Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12937/2018

THE IMMIGRATION ACTS

Heard at Manchester | **Decision & Reasons Promulgated**
On 4th April 2019 | **On 30th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS M K
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Miss L Bashaw (Counsel)
For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Malik, promulgated on 7th January 2019, following a hearing at Manchester on 10th December 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a citizen of Iran, was born on 29th August 1983, and is a female. She appealed against the decision of the Respondent, refusing her claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395 in a decision dated 27th October 2018.

The Appellant's Claim

3. The essence of the Appellant's claim is that she was born a Shia Muslim, experienced financial difficulties with her husband, was forced to live with her husband's parents, and then was introduced to Christianity after she had attended a hair salon and met with her friend. She thereafter attended the house church in Iran six times. Eventually, she left Iran illegally. In the UK, she alleged to have become a believer on 20th May 2018, the day of the Pentecost, which was the first day she attended the [Church]. She now fears that if she is returned to Iran she would be persecuted for apostasy.

The Judge's Findings

4. In a careful and comprehensive determination, the judge disbelieved the Appellant's account. She disbelieved the Appellant's claim that she had been mistreated by her husband, which she found to have been wholly manufactured as a background to her claim. The judge also disbelieved the Appellant's conversion to Christianity. On the other hand, the judge did find the two Christian witnesses, the Reverend Dunne and Mrs Butler, to be credible and sincere in their belief that the Appellant was a genuine Christian. The judge, however, came to the conclusion that the Appellant was a person who had not generally converted (paragraph 49).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge erred in law because she imposed her own standard of the "reasonable Christian" on why the Appellant should choose to be baptised before becoming fully conversant with the Old Testament. The level of knowledge held of the Old Testament's similarity to Islamic teachings, was also a matter that the judge had wrongly gone into. Moreover, the judge had failed to heed the principles recently established in the Scottish case of **TF [2018] CSIH 58**.

7. On 28th January 2019 permission to appeal was granted.

8. On 6th February 2019, a Rule 24 response was entered by the Respondent Secretary of State. It was then that the Appellant's claimed account of events in Iran (referred to at paragraphs 39 to 46, and at paragraph 48 of the determination) that her husband was oppressive had been properly rejected by the judge. These findings were not even challenged in the grounds. This is material which is relevant.

9. Nevertheless, the judge had not allowed her findings in this respect to infect the consideration of the claim that the Appellant was a convert. The judge had stated (at paragraph 49) that, "notwithstanding my above credibility findings, it is the Appellant's claim now that she is a Christian convert and attends church" which the judge separately focused upon.

10. The judge then identified the inconsistencies between the evidence of the Reverend Dunne and the Appellant, and set out the reasons for rejecting her claimed conversion. It was also noted that the witness [S] Butler, believed the Appellant's account of events in Iran [paragraph 34]. The judge was entitled to reject the Appellant's account having accorded appropriate weight to the evidence of the witnesses. The authority of **TF** was not binding upon the Tribunal in this country.

Submissions

11. At the hearing before me, Miss Bashaw, appearing on behalf of the Appellant, focused upon the eventual conclusions of the judge (at paragraph 49), where she had said that she was satisfied that Reverend Dunne and Mrs Butler were "credible and sincere in their belief that the Appellant is a genuine Christian". However, in the same breath the judge had gone on to say that, "but given their faith and conviction they would be predisposed to accept that she has converted" (paragraph 49). That suggestion, submitted Miss Bashaw, that the judge had given less than proper weight to the belief of the two church witnesses. In fact, it suggested that the judge was impugning an intrinsic lack of credibility in their evidence, precisely because "they would be predisposed" to the Appellant.

12. Second, Miss Bashaw submitted that the case of **TF [2018] CSIH 58** makes it abundantly clear (at paragraphs 48 to 49)

> "That the fact that the evidence of the witness is found to be generally incredible and not relied upon, 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".

13. Third, both witnesses, confirmed independently that they observed the Appellant in her Christian activities both at church and at home. Mrs Butler's evidence was particularly compelling in that, she drew upon her experiences of working as a social worker. She said she had observed the Appellant closely (including her body language) and had even made a surprise visit to the Appellant and found her reading the Bible. They had played together. She had been observed during a twelve week alpha course. This evidence of the witnesses was not evaluated (at paragraph 49) and the judge simply rejected the witness evidence as being "predisposed".

14. Finally, the judge erred in law because she "peered into the Appellant's soul" and imposed on the Appellant an additional burden of passing a "reasonable Christian" test, which was wrong in law. The judge imposed a

wrong subjective standard of how a “reasonable Christian” would behave, which was inconsistent with the evidence of Christian witnesses.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

16. First, this is a case where the judge makes findings of fact that were open to her. She records how the Appellant attended six times at a house church in Iran. Nevertheless, she claimed to become a believer on 20th May 2018, the first day that she attended the [Church], and the judge’s conclusion that, “I do not find it reasonably likely she would have become so on the very first day she attended a church in the UK”, was open to her.

17. Second, the judge backs this up with a statement that it was not clear “why the letter from the [Church] does not confirm this”.

18. Third, whilst the Appellant claimed that the [Church] was different to the house church, “there is no reasonable explanation then as to why she waited until the first day she attended a church in the UK to consider herself a Christian”, given that she had already attended six times in Iran.

19. Finally, she had actually described herself as a Muslim in her screening interview (see paragraph 47).

20. In addition to all this, I have looked at the judge’s treatment of the church witnesses carefully. I do not find the judge as having not given the church witnesses their due in the manner that is complained of. What the judge states is that,

> “On the evidence before me I am satisfied she does attend church. I found Reverend Dunne and Mrs Butler to be credible and sincere in their belief that the Appellant is a genuine Christian – but given their faith and conviction they would be predisposed to accept she has converted – but neither they, nor I, can look inside her soul” (paragraph 49).

21. In this respect, of course, it is necessary to look at the Scottish case of **TF and MA [2018] CSIH 58** where the court looked at the evidence as falling into three specific categories, as it explained, at the basic level, it consists of factual evidence about what the Appellants themselves did and said in relation to their attendance at the church. At the second level, it consists of evidence explaining the practices of the church itself. At the third level, it consists of an opinion and is given by the individuals in positions of responsibility within the church, who have observed the Appellants in their activities at the church (see paragraph 52).

22. In this respect, it is worth noting that, having said that both church witnesses were “credible and sincere”, the judge then went on to look at

their opinions and found that, Reverend Dunne had said he had spoken to the Appellant about the Bible on a number of occasions, but the Appellant said that she had not done so. Therefore, the judge was not simply "predisposed", but was looking at the evidence before her on the day of the hearing.

23. In fact, the judge gave further additional cogent reasons when observing that,

> "The letter from the [Church] is based on the Appellant's attendance there of seventeen days; the assessment made in Reverend Dunne's first letter of 1st October 2018 was some sixteen weeks after she first attended; there does not appear to be a formal process to make such an assessment – nor an explanation as to why the Appellant would be so eager to be baptised before being fully conversant with all aspects of Christianity, including the Old Testament" (paragraph 49).

24. In this respect, the Scottish Court of Session case of **TF and MA** is of assistance because it observes that, "in cases where the court does not have sufficient knowledge of its own" the evidence from within a particular church or of a particular tradition "can help 'to illuminate the court's understanding of matters [which may be] outwith its knowledge'" (at paragraph 54). Therefore, the judge was here well within the confines of what was set out as a paradigm in the case of **TF and MA [2018] CSIH 58**, in coming to her conclusions.

25. Accordingly, notwithstanding Miss Bashaw's valiant efforts before me to persuade me otherwise, I am not persuaded that the decision of Judge Malik below amounted to an error of law.

Decision

26. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

27. An anonymity direction is made.

28. This appeal is dismissed.

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 Dated

Deputy Upper Tribunal Judge Juss 25th April 2019