



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12641/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision promulgated and

sent

On 17 May 2017

On 25 May 2017

Before

Upper Tribunal Judge John FREEMAN

Between

MF

(Anonymity to continue till after fresh hearing)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, solicitor, Elder Rahimi

For the Respondent: Mr S Kotas

DECISION AND REASONS

1. This is an appeal from a decision by Judge Paul Housego, sitting at Hatton Cross on 19 December 2016. The appellant was born in Iran in 1995, and says he entered this country on 5 May 2016. He claimed asylum some time after that, on the basis that while in this country he had converted to Christianity, having previously taken some interest in this religion when he was in Iran, and got into trouble with the authorities over it.
2. The appellant was interviewed on 18 October 2016, and his claim was refused on 1 November. The judge disbelieved his account of his conversion, and the decision is challenged on various grounds; first and foremost being difficulties which are said to have arisen over the

interpretation. The judge referred to *Dorodian* [01/TH/1537] (mentioned with approval in *NM* (Christian Converts) Afghanistan CG [2009] UKAIT 00045 at paragraph 68), and it was clearly relevant to consider what knowledge the applicant had of the Christian religion.

3. The judge accepted at paragraph 63 that he had shown some knowledge of Christianity, but, reasonably enough, took the view that that was not necessarily the whole story. What he had needed to do was to explore the knowledge that the appellant had shown, and it is very clear that difficulty had arisen with the interpretation, over the translation of religious expressions. The judge has helpfully provided a typewritten note of his record of proceedings, though, not quite so helpfully, an unproof-read one. With the help of Mr Gayle's own note, I have had to make sense of it at some points; but it is quite clear that the judge did take considerable trouble to get clear answers to the questions that the appellant was asked, so far as he possibly could, and he is to be commended for that.
4. The judge notes at paragraph 45 of his decision that it was "difficult to get a clear answer to relatively simple questions". The example that he goes on to give at paragraph 45, if it was an example, refers to the means by which the appellant had got the money to pay an agent to bring him to this country. That is dealt with in the record of proceedings at page 8. There is an indication there that Mr Gayle raised concern about the interpretation, because answers were being given about money which did not necessarily fit the question.
5. At this point the question was why the appellant should have been giving answers about his father's pension. The appellant's answer to that is, "Because you asked me how much he gets as a pension". The judge says correctly in terms of his previous question, as recorded on the transcript, "I asked how much the agent was paid". It seemed from the exchange which had taken place that the appellant was under some misapprehension, if it was a misapprehension, about the relevance of his father's pension; but it seemed that an answer was provided to the question in the end. In my view, though I acknowledge that the judge heard and saw the appellant, this exchange was just as capable of showing interpretation difficulties as evasiveness on his part.
6. However a key finding in the judge's credibility decision came at paragraph 68, "The oral evidence of the appellant was evasive and often avoided questions" and the judge then relates the efforts he made to ensure the interpretation was correct and concludes, "I am satisfied that the reason was not any difficulty in translation". It is a bad practice for a judge to find an appellant, or anyone else, evasive without giving details of how he had been evasive. If it is obvious from what had gone before, then it is not necessarily a material error of law, so Mr Kotas by invitation referred me to the passages which he said did make that clear.
7. The first comes at paragraph 41 of the judge's decision, as follows:

Asked why he had come to the UK and not another country, the appellant said that he had difficulty in his own country and that was why he had come to the UK. I asked if he had understood the question. He said that he gave money to the trafficker to take him somewhere safe. He had not known that he was coming to the UK, and did not know that was where he was until he was arrested on arrival.

8. That passage appears in the record of proceedings at page 5 as follows:-

Q Why chose UK to come to not another country?
A Because I had the difficulty in my country I would not come (sic) here.

Q by Judge Did you understand the question?
A I gave money to trafficker to take me somewhere safe and they brought me here.

Q And do you have friends, family here?
A Nobody.

Q So you did not know coming to the UK, is that right?
A No I did not know I was coming to the UK - I just said 'Take me somewhere safe'.

Q At what point did you realise you coming to the UK in your travels?
A At no point I realise that I knew I was coming to the UK when the human trafficker arrested me I was informed I was in the UK.

9. It was then suggested to the appellant by the presenting officer that he was not being truthful, and there was an exchange which got no-one very much further about that. It is difficult to see that those questions either, as recorded, are an example of evasiveness, rather than difficulties of interpretation. It may have been clear to the judge seeing the appellant give those answers for himself, and it is certainly true that this appellant was somebody with a history of raising difficulties about interpretation at his interview; but the judge needed to explain how and why he had reached that conclusion.

10. The other example mentioned by Mr Kotas comes at the judge's paragraph 42, where it appears in this form:-

Asked if his family had converted to Christianity the appellant said that he was in touch with them. The Home Office Presenting Officer said that she had asked if they had converted: the appellant said no. Asked when he was last in touch with them the appellant said it was Saturday, 17 December 2016. Asked how they felt about his conversion he said they were unhappy about it, and unhappy that he was far away, but happy that he was safe.

11. That passage in the judge's record of proceedings appears as follows:-

Q Your family in Iran?

A Yes.

Q Have they converted to Christianity?

A I am in contact with them.

Q What I asked is have they converted?

A No.

12. It is quite clear that the appellant's answer about being in touch with his family was not a direct answer to the question about whether his family had converted to Christianity; but it seems that, when that question was repeated, he did give a direct answer, which was "No". It is not easy to see what the appellant could possibly have to gain by avoiding that particular question; and once again, in my view, the judge did not make it clear, if that was intended as an example, why he regarded him as evasive on it.
13. So for those reasons, and without going on to consider the other grounds, it seems to me that there will have to be a fresh hearing before a different judge. Considerable care will no doubt be taken that the interpreter chosen is not one with whom the appellant can claim there are any difficulties, and it may be as well for that person to be booked for a case management hearing in advance of the actual hearing date, so that this can be established to the judge's satisfaction; but that will be something for the resident judge to consider.

Appeal allowed: decision set aside

Fresh hearing in First-tier Tribunal, not before Judge Housego



(Judge of the Upper Tribunal)

Date 24 May 2017

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 his 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.