



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00489/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 19 June 2018

Decision & Reasons Promulgated
On 09 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, M K, was born in 1980 and is a male citizen of Iran. The appellant first entered the United Kingdom in February 2009 on a visa valid for one month. He claims thereafter to have re-entered clandestinely in June 2013. He claimed asylum on the basis of imputed political opinion but his application was refused by the respondent. A subsequent appeal was dismissed by the First-tier Tribunal (Judge Henderson) by a decision dated 23 September 2013. The appellant was subsequently baptised in a Christian church on 30 March 2014 and further representations were made to the respondent on the basis of the appellant's claimed conversion to Christianity. That application was refused by a decision of the respondent dated 21 December 2016. The appellant appealed to the First-tier Tribunal (Judge Moxon) which, in a decision

promulgated on 8 June 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal. There background to the challenge to the judge's decision is as follows. First, the judge found that the appellant's claim to have converted genuinely to Christianity was false. At [56] the judge noted that the appellant had been introduced to the Christian church a few weeks prior to the appeal hearing before Judge Henderson. The appellant made no mention to Judge Henderson at the subsequent hearing of his conversion. Judge Moxon found that it was "implausible that he would have failed to reference his Christian conversion during his 2013 hearing if it was genuine."

2. The appellant points out that the refusal letter of 21 December 2016 records at [70] that the appellant had "provided letters of support from St Thomas' church and also for St Paul's church. It is accepted that you are fully active and participating in your church activities in the UK." However, at [81], the respondent made it clear that she did not accept that the appellant was a genuine practising Christian. In consequence, the respondent considered that the appellant would not be at risk upon return to Iran.
3. The appellant challenges Judge Moxon's finding that the appellant had fabricated his claim to be a genuine Christian. The observation that, notwithstanding the respondent's acceptance of the appellant's activities in the Christian church if not the genuineness of his conversion, the appellant had failed to mention his nascent involvement in the church to Judge Henderson was illogical. I disagree. I will deal later with the appellant's assertion that he will be at risk in Iran even if he is not a genuine practising Christian because he has been involved in the Christian church in the UK. The appellant contends that he will be asked questions which will expose his activities in the Christian church when he returns to Iran. Leaving aside the genuineness of his conversion, that element of his claim for asylum existed as at the date of the hearing before Judge Henderson. I share Judge Moxon's puzzlement that the appellant did not mention his Christian activities to Judge Henderson if he believes that such activities (whether or not evidencing a genuine conversion) would expose him to risk. Put another way, had he genuinely believed that the activities which had taken place before his hearing before Judge Henderson would place him at risk, then he would have mentioned the activities to the Tribunal. Judge Moxon was fully aware that the appellant had undertaken such activities and he was aware also that the respondent, in the refusal letter had accepted that the activities had taken place. I do not consider Judge Moxon's findings to be illogical. Even if they were, the judge has gone on at [57-67] to give other compelling reasons for finding that the appellant's conversion was not genuine.
4. The second challenge to Judge Moxon's decision is argued on the basis that, even if the appellant is not a genuine convert to Christianity, when he returns to Iran, he will be asked questions which will lead him to reveal that he has attended a Christian church in the United Kingdom. That revelation, the appellant contends, will expose him to a real risk. Reliance is placed upon an unreported decision of the Upper Tribunal (Judge Plimmer) in AA/09450/2014. The argument put before Judge Plimmer was advanced by Mr Schwenk at the hearing before me. I note that Judge Plimmer's treatment of that submission is in no way binding upon me. Mr Schwenk argued that, if the appellant is asked an "open" question by his interrogators at Tehran

Airport, he would be obliged to tell them the truth, namely that he spent his time in the United Kingdom, at least in part, attending a Christian church. Even if the appellant went on to explain that his conversion was bogus and undertaken purely with a view to claiming asylum, it remains likely that his interrogators would order him to be detained where he would suffer ill-treatment.

5. I find that there is no evidence to show what questions a returning failed asylum seeker will be asked at Tehran Airport. If the appellant is asked the direct question "Did you attend a Christian church in the United Kingdom?" then I accept that he would not be obliged to dissemble, but there is no evidence that he would be asked such a question. Given that the appellant's claim based on imputed political opinion has been rejected, the appellant would present with no adverse profile to the Iranian authorities which might lead those authorities to suspect him of anti-government behaviour. Secondly, if the appellant were to be asked an open question such as "What did you do when you were in the United Kingdom?" then (with respect to Judge Plimmer) I cannot find that the appellant would be obliged, morally or otherwise, to reply that he had attended a Christian church. If the appellant replied giving details of activities which he may have undertaken in the United Kingdom but excluding his attendance at the church, then such a reply would answer the question and would not be untruthful. If asked such an "open question", I find it inconceivable that the appellant would voluntarily mention his attendance at a Christian church when answering the question did not oblige him to do so (in particular given that his claimed conversion was not genuine) and when he would be aware that the revelation of his attendance might expose him to risk.
6. Finally, at [65], Judge Moxon had written "I note the appellant has been baptised and confirmed although this itself is not determinative of genuine conversion, although he is given weight in my consideration. I note the photographs [of the baptism] adduced although these can be easily staged." Mr Schwenk challenged this finding on the basis that it was illogical; if the judge accepted that the appellant had been baptised then there would be no reason for the appellant to stage photographs of a baptism. I agree. However, I do not consider that, reading the determination as a whole, any error on the part of Judge Moxon at [65] is not so serious as to require me to overturn his decision. I acknowledge that Judge Moxon could have investigated risk on return more thoroughly but, in the light of his findings and also considering what I have said above, had he done so he would have reached the same result
7. For the reasons I have given above, the appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

9. 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 their 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
Upper Tribunal Judge Lane

Date 29 July 2018

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed
Upper Tribunal Judge Lane

Date 29 July 2018