



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: AA/00394/2016

**THE IMMIGRATION ACT**

**Heard at Manchester**

**Decision & Reasons Promulgated**

**On 22<sup>nd</sup> September 2017**

**On 29<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**Mr Seyed Iman Nasirzadeh**

**(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Bradshaw Counsel instructed by Migrant Legal Action

For the Respondent: Mrs Petterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran. No anonymity direction was made previously. It appears that none was applied for. Having considered the circumstances I do not make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cohen promulgated on 17<sup>th</sup> February 2017 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse his protection claim based upon asylum, humanitarian protection and Articles 2 and 3 of the ECHR.

3. The grant of permission at paragraph 3 states:-

*The grounds assert that the Judge failed to apply the correct test, namely, whether he was a regular attender at church and would thus be at risk. The Judge did not have regard to the background evidence of Bishop Smith and made no findings as to whether the appellant was a regular attender at church. The appellant's evidence was that he was an Aaronic Priest was not, as found by the judge discrepant with the evidence from his witness. Bishop Smith noted that a male member above 18 can be ordained a priest within the Priesthood. The Judge also speculated as to whether the appellant would have devoted significantly more time and energy to learning about the church, contrary to SZ and JM [2008] UKAIT 00082.*

4. It is on the basis indicated that leave was granted.
5. The appellant, an Iranian national, was claiming conversion to faith of the Church of the Latter Day Saints, known otherwise as Mormons, as a basis for asylum, humanitarian protection or relief on the grounds of Articles 2 and 3 of the ECHR.
6. Crucial to the consideration of that issue was whether or not the appellant had genuinely converted to the faith referred to. In order to prove a genuine conversion statements, emails and letters in support had been submitted to the Tribunal, including an email from a Bishop Smith. It is to be noted that Bishop Smith did not attend to give live evidence but had submitted an email. A Joseph Forbes, who in accordance with the Mormon faith would be at the very least an Aaronic Priest, did attend and gave evidence on behalf of the appellant. As will become apparent it appears that all males over 18 who have been baptised are normally ordained into the priesthood.
7. The Judge in paragraph 6 considered the evidence that was available to show whether the appellant was regularly attending church and was a genuine convert. It was noted that the appellant's application was lodged in 2013 and all his evidence related to that period. The only additional evidence was however an email from Bishop Smith of the Rochdale Ward of the Church of the Latter Day Saints and the live evidence from Mr Forbes.
8. At paragraph 23 of the decision the judge has stated that the evidence by the appellant that he had been ordained as an Aaronic Priest when he had joined the Mormon Church was not consistent with the email by Bishop Smith. The conclusion by Judge Cohen was that being ordained as an Aaronic Priest was for young men between the ages of 12 and 18 and not for new members. The evidence in the email however states in paragraph 5

*"The Aaronic Priesthood is the 'lesser Priesthood' young men from the age of 12 to 18 hold the Aaronix Priesthood and their age determines which office they are ordained to within the Aaronic Priesthood, boys 12 to 14 are ordained deacons..... All new male members aged 18+ are ordained as Priests within the Aaronic Priesthood straight after baptism."*

9. Whilst reading the first part of that email seems to indicate that the Aaronic Priesthood starts for young men at the age of 12, it does go on to indicate that new members are also ordained into the priesthood. In the decision

clearly the judge has misunderstood what the email was saying. The following paragraphs of the email deal with the fact that those being baptised into the Mormon faith, who are 18+, are encouraged to be ordained into the priesthood. The fact merely of baptism qualifies an individual to be ordained into the Aaronic priesthood and it does not reflect any detailed knowledge or understanding of the faith itself. Normally an individual is ordained into the Aaronic Priesthood on baptism. Indeed further on the emails from the Bishop indicate that an individual progresses from being in the Aaronic Priesthood to being in the Melchizedek Priesthood indicating that it is at that stage that one has developed an understanding and knowledge of the faith.

10. The emails also indicate that the church does not have vicars in the sense that is normally understood in the Church of England or other Christian denominations. The church has wards. Each ward is run by a bishop, who is effectively performing the functions of a vicar. In that context the fact that the appellant did not understand what was referred to as a vicar or what the responsibility of such a post involved may be explainable. In the decision the judge has made much of the fact that the appellant did not seem to understand what the functions of a priest or vicar were. Given that an individual is ordained virtually at the same time that one is baptised the baptism of itself does not preserve many deep knowledge or understanding of the faith, but is only indicative of commencing a journey it may not be surprising that the appellant did not have a knowledge of what the functions of the priest or a vicar were.
11. As indicated the point made by the judge that the appellant's evidence is discrepant from that of his witness is not sustainable in the circumstances. Equally some of the conclusions drawn that an individual who was in the Aaronic Priesthood would have a detailed knowledge and understanding of the faith are not borne out by the email. It appears to an extent that the judge speculated that an individual that had been ordained into the Aaronic Priesthood would have such knowledge and that such was unjustified. Equally the reference to vicars as a test of the commitment of an individual to a faith may not have relevance in the context of the Mormon faith.
12. As indicated within the letters by Bishop Smith and by the evidence of Mr Forbes the appellant was regularly attending church and was regularly being instructed in the tenets of the faith, which he had joined.
13. The judge has made adverse findings with regard to factors and indicated that there are contradictions in the evidence, which do not exist. That undermines the whole of the process of findings of fact made by the judge. In the light of that the findings of fact cannot stand. The only courses for this matter to be considered further in the First-tier Tribunal. I therefore remit the appeal to the First-tier Tribunal.
14. In any reconsideration of the case reference will have to be made to domestic case law the case of **FS & ors** (Iranian Christian Converts) [2004] UKAIT 00303, which case was intended to give a definitive approach to how to treat converts. Clearly since that time case law has moved on. At paragraph 187 of FS it was found that those that are not leaders, do not promote the faith, are not proselytisers or evangelical Christians would not be at risk. The evidence disclosed that whilst there may be questioning of

such converts there was no suggestion of any ill treatment during the course of such questioning. There may be some restrictions on liberties but such would not engage either of the conventions. The case even considered the prospect of mistreatment from Basiji and the frequency and level of such was not such as to engage Article 3 or asylum or humanitarian protection.

15. By comparison at paragraph 189 of FS those that were leaders of the church, were proselytisers or evangelical Christians would be at risk of persecution. The greater their activity and the greater the leadership role the greater the risk of mistreatment and persecution. The more significant the role the greater the likelihood that an individual would come to the attention of licensed zealots or adverse attention of the theocratic state. Whilst there may be other factors which would result in an individual being at risk, at paragraph 192 the case states that fact finders have to consider how a person will act on return to Iran. The case of **SZ & FM** [2008] UKAIT 00032 endorsed the approach set out in FM.
16. Those cases have to be considered in light of the case of **HJ v SSHD** (Iran) [2010] UKSC 31 wherein the guidance given with regard to the expectation that an individual will live discretely or in the present case hide his faith was dealt with and if one had to so amend one's life to avoid the risk such would be an unacceptable infringement could constitute persecution.
17. Within the more recent authorities it is accepted that those that have genuinely converted to Christianity may be at risk. In **FG v Sweden** App No 43611/11 ECtHR 2016 it was accepted that converts per se would be at risk. In any hearing before the First-tier Tribunal consideration will have to be given to the background evidence and determine whether or not if the appellant has a genuine convert how would he be treated if returned to Iran
18. I am satisfied that the First-tier Tribunal's credibility assessment contains material errors and must be set aside. With regard to the further disposal of this appeal I have regard to paragraph 7.2 of the Senior Presidents Practice statement and to the nature and extent of the factual findings required in remaking the decision. I have decided that the most appropriate courses to remit the matter back to the First-tier Tribunal so that fresh findings of fact can be made. None of the findings of fact made by the judge are preserved.

### **Notice of Decision**

19. The decision of the First-tier Tribunal involved the making of material error of law. Its decision cannot stand and is set aside.
20. The case will be remitted back for a fresh hearing before the First-tier Tribunal. None of the findings of fact of the First-tier Tribunal are preserved.

Signed

Date

Deputy Upper Tribunal Judge McClure