



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12648/2018

THE IMMIGRATION ACTS

Heard at Field House
On 2 April 2019

Decision & Reasons Promulgated
On 9 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M A L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dolan, counsel instructed by Sriharans solicitors

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 14 March 1982. He first entered the UK as a Tier 4 (General) Migrant Student on 9 November 2009 and made subsequent applications to extend his leave and for leave to remain on the basis of his human rights. He made an application for asylum on 16 June 2016 on the basis of his conversion to Christianity. This application was refused in a decision dated 19 October 2018. The Appellant appealed against that decision and his appeal came before Judge of the First-tier Tribunal Fox for hearing on 30 November 2018.

2. In a decision and reasons promulgated on 3 January 2019, the judge dismissed the appeal, rejecting the Appellant's claim to be a genuine convert to Christianity and also rejecting the credibility of his pastor and a witness who had also attended and given evidence before him.
3. Permission to appeal was sought, in time, on the basis that the judge had erred materially in law: firstly, in failing to consider whether the Appellant would be at risk on return to Pakistan as somebody perceived to be a Christian in light of the principles in HJ (Iran) [2010] UKSC and RT (Zimbabwe) [2012] UKSC 28; and secondly, that the judge had erred in his assessment of the Appellant's evidence and credibility and had failed in so doing to utilise a structured approach and had taken into account immaterial considerations.
4. Permission to appeal was granted by Upper Tribunal Judge McWilliam in a decision dated 7 March 2019, on the basis that it was arguable that the judge did not make a clear finding whether the Appellant had been baptised and therefore it was arguable the judge should have considered imputed political opinion. Permission was granted on all grounds, subject to the caveat that if the record of the Judge's evidence was being challenged, Ms Sriharan would be unable to continue as both advocate and witness and would need to provide a witness statement exhibiting her notes.

Hearing

5. At the hearing before the Upper Tribunal, Mr Dolan appeared on behalf of the Appellant. He addressed the issue of credibility first, submitting that the judge focused on individual inconsistencies and failed to adopt the approach required both by the Secretary of State's own Asylum Policy Instruction but also that set out in SM (Iran). He submitted that there was a detailed witness statement from the Appellant which provided dates and an account of how he came to convert to Christianity. However, what the judge had done with regard to baptism is to focus on supposed inconsistencies as to when the Appellant would be baptised and what discussion led up to that, as opposed to looking at the issue in the round. The judge further erred in failing to consider the claim in terms of plausibility, in particular, the factors set out in four of the Appellant's witness statements, the fact that his father was strongly opposed to conversion and was committed to the Islamic faith. He submitted that the credibility assessment had been carried out in a piecemeal fashion rather than in the round and that one must be aware of the danger of attempting to peer into a convert's mind *cf.* R (On the application of SA (Iran)) v Secretary of State [2012] EWHC 2575 (Admin) per His Honour Mr Justice Gilbert QC.
6. Secondly, Mr Dolan argued that the judge had erroneously failed to consider, at the very least, whether it was possible given that the Appellant was someone of a relatively high profile, that he would be at risk on return on account of his baptism. Mr Dolan acknowledged that there was no clear finding as to whether or not the judge accepted that the Appellant had been baptised, but that this was implicit by virtue of the fact there was a baptism certificate.

7. Mr Dolan sought to rely on the Appellant's evidence as set out in his witness statement at [10] where he referred to arguing with friends about their belief in Islam whilst he still lived in Pakistan and that they would say that he was speaking in a blasphemous manner. Consequently, any failure by the Appellant to practise his religion would at least in part be due to his fear of the consequences if he did so. Mr Dolan submitted that the judge has not dealt with this. At [80] the judge found the Appellant was not a genuine convert to Christianity and thus the baptism certificate was of a limited probative value. He submitted that this still leaves open the question of imputed Christianity and it was not clear whether or not the judge accepts that the Appellant had been baptised but considered it was not genuine.
8. In her submissions, Ms Everett noted there was a Rule 24 response where the Respondent's position was that the Appellant would be discreet on return because he has been discreet about his Christianity in the UK, however that she intended to defend the decision on a different basis, which was that the judge did not accept that the Appellant has converted to Christianity. She submitted that the assertion the judge had made factual errors was in fact a question of interpretation. During his asylum interview the Appellant was asked about Christmas but not about Easter. However notably he did not know about Christmas or Easter. The judge was clearly concerned with the narrative of the Appellant's baptism and was entitled to take account of internal discrepancies between the evidence of the Appellant and the pastor. She submitted the judge gave cogent reasons for not accepting the Appellant's claim.
9. In relation to the second point, Ms Everett submitted that if the judge's findings were sufficiently satisfactory and cogent, then ultimately the Appellant on his findings is not a Christian and therefore would not seek to practise as a Christian on return to Pakistan. Consequently, the issue of having to live discreetly or conceal his religion does not arise. She also took issue with the suggestion the Appellant was high profile but rather on the basis of his evidence that his father was a diplomat that simply they were a family that had access to wealth.
10. She further submitted that, if indeed the Appellant were disingenuously practising his faith, then his baptism would not be significant in any event. If asked on return to Pakistan whether or not he was a Christian he could simply say the truth, which is that he was pretending to be a Christian in order to stay in the UK.
11. She concluded by submitting that if the judge's reasons as to credibility were accepted then the appeal fails.
12. I then gave the parties the opportunity to comment on the judge's rejection of the evidence of the Appellant's pastor and his reasons for that. This evidence is set out at [68], [73] and [81] of the decision. Ms Everett submitted that it is clear from the finding at [68] that the pastor was unable to recall the day of the week or who else was present when the Appellant was baptised and that was the basis of the finding that his evidence was vague and evasive. She submitted it was a key event and the

pastor had been able to add very little to it by way of evidence. She submitted that the reasons given by the judge were not inadequate or perverse.

13. At [70] the judge fairly assessed the evidence of the pastor as to when the decision was made and by whom in respect of the Appellant's baptism and that his finding at [73] rejecting the evidence of the pastor was neither perverse nor biased. Ms Everett submitted the judge had given reasons for finding that the Appellant's baptism was not coherent and was lacking in detail. She submitted the decision and reasons should stand. It is clear from the Appellant's answers in the Asylum Interview Record at questions 109 to 113, that the Appellant does not know what Christmas is yet he claims to be a firmly committed Christian. Moreover Christmas is not a difficult concept to grasp e.g. it is not the Pentecost.
14. In reply, Mr Dolan denied that he was making any assertion of bias on behalf of the Appellant. He reiterated, as Ms Everett had acknowledged, that it is notoriously difficult to peer into the mind of a convert. He submitted in respect of the Appellant's answers as given in the Asylum Interview Record that at question 114 he was asked to tell the interviewing officer about the rights and rituals that Christians practise and it was unfair to rely on this to support a finding that the Appellant does not know what Easter is. As regards Christmas, in response to question 111 where the Appellant made reference to getting food and eating together and question 112 where the Appellant states that he is a new convert and still learning, it was clear he had not yet been taught about celebrating Christmas but the focus had been on the teachings of Jesus Christ. In relation to baptism, Mr Dolan submitted it was very important in this church, which is a Baptist church. The judge, in rejecting the Appellant's credibility, failed to consider this in the context of the background evidence as to the treatment of Christian converts in Pakistan and the fact that many were charged with blasphemy. He also drew attention to the fact at [6] of his witness statement, the Appellant stated his father is connected to government authorities, politicians, religious groups as well as the ISI. Thus his father is clearly connected and influential.
15. Mr Dolan submitted that the judge's findings as to the Appellant's credibility were unsafe and the crucial issue is whether other people would consider the Appellant to be an apostate. There was ample objective evidence as to how he would be treated. He submitted the decision was unsafe and should be set aside.
16. I reserved my decision, which I now give with my reasons.

Findings and reasons

17. I find no error of law in respect of the first ground of appeal, that the Judge erred in failing to consider whether the Appellant would be at risk on return as a perceived Christian. This is because at [80] the Judge held as follows:

"For all the reasons stated above I do not accept that the appellant has converted to Christianity and the baptism certificate is of limited probative value

accordingly; Tanveer Ahmed applied. In the alternative the appellant is not a genuine convert to Christianity for the same reasons."

18. Thus it is tolerably clear that the Judge did find that the Appellant had been baptised but that he was not a genuine Christian convert. In these circumstances, I accept the submission of Ms Everett that ultimately the Appellant on his findings is not a Christian and therefore would not seek to practise as a Christian on return to Pakistan. Consequently, the issue of having to live discreetly or conceal his religion does not arise and if indeed the Appellant were disingenuously practising his faith, then his baptism would not be significant in any event.
19. However, I do find there is merit in the second ground of appeal, with regard to the Judge's treatment of the credibility of the Appellant and his failure to take a structured approach, as set out in the Respondent's Asylum Policy Instruction, i.e. whether the evidence is sufficiently detailed and specific; internally consistent and coherent; consistent with specific and general country of origin information; consistent with other evidence and plausible.
20. The basis of the Judge's negative credibility finding is primarily in relation to the Appellant's baptism, finding at [65] that "*despite his claim to have received religious instruction for approximately 3 years he had no meaningful knowledge of spiritually significant decision to proceed to the sacrament of baptism.*" I find that it is unclear what exactly is meant by this statement. The Appellant had not yet been baptised at the date of the refusal decision, although he was shortly thereafter, nor was the Appellant was cross-examined by the Presenting Office about his baptism. Thus the credibility issue arose from questions asked by the Judge for clarification. Caution in so doing must be exercised, when the Respondent is represented *cf. Secretary of State for the Home Department v Maheshwaran* [2002] EWCA Civ 173 where the Court of Appeal held at [3]: "*Adjudicators will in general rightly be cautious about intervening lest it be said that they have leaped into the forensic arena and lest an appearance of bias is given.*" However, no allegation of bias has been made in this case, albeit it was envisaged by Upper Tribunal Judge McWilliam in the grant of permission to appeal. At [35] what is recorded by the Judge in terms of the Appellant's evidence is "*No explanation was provided for the Pastor's decision that the appellant was ready for baptism, and the appellant was not asked any questions about his faith on that day.*" However, the decision was surely one for the Pastor, rather than the Appellant.
21. The Pastor's evidence was that the Appellant had been a regular attendee at services and Bible studies on Wednesday and baptism classes every third Sunday since 2015 [38]. He was certain of the Appellant's religious conviction as he is inquisitive, proactive and consistent in his attendance [39]; that he has many asylum seekers who have converted to Christianity though he has never supported an appeal before [40]; he believed that the decision to baptise took place on a Sunday as baptism classes are every third Sunday and it is at those classes that the Pastor discusses who may be ready for baptism and those who are ready come forward at the end [42]. The Pastor's evidence, recorded at [43] is that "*the appellant took 3 years to prepare for baptism as the church is strict about ensuring that those who are baptised make an informed*

decision. The Pastor looks for attendance, study and any other evidence as signs of commitment to the Christian faith." And at [44] in re-examination that he had asked the Appellant if he was ready for baptism during baptism class and the Appellant confirmed he was ready. I find that there is consistency between the evidence of the Appellant and the Sponsor that the Pastor approached the Appellant as he considered he was ready for baptism and the Appellant agreed. The only inconsistency is whether this took place on Sunday at baptism class [Pastor] or a Wednesday during a Bible studies meeting [Appellant]. When the Appellant's answer was put to the Pastor he stated that he may have spoken to the Appellant at the beginning of the meeting [43].

22. A further witness was also called to give evidence when he stated that he has known the Appellant for 3 years since he began attending Church [46]; that he was the Appellant's mentor and assisted him to find scriptures and explore the Bible; that the Appellant sends him SMS message asking religious questions and also telephones him for the same reason [47]. In response to questions asked by the Judge for clarification, the witness stated that the decision to baptise the Appellant had been taken approximately two months ago and the Appellant had informed him by telephone. He did not know when the Pastor had approached the Appellant but assumed it was a Wednesday and the Pastor was satisfied the Appellant was ready for baptism and so the Appellant should consider this [48]. He stated that the baptism ceremony was originally scheduled to take place in September 2018 but was rescheduled for unknown reasons [49].
23. The Judge's findings in respect of the credibility of the Appellant, the Pastor and the Appellant's mentor are damning. Both the Appellant and the Pastor were described as "vague and evasive" [65]; [68] in the context of when and why it was decided that the Appellant would be baptised. In fact the majority of the Judge's findings were in relation to this issue only, from [65]-[79]. The question is whether those findings are justified.
24. At [71] the Judge find that "by the appellant's own evidence" the decision to baptise was taken in isolation of all other activities at the Church and that it was significant that the Appellant fails to make any reference to baptism classes, distinguishable from bible studies. The difficulty with this finding is that the decision to baptise the Appellant was taken by the Pastor rather than the Appellant and it is clear from the summary of his evidence set out at [21] above that the decision was not taken in isolation of all the Appellant's other activities at the church but in the context of his attendance, thirst for knowledge and other activities. These are described in the Pastor's statement as the Appellant being "*very keen to help in cleaning, setting up chairs and helping in different ways at the church*" and that "*he is very honest and caring towards elderly.*" I find the Judge failed to take account of material considerations in that he has failed to consider the Pastor's evidence as a whole. Further, it was clear from the Pastors evidence that baptism classes take place every third Sunday after the service, as distinct from Bible classes which take place every Wednesday. The key issue here, I find, is that the Pastor confirmed that the Appellant had attended not only Sunday

services but the baptism classes which took place every third Sunday after the service and Bible classes, thus twice weekly attendance over three years.

25. The Judge at [77]-[79] held against the Appellant, the Pastor and the witness, the Appellant's mentor, that his mentor stated that the Appellant's baptism was supposed to take place in September 2018 but had to be deferred, when this was inconsistent with the evidence of the Appellant and the Pastor. However, this fails to take into account the Appellant's evidence given in response to questions asked by the Judge at [34] that "*the Pastor informed the appellant that he should be baptised in approximately October 2018. This was amended to state that the Pastor informed the appellant of the decision to baptise him one month before the actual event or maybe 2 months prior to the event*" and at [36] "*the Pastor stated that there would be a delay while they waited for another woman to be baptised with the Appellant.*" This evidence does not support the Judge's finding at [79] that "*Nor is it credible that the witness would be aware of an unsuccessful attempt to baptise the appellant when the appellant and Pastor expressly confirmed that the baptism took place on 11 November 2018 as originally intended.*"
26. I have concluded that the Judge's adverse findings are not justified, both for the reasons set out above and in light of the recent judgment in TF & MA v SSHD [2018] CSIH 58, where Lord Glennie held *inter alia* as follows at [44]:

"[44] The only direct evidence as to the state of mind of the person claiming to have undergone a religious conversion is the evidence of that person himself. But that evidence may not be available or, if it is, its truthfulness may be challenged. It is now recognised that it is not possible to "open windows into men's souls" (an expression usually attributed to Elizabeth 1 of England) to test the sincerity of his belief. Juries in Scotland are habitually directed that intention or belief is a state of mind, to be inferred or deduced from what has been proved to have been said or done by the person whose state of mind is in issue. That applies equally to a case such as the present. This point was well made by HH Judge Gilbert QC, sitting as a deputy High Court Judge in SA (Iran) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin) at paragraph 24:

"... What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant's conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church."

In Dorodian (Ali) v Secretary of State for the Home Department (2001) 01/TH/01537 (unreported) the Immigration Appeal Tribunal (IAT) referred to a letter from the pastor of the relevant church confirming the fact that for the previous six months the asylum seeker "has been regularly attending the activities of the Iranian Christian Fellowship and is in the process of being prepared for baptism"; and commented that since that letter was accepted (i.e. as truthful) "we take the appellant as a committed Christian". In SJ (Christian Apostates – Evidence) Iran [2003] UKIAT 00158 at para 22 the IAT stressed the importance to be attached to evidence of the appellant's continuous adherence to the church's principles during the relevant period in order that the tribunal can "satisfy himself that the claim to adhere to the Christian faith is not a transient claim brought into existence purely for the purposes of pursuing an asylum claim". The important point is that evidence of how the appellant has engaged with the church is regarded as critical to this exercise. Mr John Taylor of the Tron Church was making the same point in his letters in support of both appellants when he said that "it is not possible to look into a person's heart to ascertain whether or not a conversion to Christianity is more than just words", implying that all he could do was to judge the genuineness of their conversion by their actions. We do not understand Judge Gilbert or the IAT, in the passages quoted above, to be saying that active participation in a Christian church is conclusive evidence of the genuineness of a conversion. If they were meaning to say that, we respectfully disagree. But it is likely to be a very powerful consideration, to be assessed alongside any other evidence pointing to the sincerity or otherwise of the claimed conversion to Christianity."

27. Whilst the Appellant's answer to the question as to Christian celebrations at question 109 of the asylum interview record was not impressive, in that he failed to mention Easter and did not know why Christians celebrated Christmas [Q113] he stated in response to question 112 that he had not been taught about celebrating Christmas because the main focus was the teaching of Jesus Christ. The Appellant was not cross-examined about these answers, however, and I find that, in themselves, particularly when the Appellant's account to be a genuine convert to Christianity was supported by his Pastor and a mentor of three years standing from the Church, they are not sufficient reason to justify a finding that the Appellant is not a genuine convert to Christianity.
28. For the reasons set out above, I find that First tier Tribunal Judge Fox made material errors of law. I set that decision aside.

Notice of Decision

The appeal is allowed to the extent that it is remitted to the First tier Tribunal for a hearing *de novo*.

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

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 *Rebecca Chapman*

Date 8 April 2019

Deputy Upper Tribunal Judge Chapman