



IAC-AH-KEW-V1

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

Appeal Number: AA/08067/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2016**

**Decision & Reasons Promulgated
On 29 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**GR (PAKISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Fletcher, Counsel instructed by the Immigration Advice Service

For the Respondent: Mr N Bramble, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Quinn sitting at Harmondsworth on 5 October 2015) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate

that the appellant continues to be accorded anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission

2. On 9 November 2015 First-tier Tribunal Judge Brunnen granted permission to appeal for the following reasons:
 - “2. The grounds on which permission to appeal is sought submit the judge failed to take account of evidence that was relevant to the appellant’s claim to be a practising Christian and failed to apply the principles set out in **HJ (Iran) [2010] UKSC 31**. These grounds are arguable.
 3. Further to the grounds on which the application is made, it was arguable that the judge failed to make any clear finding as to whether he accepted the appellant as genuinely a Christian at all. Several of his findings appear to point to a negative finding on this issue. Further, if he was accepted to be a Christian, the judge made no clear findings as to how openly he has practised his faith in the UK and [how] he would wish to practise his faith in Pakistan.”

The Rule 24 Response

3. On 23 November 2015 Paul Duffy of the Specialist Appeals Team settled a rule 24 response opposing the appeal. In summary, he submitted that the judge of the First-tier Tribunal directed himself appropriately. His findings were entirely consistent with the ratio of **HJ Iran**. The judge found that the appellant had been discreet about his faith in his past and would continue to be so, not through fear of persecution, but through fear of familial disapproval. This was a finding that was open to the judge on the evidence before him.

Relevant Background

4. The appellant arrived in the UK on 3 October 2012 to study for a Masters Degree in Information Security and Privacy. He had a visa which was valid until 29 January 2015. On 24 November 2014 he had applied for asylum in the UK on the basis of his conversion from Islam to Christianity.
5. As summarised in the subsequent refusal letter, the appellant’s core claim was that he had not followed his religion like other Muslims. In 2011 he had been in a relationship with an Iranian national, who was Christian, and who had persuaded him to study Christianity and to begin to read the Bible and participate in an online Christian forum. He was discreet about his activities because of the social pressure that he might otherwise face.
6. While studying in the UK, he had attended an evangelic church at his university. He would attend the church once or twice every month. He started dating a Czech national whilst he was in the UK. They would practise Christianity together. In August 2013 he and his partner decided to get engaged, but they broke up shortly after their engagement. In June 2014 he decided to become open about his religion as a Christian. He did this by becoming involved in more forums on face book, and by

communicating with priests and rectors at St Peter's Church in Farnborough, where he undertook charity work. In July 2014 he had decided to convert to Christianity properly. He lived with his brother in the UK, but he had not told them of his conversion as he would react badly to the news. Following the death of his father on 17 July 2014, he had gone back to Pakistan for his father's funeral, and had stayed there until 11 August 2014. He had not mentioned his conversion whilst he was in Pakistan. On his return, he had started an Alpha course at St Peter's Church. According to his witness statement, as he lived with his brother in the UK, he could not practise his religion openly here.

The Reasons for Refusal

7. In the Reasons for Refusal Letter, the Secretary of State referred to the appellant's attendance at Leeds Registry Office on 24 September 2014 to marry a British national called Rachael Tiffany. The registrar had completed a suspicious marriage report. Neither he nor his claimed partner were able to provide each other's address, and they both provided different details about the length of time they had been in a relationship. It was noted that he was only allowed to work twenty hours a week, but his bank statements showed an income of £1,200. Rachael was later interviewed by an Immigration Officer at her home address. She stated that they were no longer living together. She stated that he was living in Edinburgh, but his own evidence was that he had never lived there. On the topic of his religion, Rachael stated that his religion was either Sikh or Muslim. When he was questioned in his asylum interview about Rachael, he said he was not open about his religion to her.
8. Accordingly, it was not accepted that he had genuinely converted to Christianity. He claimed that he was an evangelist, and that he wanted to be open about his religion, yet he had not told his partner whom he wanted to marry that he was a Christian. It was reasonable to expect that he would disclose his religion to his partner and future wife.
9. He claimed to be open about his faith as a Christian, yet his brother with whom his was residing did not know that he had converted. It was not considered credible that he would be able to hide his conversion from his brother. Moreover, as an evangelist, he had failed to explain why he would want to hide his faith as a Christian whilst he was in the UK.
10. In his asylum interview, he had demonstrated poor knowledge of Christianity. He did not know how many disciples followed Jesus, he did not know the Lord's Prayer, he did not know how many books there were in the Bible, and he did not know who had betrayed Jesus. So he had little knowledge about the evangelic denomination, or how it differed from other Christian faiths.
11. Effectively, no one actually knew he was a Christian, he knew little about Christianity, he had never preached to anyone and he rarely attended church. It was considered he had made attempts to attend church in the UK and learn about Christianity to enable him to be able to manufacture an asylum claim, and this included making arrangements to be baptised on 10 May 2015.

The Hearing before, and the Decision of, the First-tier Tribunal

12. Both parties were legally represented before the First-tier Tribunal. The judge received oral evidence from the appellant, and was cross-examined by the Presenting Officer. In closing submissions, the Presenting Officer submitted that the appellant was not a genuine convert. All the documents relied on dated from after his asylum claim, and there was no evidence before the claim of an interest in Christianity. On the issue of risk on return, he submitted that Christians were generally permitted to practise their faith and no one else knew of his conversion.
13. In reply, the appellant's representative said that the appellant would be persecuted in Pakistan because of his apostasy. He submitted that the appellant did not have to be an active Christian in order to be liable to persecution. If the appellant was returned to Pakistan, religion fanatics there would not ask him if he was a genuine Christian or not, but would persecute him for being a Christian.
14. The judge's findings of credibility and fact were set out at paragraphs [28] onwards in his subsequent decision. The judge held that if the appellant was a Christian but not practising, he did not see why the situation could not continue in Pakistan. He did not need to tell anyone in Pakistan that he was a Christian. The appellant said he had been open about his religion in the UK, but he did not find this to be the case. He clearly had not been open about his religion with his claimed partner Rachael Tiffany: she believed that he was either Sikh or Muslim. This was quite telling as it was reasonable to expect a partner to have knowledge of one's religion. If he had been open about practising his religion, she could not have failed to have been aware of it.
15. He noted the appellant was not baptised until 10 May 2015 at St Peter's Church in Farnborough, and that he was confirmed there four days later. There was no letter from the vicar confirming that the appellant was known to him as a Christian or confirming he was a regular attender at the church. Neither were there any letters or witness statements from any fellow parishioners. There was no evidence of any witnesses in Cardiff where the appellant claimed to have become interested in the Christian faith. It was usual for a would-be Christian to have a sponsor for baptism. There was no statement from such a person in this case.
16. Despite the appellant having allegedly followed Christianity for some time and having attended an Alpha course, the appellant was unable to name the correct number of disciples (he said sixteen) and neither could he name Judas Iscariot.
17. The appellant's actions in going back to Pakistan for his father's funeral did not suggest he had a genuine fear of returning there.
18. The appellant had not practised evangelical Christianity in the United Kingdom so far as he could see. Even if Muslims were more at risk in Pakistan for having converted, the fact of the matter was that nobody knew, or needed to know, that the appellant had converted to Christianity.

19. The judge continued at paragraph [54]:

“The appellant kept his religion a secret from his former partner and could keep it a secret from his family as well. The concealment of his alleged faith from his brother coupled with his poor knowledge of Christianity persuaded me that the appellant’s knowledge of Christianity was not deep and given the appellant’s history and the facts recited in the respondent’s Reasons for Refusal Letter the conversion to Christianity appeared to be one of convenience.”

20. At paragraph [57], the judge said he had also considered the case of **FS and Others (Iran - Christian Converts) Iran CG [2004] UKAIT 00303**. Although it was related to Iran, and contained much useful information, the judge went on to quote from paragraph 19 as follows:

“I have noted that since his ‘conversion’ on 15 August 2001 and his departure almost a year later the appellant was apparently content to practise a religion in safety by restricting his activities to his personal reading and writing in the safety of his own home and he had never attempted to join an evangelical church in his own country. I therefore find the appellant had adopted a cautious and sensible approach to his wish to follow Christian teaching and philosophy I can see no reason why if he would be returned to Iran he would not behave in a similar manner. I accept that he would be prescribed from evangelising and attempting to convert other Muslims to his way of thinking but he has not described a need or a wish to do so.”

21. The judge said that the appellant was in a similar position, and was being “a cautious Christian.”

The Hearing in the Upper Tribunal

22. At the hearing before me to determine whether an error of law was made out, Ms Fletcher developed the case advanced in the application for permission to appeal. It was a fundamental error of law to require the appellant to be discreet about his religion in order to avoid being persecuted. As was held in **HJ Iran**, being forced to be discreet about having converted was in itself persecutory.
23. The judge had also erred at paragraphs [32] and [33] of his decision in finding that the appellant had not said that he was a practising Christian in the United Kingdom, and/or in finding that the appellant was not *in fact* a practising Christian in the United Kingdom. As a result of this error, that the judge had wrongly concluded that the appellant would not be at risk in Pakistan as a non-practising Christian.
24. On behalf of the Secretary of State, Mr Bramble adhered to the Rule 24 response which had been settled by his colleague. He submitted that the judge had made sufficiently clear adverse credibility findings such as to make his failure to apply **HJ Iran** an error that was ultimately not material. Looking at the matter through the prism of **HJ Iran**, the judge had given adequate reasons as to why the appellant’s claim failed.

Discussion

25. In HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31, the Supreme Court gave the following guidance at paragraph [82]:

“When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the Tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he will be treated as gay by potential persecutors in his country of nationality. If so, that a Tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality. If so, the Tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution – even if he could avoid the risk by living ‘discreetly’. If, on the other hand, the Tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so ... If the Tribunal concluded that a material reason for the applicant living discreetly on his return would be a fear of persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution”

26. The judge has left himself vulnerable to an error of law challenge as he did not make his findings within the framework of this test formulated by Lord Rodger, or the similar test propounded by Lord Hope at paragraph [35] of the same decision. In particular, he dealt with the issues in the wrong order. He addressed the question of how the appellant behaved as a Christian in the UK, and hence how he was likely to behave as a Christian in Pakistan, before resolving the question of whether the appellant was a genuine convert in the first place.
27. However, the two questions were interlinked in that how the appellant had behaved as a claimed Christian in the UK was highly material to the question of whether his conversion to Christianity was genuine.
28. I am not persuaded that the judge erred in finding that the appellant was not openly practising Christianity in the UK, and indeed was not claiming to be openly practising his new faith, on one version of events that he gave. As brought out in the refusal letter, the appellant had himself said that he was not open about his alleged conversion to Christianity either with his brother or with Rachael. The fact that his self-proclaimed discretion about his Christianity was inconsistent with the parallel claim that he was a fervent evangelical Christian who attended church with reasonable regularity only served to undermine, rather than to enhance, his general credibility.
29. Accordingly, I consider that the judge gave adequate reasons for reaching the conclusion at paragraph [54] that the appellant was not a genuine Christian convert. This finding is enough to dispose of the appeal in the Secretary of State’s favour, following HJ (Iran).

30. Ms Fletcher submits that the finding at paragraph [54] is undermined by the judge going on to find at paragraph [57] that the appellant is a cautious Christian. Mr Bramble submits that there is no inconsistency between the finding in paragraph [57] and the earlier finding in paragraph [54], as the appellant is a Christian *as a matter of fact* on account of him being baptised into the Christian faith. This does not detract, he submits, from the earlier finding that the appellant has become a Christian in order to mount a dishonest asylum claim. I concur with this submission. On the facts found by the judge, the appellant's reticence about his Christianity on return to Pakistan would not be engendered by a fear of persecution if he revealed his conversion to those who might regard him as an apostate. For this could not explain why he had been reticent about his conversion to Christianity in the United Kingdom, where he could have been open about it without a risk of persecution. In short, the appellant could not be heard to say that an inability to state publicly on return to Pakistan that he had converted from Islam to Christianity constituted a persecutory suppression of his religious identity.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal 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

Date

Deputy Upper Tribunal Judge Monson