley, instructed by Saeraphus, London
For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant Abdelrahim Abdelrahman, was born on 3 December 1983 and is a male citizen of Sudan. The appellant entered the United Kingdom on 2 January 2013 and claimed asylum the following day. A decision was taken on 14 February 2013 to

remove the appellant by way of directions under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed against that decision to the First-tier Tribunal (Judge Fletcher-Hill) which, in a determination which is dated 16 April 2013 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. His appeal turns upon the appellant's Baha'i faith. Both the judge and the respondent [57] found that the appellant was a practitioner of the Baha'i faith. However, the judge took the view that the practice of the Baha'i faith was "an essentially private matter" [63]. At [68], the judge wrote:

I find that the only feature of the Baha'i faith that the appellant has identified and which would be likely to alert a passing stranger to any difference [with the practice of Islam] is that he has identified that Baha'i members fast during the month of March, rather than observing Ramadan in the autumn. Given that one normally eats and drinks at home privately there is no reason for strangers to notice that. Indeed, the appellant has stated that he only became aware of differences with his friend Hani when Hani was staying at his own home prior to his wedding to assist him with his wedding preparations. It was only because they were sharing accommodation at mealtimes that any queries arose.

3. The judge went on to find that "it clearly suited the appellant and his friends to meet together and pray on weekly basis but this was completely a matter of their own choice and nothing to do with a ritual laid down for the observance of their faith." [69].
4. The grounds of appeal [28] make the point that the appellant in his own evidence indicated that he had modified his behaviour and practice of the Baha'i faith in Sudan for the purposes of avoiding persecution (see **RT (Zimbabwe) 2010 EWCA Civ 1285**). The grounds also point out at [26] that the background evidence before the judge confirmed that an obligation fell upon practitioners of the Baha'i faith to attend annual meetings or ceremonies referred to as Feast and Fireside. The grounds assert that "nowhere in the background evidence does it say state the faith is entirely private in practice, quite the opposite in fact." The grounds also make the important point that, quite apart from the manner in which the appellant might practise his Baha'i faith, his adherence to that faith would indicate to others within his community that he was no longer publicly expressing an adherence to Islam. Whilst there is a dearth of background material relating to the Baha'i faith and its practice in Sudan, it is clear that members of other religious groups [for example, Christians] encounter very serious problems not only for following religions which many Muslims consider heretical but also by failing to express an adherence to Islam by attending the mosque. The grounds quote the respondent's Country of Origin Information Report (COIR) which recorded that,

"In 2011 nearly 170 persons were imprisoned or charged with apostasy, a crime punishable by death in Sudan. In the past suspected converts were subject to intense scrutiny, intimidation and sometimes torture by Government security personnel. The individuals [referred to in the report] were released ... only after they renounced their faith and agreed to follow the Government's interpretation of Islam."

Reference is made in the grounds to other parts of the background evidence which indicate that apostates and suspected apostates from Islam may be tortured and murdered.

5. We find that the judge (and the respondent in her refusal letter) had adopted the wrong approach to the risks which this appellant may face upon return to Sudan. The respondent, whilst accepting the appellant's adherence to the Baha'i faith, effectively rejected his claim because he had been unable to show specific evidence of the persecution of members of the faith in Sudan. That was an argument which appears to have been adopted by the judge, but it ignores what we have said above about the fate of those who, even though they may practise their own faith in private, place themselves at risk by not attending the mosque or otherwise publicly expressing an adherence to Islam. Many individuals may attend the mosque purely out of a fear of being persecuted for not doing so, and we consider that the principle established in RT applies. Likewise, we are not satisfied that the judge has had proper regard to evidence before her which indicated that the practice of the Baha'i faith is not an entirely private matter, but may, particularly at the time of important festivals, involve adherents of the faith meeting together in order to worship. We are satisfied, on the evidence adduced in this appeal, that (i) the appellant is likely to avoid such communal worship only because he fears being persecuted for engaging in it (ii) he is likely to claim to be a Muslim and/or attend mosque for the same reason. Those findings lead us to conclude that he requires to be considered a refugee.
6. In all the circumstances, we find that the judge erred in law such that her determination falls to be set aside. We told the representatives at the Upper Tribunal hearing that we intended to remake the decision on the basis of the existing evidence. Neither representative disagreed with that proposed course of action and Mr Diwnycz, for the respondent, accepted that, in light of what we had to say about the likely risk to this appellant in Sudan, his appeal should be allowed.

DECISION

7. The determination of the First-tier Tribunal dated 16 April 2013 contains errors of law such that it falls to be set aside. We set aside the determination and remake the decision. This appeal is allowed on asylum grounds. This appeal is allowed on human rights grounds (Articles 2/3).

Signed

Date 29 August 2013

Upper Tribunal Judge Clive Lane