



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11722/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2019**

**Decision & Reasons Promulgated
On 9 May 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MA
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle of Counsel

For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 1993. He appealed against a decision of the respondent made on 20 September 2018 to refuse his claim to asylum.
2. The basis of his claim is that he fears persecution on return on account of his conversion to the Christian faith.

3. A previous application on the same basis made in October 2016 was refused on 14 March 2017. An appeal to the First-tier Tribunal was dismissed on 17 May 2017 with appeal rights exhausted on 6 September 2017.
4. In the refusal letter for the second application the respondent did not believe the appellant was a genuine Christian convert. Reliance was placed on the adverse credibility findings made by the first tribunal.
5. He appealed.

First-tier hearing

6. Following a hearing at Hatton Cross on 2 November 2018 Judge of the First-tier Tribunal Devittie dismissed the appeal. He heard oral evidence from the appellant and two witnesses from the church. His findings are at paragraph [11]ff. He took as his starting point the first tribunal's adverse credibility findings which he sets out over two and a half pages.
7. He noted that the further evidence on which the appellant seeks to differentiate his current claim from the previous one comes from the church. In that regard he noted further evidence in support, namely, *"Two letters from Dr Masters, senior pastor of the Tabernacle Church; letter from pastor Mohamed; letter from Mrs Helen Crompton of the Tabernacle Church; witness statement of Dr Behnam of the Metropolitan Tabernacle Church; screenshots from the appellant's Christianity-themed pages; photographs of the appellant proselytizing."* The Judge also noted that pastor Mohamed and Mrs Crompton gave oral evidence.
8. His conclusions on the church evidence are at [14]. He accepted the *bona fides* of the witnesses but considered that the appellant had hoodwinked them into believing him to be a genuine Christian convert. He went on at [15] to consider the critical question to be what weight should be given to the church witnesses. He continued:

"What is clear to me is that their evidence cannot stand in isolation in my assessment of whether the appellant is a genuine convert. Their evidence falls to be considered in the round and therefore in the context of the totality of the evidence. Herein lies the appellant's difficulty - the comprehensive findings of the first immigration judge ..."
9. And at [16] he considered that the probative force of the previous judge's findings *"points so compellingly to the appellant not being a genuine convert, that the weight of evidence of the church witnesses is considerably undermined ..."*
10. He sought permission to appeal which was granted on 15 February 2019.

Error of law hearing

11. At the error of law hearing before me the crux of Mr Gayle's submissions was that the judge failed properly to consider the evidence of the appellant's sur place Christian activities in light of the guidance given in **TF and MA v SSHD [2018] CSIH 58** to which he had been referred.
12. Ms Willocks-Briscoe's response was that the judge's conclusions were open to him. As he indicated he had considered the evidence of the two church witnesses but he was entitled when weighed with the adverse findings and inconsistencies noted by the previous tribunal to conclude that it did not overcome the burden on the appellant. As he further indicated he had considered the evidence in the round.

Consideration

13. I find merit in Mr Gayle's submission. At [48] of **TF and MA** the court said this:

"... Any court or tribunal must be very careful not to dismiss an appeal just because an appellant has told lies ... the judge should not jump too readily to the conclusion that because the appellant has told lies about some matters then his credibility on all matters is fatally undermined."

14. And at [49]:

"... Even if the FtT Judge concludes that the witness's evidence on the critical matters is undermined by a finding that he is generally incredible and not to be relied on, that has the limited effect that the appellant's (disbelieved) evidence is disregarded or put to one side; it does not somehow become evidence to the opposite effect, to be used against the appellant in contradiction of other independent evidence on which he relies ... So here, where the FtT judges have disbelieved the appellants' evidence that they are genuine converts to Christianity, their evidence to that effect will be put to one side and given no weight. But the rejection of their evidence on this point does not become evidence that their conversion is not genuine, to be set against other, independent, evidence from which the genuineness of their conversion can be inferred. That other evidence requires to be assessed on its merits, without any a priori assumption derived from the complainer's own false evidence that it is in some way suspect or of little value."

15. Finally at [59]:

"It is legitimate to question the experts on their opinions and as to the basis upon which they have reached these opinions. In some cases it may be appropriate to question the objectivity of the assessment made by the witness, or to suggest that there may be an element of wishful thinking given the evangelised mission of the particular church. But as we have already made clear that exercise should not start with any predisposition to

reject the evidence because it does not fit in with some a priori view formed as to the credibility of the appellant. The evidence should be considered on its merits and without any preconception, based upon an assessment of the individual appellants that it is suspect or otherwise falls to be disregarded."

16. As indicated there was documentary and oral evidence from the church in support of the appeal. The evidence of Pastor Mohamed was set out in detail at [9] of the judge's decision. It included that it was not unusual for the church to refuse baptism if they had any doubts. The decision is made on an assessment of the spiritual life of the prospective convert who has to provide written and oral testimony and he is interviewed by two elders. The pastor is not involved because the church wants to check that the story is consistent. The appellant had lived with a brother from the church for some eight months. If his conversion was suspect this would have been mentioned by the elder.
17. The evidence of the second witness, Helen Crompton, is also set out in some detail at [16]. She reiterated the church's approach to accepting the genuineness of asylum seekers. A retired civil servant who had been a benefits office manager she made clear that she was not gullible.
18. The judge by simply stating that the unsatisfactory features of the appellant's evidence identified by the previous tribunal *"points so compellingly to the appellant not being a genuine convert that the weight of evidence of the church witnesses is considerably undermined"* failed to follow the guidance that the church evidence should be considered on its merits and without any preconception. What he ought to have done was to look at all the evidence in the case, including the evidence from the Tabernacle Church witnesses, on its own merits before forming a concluded view as to the veracity of the appellant.
19. In failing to give sufficient analysis of the nature, extent and quality of the evidence of the church witnesses in delineating the existence or otherwise of an objective foundation for what the judge accepted (at [14]) as their *"unstinting faith in the authenticity of the appellant's conversion"*, he erred such that his findings cannot stand and the case must be reheard.

Decision

20. The decision of the First-tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for a fresh hearing on all issues. No findings stand. The members of the First-tier Tribunal chosen to consider the case are not to include Judge Devittie.

An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date: 03 May 2019

Upper Tribunal Judge Conway