



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05480/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 9th January 2019

Decision & Reasons Promulgated
On 18th January 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR H R
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Aboni, Senior Presenting Officer

For the respondent: Mr Azmi, Counsel, instructed by Halliday Reeves Law Firm.

DECISION AND REASONS

Introduction

1. The appellant is a national of Iran who made a claim for protection on the basis he would be at risk if returned because he had changed his religious beliefs from Islam to Christianity. His claim was refused and his appeal to the First-tier Tribunal was dismissed. He then made further representations based upon additional evidence and his activities in relation to Christianity in the United Kingdom. These related to a progression in his beliefs and his

proselytising. This was also dismissed. His appeal was heard by Judge of the First-tier Tribunal IF Taylor and was also dismissed.

2. The appellant attended his appeal along with 2 ministers of religion and 2 other individuals. He claimed that members of his family were supportive of the Iranian regime and to this end he had produced a number of photographs said to show his cousin in the company of Iranian officials.
3. First-tier Tribunal IF Taylor applied the Devaseelan principle in relation to the earlier First-tier Tribunal decision. The judge said no issue had been taken in relation to the appellant having been baptised and confirmed or that he was an active member of the church. What was not accepted in the original hearing was that his conversion was genuine.
4. First-tier Tribunal Taylor at paragraphs 30 and 14 sets out the appellant's explanation of photographs submitted. At paragraph 18 the judge commented that 'None of the photographs are in original form'. At paragraph 23 the judge sets out a summary of the evidence of the witnesses called on behalf of the appellant. At paragraph 29 the judge said that none of the photographs were in original form which reduced the weight attached to them. Then, at paragraph 34, the judge refers to having considered the documents and concluded that none of them could be considered reliable.

The Upper Tribunal.

5. Permission to appeal was granted on the basis it was arguable First-tier Tribunal Taylor failed to make any findings on the oral evidence by the witnesses called on behalf of the appellant. The grounds had also asserted that the judge erred in stating that the photographs submitted were not in an original form and therefore less weight was placed upon. It was submitted that photographs now are typically taken on phones and cameras and then self-printed.
6. At hearing both representatives were in agreement that the judge materially erred in failing to make findings in relation to the evidence of the witnesses called on behalf of the appellant.
7. I would agree that the decision is defective. It records in summary form the evidence of the witnesses. However, it does not evaluate the content of the evidence. In the case of claimed conversion the opinion of church ministers and activists can be very important and such persons have on occasion been described as if they were expert witnesses. They were fundamental to the appeal and it was necessary for the judge to evaluate and set out an assessment of their evidence. This is missing and is a material error of law.
8. The failing to reach conclusions on the evidence of the witnesses means the decision is fundamentally flawed and so the question of the photographs submitted is therefore secondary. For completeness however it is not

apparent what the judge meant by 'in the original form.' If the judge was referring to the fact they were reproduced, for instance on a domestic printer rather than commercially, it was necessary for the judge not only to explain the probative value of the photographs but also why less weight was being attached to them because of their format. This was not done.

9. Primarily because of the lack of evaluation of the oral testimony the decision is fundamentally flawed and cannot stand. Consequently I set it aside for a fresh de novo hearing.

Decision.

The decision of First-tier Tribunal IF Taylor materially errs in law and is set aside for a de novo hearing in the First-tier Tribunal

Francis J Farrelly
Deputy Upper Tribunal Judge.

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal at Nottingham excluding First-tier Tribunal Judge IF Taylor.
2. A Farsi interpreter will be required
3. There may be four witnesses and a hearing estimate of 2 ½ hours is reasonable.
4. When the appellant's representatives are preparing for the fresh appeal they should consider the probative value of the photographs relied upon. It is suggested that the appellant's cousin can be seen in the presence of high-ranking members of the Iranian regime. The representative should consider how it can be established that the person is in fact the appellant's cousin. It may be for instance there are 2 photographs of them together or publish photographs with his cousins name which can be linked somehow to the appellant.
5. There have now been a number of cases in relation to conversions and the use of church witnesses which the parties may wish to consider:
 - (i) Dorodian (Ali) v Secretary of State for the Home Department
 - (ii) SA (Iran) v Secretary of State for the Home Department (Iran) [2012] EWHC 2575
 - (iii) TF and MA v The Secretary of State for the Home Department [2018] CSIH 58

Francis J Farrelly
Deputy Upper Tribunal Judge.