Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00580/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons promulgated**
On 19 July 2019	**On 09 August 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Behbahani of Behbahani & Co Solicitors.
For the Respondent: Miss Isherwood Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge McCall ('the Judge') promulgated on 22 March 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Iran born on the 16 February 1988 who entered the United Kingdom on 3 October 2015, lawfully, travelling on her own passport with a valid student Visa. On 8 March 2018 the appellant claimed asylum which was refused on 4 September 2018. This is the decision challenged on appeal.

3. The Judge treated the appellant as a vulnerable person for the reasons set out at [16] of the decision under challenge.

4. There was no dispute the appellant is a citizen of Iran who was born into the Islamic faith as a Shia Muslim or that the appellant was granted leave to remain in the UK which remains valid until 2021.

5. The Judge identifies as the crux of the appellant's claim her alleged conversion to Christianity and the Iranian authorities perception of her conversion as apostasy. The Judge had the benefit of hearing oral evidence from the appellant and a Pastor Connolly but was not satisfied the appellant had established that she is a genuine Christian convert. At [59] the Judge writes:

> "59. The Appellant claims that she fears persecution by the Iranian authorities and non-state actors. I am satisfied that the Appellant has fabricated her asylum claim and she has not converted to Christianity and nor will she be perceived or suspected of having converted to Christianity."

6. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal, the operative part of which is in the following terms:

> "2. The grounds, which were in time, complained that the Judge erred in: (1) failing to consider evidence in context at [22,23,34,38,41]; (2) failing to consider relevant background evidence [39]; and (3) a flawed assessment of the appellant's claim to have converted to Christianity.
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> 3. The grounds are arguable.
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> 4. It is arguable that the Judge, having identified the *SA (Iran)* guidance at [47] fails to apply it in his assessment at [50], where church attendance is tied, arguably without evidence, to depth of religious faith; and the reasoning for rejecting conversion arguably rests on plausibility/inherent probability, without adequate evidential foundation."

7. The respondent in his Rule 24 reply of 19 June 2019 opposes the appeal asserting the Judge properly considered the appellant's claim to have converted to the Christian faith and that the credibility of the appellant's account was primarily a question of fact, which was a matter for the Judge. The respondent asserts on balance it was properly open to the Judge to find the appellant's claimed fear of persecution by the Iranian authorities was fabricated and that sound

reasons have been provided to support the finding that the appellant had not converted to Christianity and nor will she be perceived or suspected of having converted to Christianity. The respondent asserts the grounds amount to no more than disagreement with the negative outcome of the appellant's appeal.

Error of law

8. In his submissions Mr Behbahani relied upon the grounds seeking permission to appeal arguing the Judge failed to consider the evidence in proper context. It was argued the finding at [22] that the appellant had gone to great lengths to argue that her protests and persecution in Iran were not political was incorrect as the appellant had gone to great lengths to explain that she herself and not the Iranian authorities regarded her own activities is not political whereas the authorities in her country, Iran, equated human rights activities/protests to being the same as political activities/protests or crimes which is said to be an explanation wholly consistent with the well-documented background material relating to Iran. The finding at [23] where the Judge finds that nowhere in the letter from Professor Speed was there any reference to the appellant having converted to Christianity from Islam and fearing return is criticised on the basis that letter was never tendered as evidence that the Professor was aware of the appellant's conversion or was evidence that he was confirming the appellant's religious conversion and that there was no evidence before the Judge to even suggest Professor was aware of the appellant's religious activities. The Judge is also criticised for taking the letter of the Professor out of context and attributing to it a context which may not have been attended by the author of the letter. The grounds assert this amounts to material error in the assessment of the letter from the Professor. The grounds also challenge the Judges expressed concern the contents of the appellant's Facebook account were in English which is explained by the Microsoft English translation tool used, and argues the Judge failed to give regard to the appellant's explanation in her witness statement as to the premise or focus as to why she was relying on limited extracts from this source. The criticisms concerning alleged failure to consider background material and to make findings based upon perception, assumption, and speculation in respect of the genuineness of the appellant's conversion to Christianity are expanded upon in the appellants grounds.

9. There is a pending country guidance case relating to risk for Christian converts in Iran but the same is not yet available and nor is it appropriate to adjourn this matter at this stage where consideration is only being given to the question of whether the Judge erred in law in a manner material to the decision to dismiss the appeal.

10. The challenge to the decision, in relation to the question of context, reflects/repeats the submissions made before the Judge. It is not made

out the Judge did not properly examine the evidence with the required degree of anxious scrutiny as a whole, especially that given by the appellant and that provided in support of her claim. The fact the appellant may not agree with the Judge's conclusions does not mean they were considered in an inappropriate manner without having due regard to the evidence. The Judge begins by considering a matter the appellant specifically stated she was not seeking to rely upon as part of her claim, namely any fear on return due to political opinion or membership of particular social group or alleged past experiences in Iran [21]. The Judge looked at the appellants statements and oral evidence relating to issues surrounding those claimed activities and whether they undermined her credibility or not. No arguable error is made out in the manner in which the Judge considered that evidence or the findings that key aspects of the evidence in relation to this aspect were not found to be credible. At [40] the Judge specifically finds:

> "40. The Appellant claims that she has been told by the authorities that as a result of her activities in University in Iran she will not be permitted to work for a public authority or State department now or in the future. The authorities did however permit her to complete her studies and they have permitted her to leave Iran, return for a holiday and then leave Iran again. The Appellant did therefore enjoy freedom of education and freedom of movement both within and outside of Iran. I find that freedom inconsistent with the claims that she was an activist in 2011 and therefore of adverse interest at that time to the authorities. I find that account does not ring true."

11. It is not made out the Judge's conclusion that the early aspects of the appellant's claim are not credible is outside the range of findings reasonably available to the Judge on the evidence.

12. The Judge thereafter considered the issue of the claim regarding conversion to Christianity from [42]. It is of note that the bulk of the grounds of challenge relate to the Judge's findings in the preceding paragraphs with the grant specifically referring to specific paragraph numbers appearing between [22 – 41].

13. The Judge refers to a number of cases. The often-quoted Scottish case of *TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58* contains an extensive discussion of how to approach the fact-finding exercise in cases where the appellant claims to have converted to Christianity. So far as *Dorodian* was concerned, it was said that while it would no doubt be desirable that the individual concerned be vouched for by someone in a position of leadership within the relevant church, it is more important that the evidence be given by someone who has knowledge of the individual whose commitment is in question. What mattered was that they have sufficient knowledge of the practices of the church of which they are a

member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities.

14. The Judge clearly adopted an approach consistent with such guidance. Whilst the grounds refer to *SA (Iran) [2012] EWHC 275* this is a decision of the High Court which has no binding effect and is a persuasive authority only. The Judge specifically refers to the guidance both in *Dorodian* and *SA (Iran)* at [47] and was clearly aware of not only the content but also submissions made in relation to these decisions.

15. The Judge at [49] accepted that Pastor Connolly is an expert in spiritual and religious matters but expressed concern regarding some of the evidence given to the Judge. The Judge was particularly concerned that matters the appellant put forward as barriers that prevented her attending church could have been overcome easily and it has not been shown to be irrational for the Judge to conclude that a person claiming to have converted to Christianity appeared to have made little effort to attend church when there was no arguable reason why she could not have found a place to worship. At [50] the Judge specifically finds:

> "50. Pastor Connolly was asked how often the Appellant had attended church since September 2018 and he replied, "up to Christmas not there every week, I would say every one in three and since then not seen her very much". It was put to him that he was suggesting she had attended approximately four times between September and Christmas, and he replied, "no, I would say more than that, about seven times. She may have attended other group activities". In the Appellant's oral evidence she confirmed she had not attended the Church weekly since September 2018 and explained she had had finance and work problems and they impacted on her studies. For a person to change their religion in the manner as explained by the Appellant and with the consequences of placing their life in danger and possibly their remaining family in Iran than one would expect them to embrace the freedom to be able to attend church and pray. Surely if a person is going through a difficult period that is when they need their faith and their church most? I find that the Appellant has chosen not to do that and rather than she has been prevented from attending I find that the Appellant's activities are more in keeping with the Respondent's analysis of this Appellant in that religion to her does not really mean very much. I respect the opinion of Pastor Connolly however, taking all the evidence in the round I am not satisfied the Appellant has genuinely

> converted to Christianity as she claims and I find she is fabricating her claim in order to remain in the UK and for no other reason."

16. This is not a conclusion arrived at on the basis of the Judge failing to consider all the evidence or solely on the basis of the appellant's attendance at church. The appellant has not demonstrated the Judge failed to consider all the evidence in the round of which attendance at church was one relevant issue. Similarly it has not been established the Judge applied a personal perception or view when assessing the evidence sufficient to take the same out of context. The appellant's evidence regarding conversion to Christianity is clearly considered within the context of her life in the United Kingdom.

17. Having found the claim to have converted was fabricated the Judge proceeded to consider whether the appellant would still face a real risk on return as the Judge had been specifically invited to do by the appellant during the course of the hearing. These findings are set out from [51] in which the Judge arguably finds the appellant's claim that her family home in Iran was raided as a result of her Christian conversion to be fabricated; especially as there was no explanation as to how the authorities in Iran could have learned of her attendance at a church in the UK in such a short timeframe with so few people being allegedly aware of this event on the basis of the appellant's own evidence. The Judge considers the social media and Facebook pages relied upon by the appellant but finds there is no evidence to link the same with the authorities in Iran such as to create a real risk on return.

18. At [59] the Judge finds:

> "59. The Appellant claims that she fears persecution by the Iranian authorities and nonstate actors. I am satisfied that the Appellant has fabricated her asylum claim and she has not converted to Christianity and nor will she be perceived or suspected as having converted to Christianity."

19. The Judge's dismissal of the appellant's claims on all grounds on the basis no real credible risk had been established is a finding within the range of those reasonably available to the Judge on the evidence. As ever in such cases, the question of whether an appellant has established their claim is fact specific.

Decision

20. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Signed.....
Upper Tribunal Judge Hanson

Dated the 29 July 2019