



Upper Tribunal

(Immigration and Asylum Chamber)
AA/07613/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford
On 23rd March 2016

Decision & Reasons Promulgated
On 13th April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

[S D]

(Anonymity Direction not made)

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Miss Khan (Counsel)

For the Secretary of State: Ms Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Kelly promulgated on the 14th December 2015, in which he allowed the Claimant's protection claim under the 1951 Refugee Convention, having found that the Claimant was a genuine convert to

Christianity from Islam and that he will thereby be at risk of persecution as a result of his religious beliefs, were he to be returned to Iran.

2. Permission to appeal against that decision has been granted by First-tier Tribunal Judge White on the 6th January 2016.
3. Within the Grounds of Appeal it is argued that the First-tier Tribunal Judge made a material error of law in failing to assess the credibility of the Claimant in the round and simply assessed the testimony of one witness, who was not the subject of the appeal, as being determinative of the credibility of the Claimant. It is said that at [17] the Judge found that the evidence of the voracity of the Claimant's religious beliefs cast considerable light on his general voracity and that the Judge based his findings on the Christianity aspect entirely on the testimony of the Claimant's minister. It is said that the Judge was required to consider this testimony alongside all of the other evidence available, particularly that of the Claimant himself and that the Judge failed to do this and that at [19] it was said that the sincerity of the beliefs of the Reverend Clarke were the background for the assessment of the Claimant's credibility. It is said that the Judge failed to conduct a holistic assessment of the Claimant's credibility and has placed almost total weight on the witness who was not the subject of the appeal.
4. Within the grounds of permission to appeal, Judge White found that it was arguable that the First-tier Tribunal Judge had erred in law in his assessment of the Claimant's credibility and as to whether or not he had assessed the evidence in the round. It is said that it is arguable that the Judge was in error in assessing the credibility of the Claimant's account of circumstances of his flight from Iran against the background of his findings regarding the acceptance of the evidence of the Reverend Clarke, when these were matters outside of the witness' own knowledge. Judge White further found that it was arguable the Judge had failed to give sufficient reasons for the findings that there were misunderstandings and confusion within the interview, and as to why the credibility assessment of the Claimant's account was thereby unaffected. He further found that it was

arguable that the Judge had failed to actively deal with all of the issues in particular the issue of the Warrant, the lack of knowledge of the Christian faith and lack of supporting evidence from the Church.

5. In her oral submissions, Ms Petterson argued that the most troubling aspect of the Judge's decision was at [18] and how the Judge had considered the credibility of the evidence of the Reverend Clarke when assessing the Claimant's credibility in respect of his activities in Iran. She argued that the Judge had accepted that there had been some confusion at interview, but that that he had not dealt with these issues properly in that the Judge had "put the cart before the horse". She argued that the Judge should have dealt with all of the evidence in the round, including the inconsistencies. She accepted that it was possible for the Claimant to be a convert even if the Judge had not accepted that anything had happened to him in Iran. She invited me to allow the appeal and remit the matter back for a re-hearing before the First-tier Tribunal.

6. In her oral submissions Miss Khan relied upon the case of Dorodian v Secretary of State for the Home Department 01 TH 01537 in respect of the requirement for a Christian convert to have a minister of the church vouching for him, in respect of his church membership and as to whether or not he is a committed Christian. She relied upon the Claimant's Rule 24 reply. Miss Khan argued that the Judge's findings were sustainable on the evidence and that he had considered the evidence in the round. She argued that the Judge did need to start somewhere with his assessment of credibility. She argued the Judge had taken account of the Claimant's interview record, the inconsistencies therein and considered that in light of the Pastor's evidence. She said that at the end of the decision at [21] the Judge had made positive findings regarding the confusion the Claimant had in interview and had gone on at [22] to make positive findings regarding the Claimant being a genuine convert to Christianity. She argued that there was no material error of law. Miss Khan argued that although the Claimant had started to express an interest in Christianity in Iran, it was not until he came to the UK that he actually converted to Christianity and attended full church services.

My Findings on Error of Law and Materiality

7. At [16] First-tier Tribunal Judge Kelly made it clear that “I am bound to be selective in my references to the evidence when giving reasons for my decision. I nevertheless wish to emphasise that I considered all the evidence in the round in arriving at my conclusions”. Given that Judge Kelly has specifically emphasised this point, I have no reason to disbelieve him, in determining whether or not he did actually take account of all the evidence, including the Claimant’s evidence and the interview, in respect of his conversion to Christianity in the UK and his attendance at church in the UK. Although First-tier Tribunal Judge Kelly has taken his consideration of the primary facts out of chronological order, he fully explained his reason for doing so at [17] since in his opinion the evidence of the Claimant’s religious devotion since coming to the UK cast considerable light on the Claimant’s general voracity.

8. The Immigration Appeal Tribunal in the case of Dorodian made it clear that “no-one should be regarded as a committed Christian who is not vouched for as such by a minister of some church established in this country; as we have said, it is Church membership, rather than mere belief, which may lead to risk;”. I therefore find that Judge Kelly was obliged to consider the evidence of the Reverend Clarke in determining whether or not the Claimant was actually a genuine and committed Christian and to consider his attendance at Church. The Judge found at [18] that the Reverend Clarke's evidence was that a person would have to persuade him that he or she had made a genuine commitment to Christ in order to be baptised and that having known the Claimant for the last six months, the Reverend Clarke had agreed that he had a clear Christian faith and based his conclusion upon having observed the Claimant during regular attendances at Church and at Farsi Bible classes when they prayed together. The Reverend Clarke had observed a change in the Claimant from a slightly aggressive individual, to one who was loving and accepting of others with whom he sought to share his faith, as recorded by First-tier Tribunal Judge Kelly. Judge Kelly noted how Reverend Clarke having been convinced that the Claimant had made a sincere Christian commitment had baptised him by immersion during the morning service of the 14th June 2014 and how

although the Claimant had heard about Jesus in Iran, he had only the courage to commit himself to Christ and practice his Christian faith upon coming to Britain.

9. First-tier Tribunal Judge Kelly had made it clear that he had considered all of the evidence in the round in reaching his conclusions at [16] but was entitled to specifically rely upon and quote from the evidence of the Reverend Clarke, which evidence would have to be assessed pursuant to Dorodian, in reaching his conclusions regarding the genuineness of the Claimant's conversion to Christianity. It is not wrong for the Judge to accept the evidence of that witness. The Judge was not obliged to refer to every single piece of evidence in that regard, and was not obliged therefore to quote from the Claimant's own evidence regarding his attendance at church and conversion within the UK, if, as he stated at [16] he had taken it into account. The Judge's findings on the genuineness of the Claimant's attendance at Church and his conversion to Christianity and baptism were open to him on the evidence.

10. Although it is argued by the Secretary of State that the Judge has "put the cart before the horse", in then utilising these findings in assessing the credibility of the Claimant's account of the circumstances of his flight from Iran, although not in chronological order, there is no requirement for the Judge to deal with all findings specifically in chronological order. As Miss Khan has stated, the Judge had to start somewhere with his findings. In this regard, the Secretary of State equally in refusal notices, often leaves matters about which they are unsure to the end, in order to determine, in light of the other findings, whether a Claimant should be given the benefit of the doubt upon such findings.

11. The Judge has considered the discrepancies and inconsistencies in the Claimant's interview at [20] and the confusion which surrounded them to be such that the Judge found that the interpreter felt impelled to interview him on at least four occasions and that the interviewer on more than one occasion had expressed his difficulty in following what the Claimant was saying. The Judge also gave clear reasons for accepting the Claimant's

account regarding the confusion at interview and confusion over the dates at [20 and 21]. These reasons were adequate and sufficient. It was only having considered all of this evidence the Judge then went on at [22] to find that the Claimant was a genuine convert to Christianity and that he also accepted the account given regarding the Claimant's experiences in Iran.

12. However, even if I am wrong in this regard, given that the Judge did accept that the Claimant was a genuine Christian convert after his arrival in the UK,, any error in terms of the assessment of that part of the claim before his assessment of the credibility of the Claimant's account of his flight from Iran, is immaterial, given that the Claimant will still be at risk upon return given the Judge's findings regarding his acceptance of the genuineness of the Claimant's conversion in the UK. As was conceded by Ms Petterson, even if the Judge had rejected what the Claimant had said regarding the circumstances of his flight from Iran, if the Judge went on to find that the Claimant was a genuine convert having come to the UK, then the Claimant will still be at risk upon return. I do not find, as was suggested by Judge White in granting permission to appeal that First-tier Tribunal Judge Kelly has relied upon any evidence from the Reverend Clarke regarding the Claimant's flight from Iran, upon which he will have no knowledge, and indeed Reverend Clarke did not seek to give evidence in that regard. The First-tier Tribunal Judge simply considered the question of the genuineness of the conversion in the UK, and then went on to consider in light of his findings in that regard, the inconsistencies and discrepancies in the Claimant's interview regarding his flight from Iran. He has not relied upon the Reverend Clarke giving evidence upon matters about which he will have had no knowledge. He has simply relied upon Reverend Clarke's evidence in terms of the genuineness of the Claimant's conversion to Christianity and his attendance at church in the UK.

13. I further find that the Judge's reasons given in respect of his explanation for the anomalies and discrepancies in the Claimant's interview, have been explained by First-tier Tribunal Judge Kelly at both [20 and 21], and that his reasons in that regard and in particular, how the interpreter himself had to intercede because of confusion in the interview, and also,

how in regards to the discrepancy regarding the date of the first meeting with Ibrahim and the prayer meeting on the 10th October 2014, the Judge again explained that the Claimant had been attempting to recall dates in both the Persian and alternative Gregorian calendars which could have only added to the overall general confusion concerning the dates. Given the confusion in the interview itself as found by the Judge at [20] this was a finding that was open to him. His findings in this regard are adequate and sufficiently explained.

14. The Judge clearly dealt with the Claimant's attendance at Church in the UK and his genuineness of his beliefs when considering the evidence of the Reverend Clarke and the evidence in the round at [18]. The Judge does not need to deal with every single piece of evidence when making his findings, providing his findings are properly explained with adequate and sufficient reasons and his findings are open to him on the evidence presented. It is not necessary to deal with every single piece of possible inconsistent evidence, when making findings. It is sufficient that a Judge explains the reasons why the losing party has lost and backed up those findings with appropriate evidence. The Judge has done exactly that.

15. In such circumstances the decision of First-tier Tribunal Judge Kelly does not contain any material error of law and is maintained.

Notice of Decision

The decision of First-tier Tribunal Judge Kelly does not contain any material error of law and is maintained.

Signed

Dated 26th March 2016

R McGinty

Deputy Judge of the Upper Tribunal McGinty