UK: Asylum-seekers and religious conversion: TF and MA

By Frank Cranmer

Law and Religion UK (03.09.2018) – https://bit.ly/2CkUg0a – When an asylum-seeker claims fear of persecution as an apostate if returned to his or her country of origin, how should a tribunal evaluate the genuineness of a claimed religious conversion?

In TF and MA, Appeals by Against the Secretary of State for the Home Department [2018] ScotCS CSIH 58, the appellants were both Iranian nationals whose claims for asylum had been rejected by the Secretary of State and whose subsequent tribunal appeals had been unsuccessful [1]. Both appellants worshipped at the Tron Church, Glasgow – an Evangelical congregation that had seceded from the Church of Scotland in 2012 – and both produced evidence from a number of individuals with connections to the church that they had become Christians. Both claimed that they had a well-founded fear of persecution arising out of their conversion to Christianity after their arrival in the UK; however, the tribunals did not believe that their conversions were genuine and refused both appeals on that basis [2]. It was not disputed on behalf of the Secretary of State that converts from Islam to Christianity do, in fact, face a risk of persecution if compelled to return to Iran [4].

When the appeal came before an Extra Division of the Inner House, the crucial issue was that the FTT judge had found both

TF and MA to be lacking in credibility [36] and, by implication therefore, that the FTT and the UT had also dismissed the evidence of the minister and elders of the Tron Church as to the genuineness of the appellants' conversions.

On the weight to be given to such evidence, the Court (per Lord Glennie) said this:

"[W]e have no doubt that expert evidence – both opinion evidence and expert evidence of fact – is admissible on these matters and can be given by the individuals we have mentioned. However, there is a separate question as to the weight to be attached to such evidence. It is trite law that an expert witness must explain the basis of his or her evidence; mere assertion or 'bare ipse dixit' is worthless: Kennedy v Cordia (supra) at paragraph [48]. But, as was recognised in the first sentence of that paragraph, there is a certain type of expert evidence – expert evidence based on personal observation or sensation – which is difficult to substantiate in this way. Such evidence may relate to questions of quality of goods or materials, or the quality of workmanship, or the artistic or literary merits of a work of art, a book or a play. In such circumstances it may be that all the expert can do is give his opinion based upon his long and varied experience. That, in our opinion, is the type of evidence that we are concerned with in cases such as this" [59].

As to how such evidence should be assessed:

"The witnesses have observed many people undertaking courses with a view to baptism and becoming members of the church.

They have seen some succeed and some fail. They will have been able to assess individuals over time as a result of those individuals taking part in activities within the church. They will have seen the intensity of their participation and will have heard the questions they ask and the interest in understanding that they show as matters are explained. Their evidence will be of the impression that that individual has made on them. They will be able to say that, in their opinion, based on their experience of this individual and many others, the individual in question is or appears to be genuine (or in other cases, they are not satisfied, or not yet satisfied, of the genuineness of their self-proclaimed faith). This, in our opinion, is admissible opinion evidence which is entitled to respect. Of course, it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal. To this extent, it is legitimate to question the experts on their opinions and as to the basis upon which they have reached those 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 evangelical 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" [59: emphasis added].

The Inner House disagreed with the conclusion of the UT that, in each case, there had been no error of law in the decision of the FTT and no lack of adequate reasoning [63]. It concluded that the FTT and the UT had erred in law in both

cases and had failed properly to take account of the independent evidence relating to the genuineness of the appellants' conversions to Christianity – and had failed to give adequate reasons for, in effect, disregarding that evidence. The two appeals were allowed, the decisions of the FTT and the UT were set aside, and the appeals against the decisions of the Secretary of State were remitted to the FTT for rehearings in each case before a differently-constituted tribunal. The issue of expenses was reserved [65].

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