



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01162/2017

THE IMMIGRATION ACTS

Heard at Piccadilly Exchange,
Manchester
On 24th January 2018

Decision and Reasons Promulgated
On 28 February 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MS

~~(Anonymity order not made)~~

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr C Holmes instructed by Greater Manchester Immigration Aid Unit

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondent in this determination identified as MS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. SM, an Iranian national, claimed international protection on the grounds that he had converted from Islam to Christianity and would thus, on return to Iran, be at serious risk of being persecuted for a Convention reason. His application was refused by the SSHD for reasons set out in a letter dated 16th January 2017. He appealed the decision, such appeal being heard by First-tier Tribunal judge Lloyd who found that the weight of the evidence (which included oral evidence from some 12 witnesses) “suggests [SM] is a genuine convert to Christianity. I do not make this finding lightly given [SM] has lied to an Immigration Tribunal on a previous occasion about a faith conversion. I have reminded myself of the lower standard of proof which is very much in [SM’s] favour.” First-tier Tribunal Judge Lloyd allowed the appeal.

Background

2. SM arrived in the UK on 11 February 2007 and claimed asylum that day on the basis that he had had a relationship with a married woman and had been arrested by the Iranian authorities for adultery. His application was refused and his appeal dismissed by the First-tier Tribunal following a hearing on 13th December 2007. The judge found that SM had “fabricated his account” and he “comprehensively disbelieved” SM’s account.
3. SM did not leave the UK. On 17th March 2009, he was convicted of a criminal offence of knowingly possessing a false instrument namely a forged Italian passport. He was sentenced to 12 months’ imprisonment. On 1st April 2009, he was served with notice of automatic deportation and on 3rd August 2009 he made a further asylum claim. That claim was made on the grounds that he had converted to the Baha’i faith; the claim was refused on 22nd January 2010 and on 7th April 2011 his appeal was dismissed by a First-tier Tribunal judge who found he had not given a truthful account of his conversion to the Baha’i faith.
4. SM neither left the UK nor was he deported.
5. On 7th May 2013 he made further representations on the basis of his relationship with a British national. The representations were treated as an application to revoke the deportation order and it was refused on 22nd August 2013. His appeal against that decision was heard on 20th November 2013. It seems that at that hearing he also claimed to have converted to Christianity. His appeal on international protection grounds was refused, the judge finding SM to be

“... a wholly unreliable and untruthful witness who is prepared to lie to immigration officers and to Tribunal judges.....given the vehemence with which he asserted his commitment to the Baha’i faith and the ease with which he has abandoned it, we have no doubt that his conversion to that faith was a fabrication demonstrating that [SM] has compunction about asserting at a tribunal that he has a faith he does not. That, taken with the extent to which he has been found to be an untruthful witness and the lack of evidence from a minister of religion, leads us to the firm conclusion that [SM’s] claimed conversion to Christianity is no more than a device.”

The judge accepted, because a concession made had not been withdrawn, that he was in a relationship with a British citizen

6. A further application to revoke the deportation order was made on 27th January 2015 on the basis that he had converted to Christianity. His relationship with his British partner ended in 2014. The refusal of the application to revoke the deportation order was the subject of the appeal before Judge Lloyd, who allowed the appeal.
7. SM's evidence to Judge Lloyd included:
 - * he admits to having lied about converting to the Baha'i faith which was done because he thought it would mean he would be released from prison;
 - * At the 2011 hearing he gave evidence that his family were not strict Muslims and he had told them of his conversion to the Baha'i faith; before Judge Lloyd he said his family were strict Muslims who no longer talk to him because of his conversion to Christianity;
 - * he had started his conversion to Christianity while in prison between December 2008 to December 2009 (although it is likely, given that his conviction was in March 2009, that by December 2009 he had been released from prison on licence particularly given his evidence that he was released shortly after Mr Nazary who had served six months);
 - * Mr Rahman Nazary, with whom he had been convicted and shared a cell had sent him a bible after he, Mr Nazary, was released (6 months after their conviction). Mr Nazary had found God whilst in prison and been subsequently recognised as a refugee because of his conversion although he did not now go to any prayer groups or attend any student Christian groups but he goes to (a different) church once a month;
 - * SM started attending church a year after he was released from prison;
 - * he attended St Paul's church in Stalybridge for a year and was baptised on 15th June 2014; at the end of 2014/beginning of 2015 he started to attend Kings Church every week where he was re-baptised by full immersion;
 - * several witnesses (friends, the Senior Minister at Kings Church, part time pastor at Kings Church, other members of Kings Church) gave oral evidence, the general tenor of which was that SM was a regular attender at church, attended church prayer meetings, had grown in faith and, in their view, he is a genuine convert;
 - * a letter from a psychiatrist diagnoses SM with recurrent depressive disorder, emotionally unstable personality traits, no acute or definitive suicide plans and corrects an earlier letter which states that SM has converted to the Baha'i faith whilst in Iran. He thinks SM's conversion is genuine: he has spoken of his love for Jesus for 18 months, finds his church very supportive and friendly and his family remain protective;

Error of law

8. If SM is to be believed, he was attending church on a regular basis for several months prior to his appeal hearing against the decision that he had converted to the Baha'i faith (April 2011). Although it seems possible that the asylum claim on that basis had been made whilst he was in prison, he was not in prison when it was refused and yet he pursued his appeal on the basis that he had converted, contrary to his evidence that he had claimed conversion to the Baha'i faith to get out of prison. There was no evidence from him why he had not disclosed his claimed increasing Christian faith at the hearing in April 2011. By the time of that hearing he had been out of prison for at least a year.

9. Judge Lloyd found:

"83. [SM] says he converted to Christianity in prison in late 2009. Judge Heynes found he has not converted following a hearing on 20 November 2013. This was due to the fact that no one from his church attended to give evidence, and [SM] had previously lied about a conversion to Islam (*this is probably a typographical error and should read the Baha'i faith*).

...

86. I bear in mind that [SM] has previously lied to Immigration Officials and to an Immigration Judge....

...

88. It is clear that the King's church is a welcoming environment that goes out of its way to welcome new members.

...

90. There seems absolutely no reason why an individual in [SM's] circumstances would not be attracted to the community at King's church. I find they are a warm and welcoming church to help and support their members.

...

95. I have no reason to doubt the sincerity of any of [SM's] witnesses.

96. [SM] says he has inner peace since he converted.

97. On the evidence before me, the weight of the evidence suggests [SM] is a genuine convert to Christianity.

10. The SSHD sought and was granted permission to appeal on the grounds that it was arguable the judge

- (i) Made a material misdirection in law in failing to treat the adverse credibility findings on the same issue (conversion to Christianity) as the starting point;
- (ii) Failed to give any or any adequate reason for finding that the weight of the evidence suggests SM is a genuine convert to Christianity; there have been no findings on the credibility of his evidence, the finding he is a genuine convert is based solely on the evidence of others and not on him;

failed to provide any or any adequate reasons why the new evidence allows a departure from the previous findings of two immigration judges.

- (iii) Made a perverse or irrational finding on a matter that was material to the outcome; the evidence in favour of the appellant was evidence from witnesses only and none of SM's evidence referred to indicates the genuine nature of his conversion.

11. The judge refers to and quotes from *Devaseelan* [2002] UKIAT 00702 and concludes that he should apply the *Devaseelan* guidelines. In paragraph 86 of his judgment, the judge says he "bears in mind" that SM has previously lied. He has not considered the previous judgments as a starting point but "borne them in mind". If that were simply a matter of inaccurate summary of the principle but that the actual principle had been applied this would be of no consequence. But in this case the judge has failed to consider specifically that relevant facts had not been brought to the earlier Tribunal's attention; the very late disclosure of his conversion despite there being outstanding applications to the SSHD and an appeal; the contradictions in his evidence regarding his family support and whether they were "strict" Muslims or not. The judge in paragraph 83 give the reason for the previous dismissal of his claim as being predicated upon the lack of attendance of a minister and lies previously told. The previous claim was disbelieved for far greater reasons than this. The judge not only found him to be wholly untruthful but also referred specifically to the issue of his previous claimed conversion to the Baha'i faith. Judge Lloyd has not addressed these very strong words by previous judges but has merely borne in mind that SM has previously lied. This is not an appeal decision where it can be implied that the judge understood the approach he should take to previous findings, despite having quoted *Devaseelan* in his decision.
12. The judge has not addressed SM's evidence. Of course, his finding that he had no reasons to doubt the sincerity of the witnesses' evidence is a finding open to him. But that is very different to assessing SM's evidence. The judge's finding that there "seems absolutely no reason" why an individual should not be attracted to the Kings community may be true in a general sense but such attraction should be analysed in the context of this appeal and SM who has not only been convicted of a serious offence of deception but has three adverse decisions against him, all concluding that he is an untruthful witness. The judge has not considered whether and to what extent the witnesses were aware of SM's previous adverse decisions or of his conviction. There has been no analysis of whether Mr Nazary's low current church involvement impacts upon SM's claimed beliefs; there has been no consideration of the claimed conversion in the context of previous claims for protection. That the witnesses, and there were many, considered SM to be a genuine convert is a factor, possibly a strong factor in SM's favour. But without an analysis of the evidence as a whole and in particular SM's evidence, it is insufficient to found a successful appeal.
13. *AS (Iran)* [2017] EWCA 1539 draws very proper attention to the care to be taken in addressing a "reasons" challenge:

“In approaching criticism of reasons given by a First-tier Tribunal, the Respondent correctly reminds us to avoid a requirement of perfection. As Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded. In respect of each of these grounds of complaint, the Secretary of State submits that perfectly acceptable reasoning was set out in the First-tier Tribunal decision.”

That is not what has happened here. The judge has not addressed the evidence before him, has failed to provide any assessment of adverse factors in the context of the weight given to the witnesses and has failed to approach the decision in accordance with *Devaseelan*.

14. There are material errors of law in the decision of the First-tier Tribunal and I set aside the decision to be remade; no findings of fact preserved.
15. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The facts in this appeal are disputed and I conclude that the decision should be remitted to the First-tier judge to determine the appeal afresh.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be heard afresh, no findings preserved.



Date 1st February 2018
Re-promulgated 23rd February 2018

Upper Tribunal Judge Coker