



IAC-AH-DP-V2

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

Appeal Number: AA/00441/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th April 2015**

**Decision & Reasons Promulgated
On 17th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**HM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Medley-Daley

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 23rd September 1971. The Appellant claims to have left Iran on 27th November 2011 and travelled through Turkey and onwards across Europe arriving by lorry in the UK on 13th December 2011 when he claimed asylum. The Appellant's claim for asylum is based upon a fear that if returned he would face mistreatment due to his imputed political opinion. The Appellant's claim for asylum and for humanitarian protection were refused by Notice of Refusal dated 3rd January 2014.

2. The Appellant appealed and the appeal came before Immigration Judge De Haney sitting at Manchester on 19th February 2014. In a determination promulgated on 3rd March 2014 the Appellant's appeal was dismissed on all grounds.
3. On 13th March the Appellant lodged Grounds of Appeal to the Upper Tribunal. Permission to appeal was sought on the basis that the judge had failed to consider whether the Appellant would face persecution simply because he would be returned to Iran without a valid passport. On 27th March 2014 Judge Ievins granted permission to appeal. He noted that the basis upon which the appeal was put was a matter raised at some length in the skeleton argument but was not considered by the Immigration Judge. He took the view that it may have been that having found the Appellant not credible then the Immigration Judge did not consider it necessary to consider the Appellant's claim on the alternative basis that had been advanced but that his failure to do so amounted to an arguable material error of law. The judge even considered that it was arguable that on the basis of background information referred to the Appellant might be at risk simply because he would be returned to Iran having claimed asylum unsuccessfully and without having a valid Iranian passport. Further the judge considered it was appropriate to impose an anonymity direction.
4. On 9th April 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds indicated that the judge may have erred in failing to consider the Appellant returning to Iran as a failed asylum seeker and without a valid Iranian passport. However it was not accepted that the position of this had altered since this issue was last considered by the Upper Tribunal and there was no material error in the judge failing to consider the matter. It was on that basis that the matter originally came before me to determine whether or not there was a material error of law. That hearing was as long ago as April 2014 and at that hearing the Appellant appeared by his instructed solicitor Mr Medley-Daley and the Secretary of State appeared by her Home Office Presenting Officer Mr Harrison. It is therefore helpful that these two legal representatives have retained the file and now appear before me on the rehearing of this matter.
5. It is appropriate to consider briefly the intermediate history of this matter from the time that I heard it and decided that there was a material error of law through to the start of this hearing because the issues have to a certain extent shifted. I found that there was a material error of law in the decision of the First-tier Tribunal and these are set out at paragraphs 13 to 15 of my reasons. Those reasons which were incorporated in directions stated that the decision of the First-tier Tribunal Judge contained a material error of law solely so far as it related to the position that the Appellant may find himself in if he is returned to Iran as an undocumented Iranian. It was acknowledged that that issue was the sole extant issue before the Tribunal and I gave directions for the rehearing of the matter before me on that basis. Thereafter the matter reappeared before me. It was agreed at that time that the matter be stayed pending the decision of the President of the Upper Tribunal in the case of *Samma* on whether new country information supports a departure from country guidance. Both Mr Medley-Daley and Mr Harrison were in attendance on that hearing and they

agreed that the matter be listed for mention on a fixed date in December 2014 this being a date that was convenient for all legal representatives and for myself to be present.

6. The matter therefore reappeared before me on 16th December 2014 for mention and directions only. At that stage it became clear that the principle thrust of the appeal had changed and I was persuaded that was an appropriate approach. The change of emphasis was not challenged by Mr Harrison on behalf of the Secretary of State. I gave directions. Those directions are of some importance. Findings of fact made by the First-tier Tribunal Judge remained preserved save for the consideration of the risk to the Appellant on return to Iran as highlighted in paragraph 14 of the decision the error of law. However the issue was not solely whether the Appellant would be at risk on return as an undocumented Iranian but whether his conversion to Christianity would itself place him at risk. Leave was granted to the Appellant's representatives to file an additional bundle of documents. Such bundles include any documents upon which they seek to rely relating to the Appellant's conversion to Christianity but not exclusively upon this point. Permission was also granted to the legal representatives of the Appellant to adduce oral evidence from the pastor of the Appellant's church.
7. The issue arose with regard to the expert's report of Dr Kakhki. It was agreed that there was leave to the Respondent to put written questions to Dr Kakhki or in the alternative to advise the Appellant's solicitors that they required him to attend for the purpose of cross-examination. The matter was adjourned and relisted and it is on that basis that the appeal at long last comes back before me for rehearing.
8. I am gratefully assisted in this matter by the continued continuity of legal representatives and by the concession made by Mr Harrison that the critical question to be answered in this matter is now whether or not to the Appellant is, or is not, a Christian and it is on that basis that the thrust of the evidence is forthcoming.

Documents

9. Following my directions a further consolidated bundle of documents relied upon is provided by the Appellant's solicitors. This bundle extends to some 443 pages but the critical initial documents for me to consider are as follows:
 - (i) the witness statement of the Appellant dated 13th October 2014;
 - (ii) the updated witness statement of the Appellant dated 31st March 2015;
 - (iii) the witness statement of Masoud Naserijam dated 31st March 2015;
 - (iv) the Appellant's baptism certificate;
 - (v) the expert report of Dr Mohammed Kakhki;
 - (vi) the list of questions posed by the Respondent to Dr Kakhki dated 11th February 2015;

- (vii) the supplementary response to those questions posed to Dr Kakhki dated 10th March 2015.

Evidence

10. It is the Appellant's evidence that since his case last came before the Tribunal for full hearing on the error of law back in April 2014 there has been a change in his circumstances and that he has been baptised as a Christian. He states that prior to coming to the UK he had started to slowly doubt his faith and that in his previous role as a taxi driver one of his regular passengers had been an Armenian woman who was a Christian and that they had detailed discussions about the Christian faith. He states that he has lived in Liverpool since shortly after his arrival in the UK and that at the beginning of 2014 he was invited by a friend to attend a Christianity meeting. Thereafter he sets out at paragraphs 9 to 17 details of his route to Christianity and in his updated witness statement he sets out at paragraphs 5 to 11 further information regarding his Christianity and confirmation of his baptism. He makes it clear within his witness statements and his oral testimony that his fear if returned to Iran is that he will be charged with apostasy due to his conversion to Christianity and that he would not be able to practise his faith in Iran without coming to the attention of the authorities.
11. Mr Medley-Daley on behalf of the Appellant poses no further evidence-in-chief but the Appellant does confirm and adopt those witness statements as his evidence.
12. Under cross-examination Mr Harrison enquires as to what the consequences will be to the Appellant turning his back on Islam and becoming a Christian to which the Appellant responds he would be regarded as an apostate and that the consequence is that there would be a likelihood that he would face death. The advice is that he has family in Iran namely his father, mother, brothers and sisters and that they are aware of his conversion. He states that they are against it but he believes that this is not specifically due to their religious beliefs but because they are concerned that he is putting his life in jeopardy and that they have advised him that if he decides to return to Iran he should be aware that his life will be in grave danger. He does not believe however that he would be in danger from his family, that the threat would not come from them or of a fear that they would report him to the authorities but that his fear would come from the State itself if they found out about his activities.
13. Mr Harrison enquires to what the Appellant considers to be the difference between having been a follower of Islam and now as a Christian and he responds by stating that Islam was forced upon him as he had been born into Muslim society but that with Christianity you have the freedom to choose your own religion. He states that he has changed and he sees himself now as a much happier individual and that he feels much calmer within himself and feels that he interacts better within society.
14. The Appellant states that he is a member of the Frontline Iranian Church and that whilst he meets a lot of Iranians who are not Christians he is perfectly prepared to discuss his religion with them and encourages them to embrace Christianity. He

advises about the baptism process stating that he went to a number of classes and that it is for the church pastor to decide when he was ready to become baptised.

15. Evidence was provided by Pastor Masoud Naserijam. The pastor attends and confirms and adopts his witness statement of 31st March. He confirms that he started the Frontline Iranian Church in 2010 and that it is an evangelical Protestant church and a free church i.e. independent. He states that his church is based in Liverpool and that it is attended exclusively by Iranians and that services are conducted in Farsi. He acknowledges that the majority of attendees had been asylum seekers who have now been recognised as refugees and some of whom are naturalised as British citizens. He sets out in great detail within his witness statement at paragraphs 7 to 18 his relationship with the Appellant, details of the Appellant's conversion and baptism and his understanding of the Appellant's faith. He acknowledges at paragraph 20 of his witness statement that there may be people who seek to take advantage of his church to try and make a claim for asylum. He does not believe that the Appellant falls into that category and goes on at paragraphs 21 to 26 to state that whilst he may have baptised over 100 asylum seekers the Appellant is only the ninth person upon whose behalf he has attended court and that over the years over 400 people have been to his church. He therefore emphasises that it is rare and unusual for him to take the step of attending court to support an Appellant but that in this case he has a genuine belief that the Appellant is a convert. He goes on, particularly at paragraphs 22 and 23, to set out why he considers the Appellant to be a genuine convert and thereafter at paragraphs 24 and 25 he goes on to reflect on the baptism process and why he agreed to baptise the Appellant. I am also referred to photographs of the baptism which took place on 13th April 2014 and I note that Mr Harrison does not seek to challenge the genuineness of the ceremony.
16. Pastor Masoud concludes his written testimony at paragraph 28 with the following:

"If I was not convinced that HM's conversion was genuine I would not be prepared to come to court."
17. It is against that background that Mr Harrison cross-examines. He enquires as to what has led Pastor Masoud to conclude the Appellant is a Christian convert. Mr Masoud responds by stating that he had seen changes in the Appellant as set out in his supportive statement and that he genuinely believes that there is a capability of a person to change from within and that if he had not seen the changes he would not set foot in the court supporting him. He believes that there is a genuine change in the Appellant's mood that he attributes to his conversion to Christianity. He emphasises that he is familiar with the culture of Iranians and that he believes he can quite quickly differentiate between those on a "pretend" course to Christianity against those that are genuine. He acknowledges that if someone was on a pretend course it would not be within his religious calling to turn them away from his church but they would not obtain his support.
18. Mr Harrison enquires as to how the pastor differentiates between pretend and genuine cases and enquires as to how he has come to believe that the Appellant has made a genuine conversion. The pastor responds by stating that it is actually very

easy to determine if someone is pretending or not by observing their behaviour inside and outside the church and that he has contact with most Iranians in Liverpool be they Christian or non-Christian and as a result of that body of contact it is actually quite easy to distinguish whose conversion is genuine and whose is not. He reaffirms that he has only been to court now on nine occasions and that he has often refused to attend court. When pushed by Mr Harrison he indicates that there are probably in excess of 100 people who have asked him to attend on an asylum appeal for who he has refused to attend court.

19. Mr Harrison enquires as to whether he has other people in his church who have a duty of leadership. He states that he does and that he uses them in the process of evaluating someone's genuineness particularly as some are involved in a baptism course. He therefore emphasised that it is not just his opinion that people are true converts, although he acknowledges that ultimately it is his responsibility, but that he does sound out other people before making his decision.
20. The only other evidence to be called related to that of Dr Kakhki. However Mr Harrison indicated that he did not seek to question further Dr Kakhki and that he was prepared for his expert report to be admitted in evidence and to be read alongside the list of questions posed by the Respondent and Dr Kakhki's supplementary response. I agreed to that course of action.

Submissions

21. Submissions were relatively brief. Mr Medley-Daley referred me to the evidence which he submitted came in distinct groups. Firstly he referred to subjective evidence in support of the Appellant namely the Appellant's own witness statement and that of a pastor and their oral evidence. He submitted that they had both given credible accounts and that the Secretary of State had not challenged the baptism and he asked me to find that on that alone there was clear evidence to show that the Appellant was a converted Christian and that the other evidence showed that in the event of his return he would in such circumstances be at risk. He thereafter turned to the expert evidence of Dr Kakhki and to the confirmatory evidence of the baptism certificate. He asked me to look at the documentary evidence that had been produced, the country material and the relevant case law. In particular he referred me to the Home Office country information and guidance on Christians and Christian converts. He asked me in such circumstances to allow the Appellant's appeal.
22. Mr Harrison indicated that the Secretary of State's position was that this case would turn very largely on whether or not I found the Appellant's testimony to be credible and that of the pastor in support to be credible. He left the matter entirely in my hands.

Findings

23. The starting point in this appeal is whether or not I find the Appellant's testimony to be credible. A proper approach to credibility requires an assessment of the evidence

and of the general claim. In asylum claims, the relevant factors are firstly the internal consistency of the claim; secondly the inherent plausibility of the claim; and thirdly, the consistency of the claim with external factors of the sort typically found in country guidance. It is theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility.

24. In this case the Appellant has given a very detailed and thorough account of his conversion to Christianity. The fact that he has been baptised is not challenged by the Secretary of State. It is the credibility and plausibility of that conversion that is potentially under challenge. To that end I am assisted by the evidence of Pastor Masoud Naserijam. The pastor was a credible witness. He is open enough to acknowledge that the concerns of the Tribunal have to be whether or not the conversion to Christianity is genuine or whether or not this is an Appellant who sees such conversion and the following of the Christian faith as nothing other than a means of trying to persuade the Tribunal that his asylum appeal should be allowed.
25. I have had the benefit of hearing the evidence both oral and seeing it in writing from the pastor and of listening to his replies to quite sensible and proper cross-examination from Mr Harrison. It is difficult to be anything other than impressed with the pastor's testimony. He is not a naïve individual. He is well aware that there are unfortunately many within his community who would seek to abuse their purported status by making claims for asylum based on a conversion/belief in Christianity which is not genuine. To use a well-known phrase it is he believes his responsibility to sort the wheat from the chaff. He provides statistics of the number of Iranians who have been through his church. Those numbers amount to around 400 and he acknowledges that that cannot be a definitive figure because some of them will have moved to different parts of the country. However he emphasises that this is only the ninth appeal that he has attended and that over 100 congregants have asked him to give evidence and he has frequently refused. He has further explained the process that an applicant has to go to prior to being baptised.
26. It is difficult to be other than impressed at the process that he follows and his comments as to how he and other members of the community can assess whether an Appellant is or is not genuinely a Christian convert. Mr Harrison does not seek to go beyond the testimony. The burden of proof is on the Appellant. It is on the lower standard. I have no doubt that that burden of proof has been discharged and that the Appellant has through the testimony brought before me shown he is a Christian convert.
27. I thereafter turn to the objective evidence and the most useful guidance is to be found in the policy summary of the country information and guidance – Iran: Christians and Christian Converts December 2014 where at paragraph 1.4 it states:

“The rights of Muslims to change their religion is not recognised under Sharia law. The religious conversion of Muslims is illegal in Iran. Christians who have converted from Islam are at real risk of persecution in Iran, and a grant of asylum is likely to be appropriate.”

28. This case falls squarely within such guidance. For all the above reasons I am satisfied therefore that the Appellant's conversion is genuine and that the Appellant has a well-founded fear of persecution for a Convention reason. In such circumstances the Appellant's appeal is allowed on asylum grounds.

Notice of Decision

The Appellant's appeal is allowed on asylum grounds.

The Appellant's appeal is also allowed pursuant to Articles 2 and 3 of the European Convention of Human Rights.

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

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application has been made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris