



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02219/2017

THE IMMIGRATION ACTS

Heard at Newport
On 10 October 2017

Decision & Reasons Promulgated
On 7 December 2017

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M H
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer
For the Respondent: Mr K Gayle of Elder Rahimi Solicitors

DECISION AND REASONS

1. This is a determination to which both members of the Panel have contributed.
2. We make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the respondent who claims asylum. This order prohibits the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (MH). A failure to comply with this direction could lead to contempt of court proceedings. This order shall remain in force unless revoked or varied by a Tribunal or court.

Introduction

3. The claimant (as we shall hereafter refer to the respondent) is a national of Iran. He has given various dates of birth in 1988 and 1989 and he has also used different identities in the UK.
4. The claimant entered the United Kingdom in March 2008. In September 2008, he claimed asylum. The basis of that claim was that he was at risk on return to Iran as a result of his (and his family's) political involvement, including his paternal uncle's execution in 1984 due to him being a member of the opposition, Mujahedin.
5. On 22 October 2008, the Secretary of State refused the claimant's claim for asylum. His appeal against that decision was dismissed. In his decision dated 21 January 2009, Judge J F W Phillips rejected the claimant's account on the basis that he did not believe the claimant was telling the truth "about any aspect of his claim other than his nationality".
6. The claimant subsequently lodged further sets of submissions, most recently on 13 September 2016. In those submissions, the claimant relied upon a risk on return to Iran on the basis that he had converted to Christianity since his arrival in the UK. On 15 February 2017, the Secretary of State refused the claimant's claims for asylum, humanitarian protection and under the European Convention on Human Rights. The claimant appealed to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

7. Before the First-tier Tribunal, the claimant claimed to have converted to Christianity since his arrival in the UK and to be at risk of persecution on return to Iran as an apostate. Judge I D Boyes set out the claimant's claim at paras 13-19 and 50 as follows:

"13. The appellant's case was helpfully set out in his witness statements at pages 15 and 16 of the Respondent's bundle and pages 1-6 of the appellant's bundle. The appellant developed and expanded upon his evidence orally. In addition, I had sight of a number of documents from members of the Church including Reverend [O] and [VC] who gave live evidence. I will not repeat the appellant's evidence in full here.

14. In summary the appellant explained that he was a follower and adherent of Islam. He regularly prayed and his religion was an important aspect in and of his life. He had arrived in the UK some years before and was returned to France to continue his asylum claim however came back to England and claimed asylum in the UK.

15. He accepted that the Judge on the previous occasion had found against him but relied upon the fact that this was a fresh claim based entirely on matters which had arisen since that last appeal. He did not accept the findings in terms of his credibility.

16. The appellant explained that it was whilst watching the events of the 'Charlie Hebdo' attack that he began to question his faith in Islam. He spoke to persons at a funeral about the attacks, Islam and Christianity (*sic*). He spent the evening discussing religion with his friends. The friends he refers to are [S] and [M], both Iranian Christian converts.

17. The appellant stopped attending the Mosque and started reading the Bible given to him, a Persian language version, by [M]. Soon after he attended Church and became involved in service and worship. He was baptised on 29th May 2016.

18. In furtherance of his faith and seeking to display faith the appellant had used his Facebook profile to post images synonymous with a belief in Jesus Christ. He had received messages and produced one message/chat between a person he stated to be a friend who had told him his behaviour was heretic and that he would be punished for it upon return to Iran.

19. The appellant further relied upon an email said to be from his Sister which showed that the village knew of his conversion and that his Mother had faced some difficulties as a result.

....

50. The appellant states that his Facebook account is open and that it contains a number of postings which are indicative of a conversion to and a belief in Christianity. It is argued that the Iranian authorities would either be aware of the postings on two grounds; one, that there is general monitoring of activity in the UK by the Iranian authorities and secondly, it has come to the attention of a former friend of the appellant who has indicated in trenchant terms that there will be retribution for his conversion."

8. Judge Boyes accepted that the claimant had attended a Christian Church in the UK and had been baptised. In robust terms, however, Judge Boyes rejected the claimant's claim to be a genuine convert to Christianity. He found that the claimant had attended Church and undergone baptism as a ruse to found his asylum claim. As a consequence, the judge rejected the claimant's claim to be at risk on return to Iran on that basis.
9. Further, although the judge accepted that the claimant had placed material on his Facebook page indicative of a conversion to, and a belief in, Christianity, the judge found that not to be genuine and, in the absence of evidence that it was open to the public, he was not satisfied that the Iranian authorities would have any knowledge and therefore interest in the claimant on the basis of his *sur place* activities in the UK. Judge Boyes also rejected the claimant's evidence that, based upon an e-mail from his sister, it was known locally in Iran that he was a Christian (see para 28). At para 53, Judge Boyes found that:

"... there is no reason for the Iranian authorities to have any interest in the appellant."
10. The judge, however, allowed the claimant's appeal on a further basis put forward by the claimant. The judge accepted, relying on the Supreme Court's decision in HJ (Iran) and another v SSHD [2010] UKSC 31; [2010] Imm AR 729 that the claimant could be presumed to tell the truth when questioned by the Iranian authorities on return at Tehran Airport. That would, the judge found, include telling "the truth about the baptism, telling the truth about attendance at Church, telling the truth about helping his friend [H]" (a failed asylum seeker) to find his own faith. As a result, the judge found that there was a reasonable likelihood that the claimant would be persecuted "not on account of his faith, but on a perception of his conversion and perception of his faith."

The Appeal to the Upper Tribunal

11. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the judge had misapplied the case of HJ (Iran) namely:

“The judge unfortunately viewed [the encounter with the Iranian authorities on return] from an entirely skewed standpoint – namely that the A would tell the Iranian authorities that he had been baptised without also taking into account that this was a false conversion and that the A has no genuine interest in Christianity at all”.
12. On 28 April 2017, the First-tier Tribunal (Judge Pedro) granted the Secretary of State permission to appeal.
13. On 28 June 2017, the claimant served a rule 24 response. In that response, the claimant contended that the judge was correct to conclude that if the claimant told the truth when questioned by the Iranian authorities he would be in danger of persecution as an apostate. Reference was also made to the Court of Appeal’s decision in Danian v SSHD [2000] Imm AR 96 and a passage in the judgment that recognises that an asylum claim based upon *sur place* activities carried out in bad faith can succeed under the Refugee Convention if that nevertheless creates a well-founded fear of persecution for a Convention reason.
14. The judge’s adverse credibility finding leading him to conclude that claimant is not a genuine Christian convert has not been challenged by the claimant either by seeking permission to appeal or in the rule 24 response. Neither has there been any challenge to the judge’s finding that the claimant will not be at risk on return as a result of his *sur place* activities. Those findings, therefore, stand.
15. The sole issue raised in this appeal is whether the judge was entitled to find that the claimant was a refugee based upon him telling the Iranian authorities on return about his involvement with the Christian Church in the UK.
16. The appeal was initially listed, and a hearing took place, on 4 July 2017 before UTJ Grubb. Subsequent to that hearing, on 7 August 2017 the Upper Tribunal issued directions that the appeal would be listed for further oral argument on the point of principle raised in the grounds and Rule 24 notice and in order to hear submissions on the country background material. It was proposed that the Upper Tribunal should consist of a panel consisting of UTJ Grubb and another judge of the Upper Tribunal and the parties were invited to indicate if they had any objection to the constitution of the Upper Tribunal being as proposed at a resumed hearing. In the result, neither party raised any objection.
17. The appeal was consequently relisted on 10 October 2017 with its present constitution. At the hearing, it was agreed that the hearing should proceed as an entirely new hearing rather than a continuation of the earlier hearing. As a result, both representatives (Mr Richards on behalf of the Secretary of State and Mr Gayle on behalf of the claimant) addressed us on all the relevant points they wished to in order for us to dispose of the appeal.

Discussion

1. The Context of the Claim

18. We begin with the judge's reasoning, which led him to allow the claimant's appeal, set out at paras 56 – 58 of his determination as follows:

"56. I must therefore presume that the appellant will tell the truth and if and when questioned by the Iranian authorities. This includes telling the truth about the Baptism, telling the truth about his attendance at Church, telling the truth about helping his friend Hassan. These factors and matters would, in my judgment, place the appellant in a position that it is a reasonable likelihood he would be persecuted for the perception that would be present that he is an apostate. To this end I apply **FS and others (Iran-Christian Converts) Iran CG [2004] UKIAT 00303**.

57. I reach this conclusion based not on the evidence of the appellant but on the evidence of Reverend Ollive. It matters not in my judgment that the appellant's motives are scurrilous, it is in fact that he has been Baptised and according to the Supreme court one must presume the appellant would tell the truth about such.

58. I apply **HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC** and find that there is a reasonable likelihood that the appellant will be persecuted, not on account of his faith, but on the perception of his conversion and the perception of his faith."

19. The core of the Judge's reasoning was that the claimant would come to the attention of the Iranian authorities on return because he would tell them about his activities with the Christian Church in the UK. Once that was discovered, despite his conversion being disingenuous, he would nevertheless be treated as if he were a convert and at risk on the basis of imputed religious belief.

20. It is, of course, trite law that a refugee claim may succeed based wholly upon *sur place* activities (see, for example Art 5 of the Qualification Directive (Council Directive 2004/83/EC)).

21. Equally, a claim under the Refugee Convention is not debarred from success simply on the basis that an individual has created the circumstances which would put him at risk disingenuously or in bad faith (see Danian and Art 4.3(d) of the Qualification Directive and para 339J(iv) of the Immigration Rules (HC 395) as amended).

22. In the latter case, a claim may succeed if, despite the individual's disingenuous or bad faith, nevertheless he is treated, in fact, as if he actually held the political opinion, was of the relevant religious faith etc. or his potential persecutors are disinterested whether his behaviour was "opportunistic". In such circumstances, the individual will have imputed to him the relevant Convention reason and, if there would be a real risk of persecution as a result, then a claim under the Refugee Convention will succeed (see Sepet and another v SSHD [2003] UKHL 15; [2003] Imm AR 428).

23. In effect, that is the claimant's case in this appeal given that his conversion to Christianity was rejected. The claimant contends, putting it in a neutral way, that if the Iranian authorities discover his opportunistic activities from his own revelations they will still attribute or impute to him that he is an apostate and there will be a real

risk of persecution as a consequence. The fact that the claimant has acted disingenuously by undertaking activities in the UK to bolster his claim does not, in principle, take him outside the protection of the Refugee Convention. The fact that he is not, in fact, a Christian and therefore actually an apostate does not matter provided the Iranian authorities would impute that characteristic to him.

24. Of course, in order to succeed the claimant must first establish that the Iranian authorities will become aware of his *sur place* activities. Then, having done so, the issue arises whether they will treat him as (if he were) an apostate and serious ill-treatment and persecution will follow.
25. Where an individual relies upon activities in the UK, typically the issue of whether the authorities of the individual's own country will be aware of those activities raises questions of, for example, surveillance and intelligence gathering at demonstrations or monitoring of internet activity (see, for example, YB (Eritrea) v SSHD [2008] EWCA Civ 360 and AB & others (internet activity - state of evidence) Iran [2015] UKUT 00257 (IAC)). He was unsuccessful before the judge in establishing that his internet activity would come to the attention of the Iranian authorities. Likewise, it was not suggested, nor was any evidence relied upon, before the Judge that any monitoring, surveillance or informants in the UK would apprise the Iranian authorities of the claimant's attendance at Church or of his religious activities.
26. Before us, Mr Gayle referred us to a passage in the Danish Immigration Service report entitled "Human Rights Situation for Minorities, Woman and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc" dated 30 April 2009 at pages A36 - A64 of the bundle, in particular at para 6.54 under the heading "Sur place conversion" (page A57) which states that:

"In general, asylum seekers and refugees are kept under strict surveillance by any Iranian embassy and its network of informers. Thus, conversion abroad may very likely come to the knowledge of the Iranian authorities. The embassy explained that the Iranian Embassy in their home country has at its disposal a very strong network of informants, who keep an eye on Iranians living in that country."

27. It is unclear to us whether Judge Boyes was referred to this passage in the Danish Immigration Service's report. However, it does not appear to us that the claimant put forward his case on this basis before the judge. Rather, his claim was (and it is clearly set out in his witness statement (at P1-P6 of the bundle)) that he was a genuine convert and he would openly practise his faith, including proselytising on return to Iran. The only other matters, relevant to this issue relied upon by the claimant in his statement, was that because of his Facebook page (and on the basis of the email from his sister) he would be of interest to the Iranian authorities. That too, was, of course, rejected by the judge. As Mr Gayle frankly accepted before us, despite his reference to the Danish Immigration Service report, the judge's factual findings against the claimant were not subject to a cross appeal or challenge in the rule 24 notice. We see no basis upon which we should approach this appeal other than by accepting the judge's findings. In any event, the one reference in a report dating from 2008 does not cause us to re-examine and reach any different conclusion from the judge.

28. As a result, the claimant's case is that his *sur place* activities will come to the attention of the Iranian authorities when he is questioned on return to Tehran Airport because he will tell them about his activities in the UK.

2. *HJ(Iran)*

29. In her grounds, the Secretary of State relied upon the Supreme Court's decision in HJ (Iran) and contends that the claimant should be expected to tell the truth including that his purported conversion to Christianity was not genuine and that he is, in effect, still a Muslim. In other words, the claimant is required to tell the whole truth, rather than, as the judge presumed he would tell, only the partial truth.
30. Mr Gayle also submitted that the claimant could not be expected to lie following HJ (Iran). He would tell the Iranian authorities at the airport that his two claims for asylum had failed. He would also tell them about his Church attendance, his baptism and his Church activities. Mr Gayle submitted that even if the claimant told the Iranian authorities he had falsely claimed asylum on religious grounds in the UK, he would still be at risk. They would, Mr Gayle submitted, attribute to him a religious belief. He submitted that, on the basis of the background evidence, it was highly likely that he would have to disclose this information and he would then be passed on to the second stage of interrogation which, on the basis of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) (hereafter "SSH"), would create a real risk of serious ill-treatment or persecution.
31. We do not consider that HJ(Iran) assists in determining what the claimant would tell the Iranian authorities on return about his activities in the UK. It is principally concerned with a different question, namely whether an individual can be required to modify his conduct (including what he says) if that conduct or what he says would otherwise put him at risk of serious ill-treatment or persecution. In other words, whether an individual can be expected to act differently from how he otherwise would act (including what he would say) in order to avoid any persecution.
32. In HJ (Iran), the Supreme Court was concerned with two appeals involving gay men. It was accepted that gay men were at risk of persecution in their respective countries of return. The issue for the Supreme Court was whether an individual could be expected on return to his country to take reasonable steps to avoid any persecution. In the context of the two appeals, this meant behaving 'discreetly' or with 'discretion' so as not to lead the life of an openly gay man.
33. The accepted position prior to the Supreme Court's decision was that an individual could not succeed under the Refugee Convention if it was reasonable for him to behave in a way that would avoid the persecution in his home country (see J v SSHD [2007] Imm AR 73). The Supreme Court unanimously concluded that was not the law. The court held that sexual orientation and the right to live freely and openly as a gay man is a fundamental right and freedom protected by the Refugee Convention and to require an individual to behave 'discreetly' would frustrate that human rights' objective and, in itself, would amount to persecution if the reason for behaving discreetly was to avoid the persecutory conduct that would follow from exercising

that fundamental right and freedom. At [110], Sir John Dyson SCJ put it succinctly as follows:

“If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention is intended to secure for him. The Convention would be failing in its purpose if it were to mean that a gay man does not have a well-founded fear of persecution because he would conceal the fact that he is a gay man *in order to avoid persecution* on return to his home country.”
(emphasis in original)

(See also, Lord Hope at [29] and [35]; Lord Rodger at [64] and [78]; and Lord Collins at [103]).

34. The same approach was adopted the Court of Justice of the European Union in Minister voor Immigratie en Asiel v X and Y; Z v Minister voor Immigratie en Asiel (Joined Cases C-199/12 to C-201/12) [2014] Imm AR 440, again in the context of an asylum claim by a gay man who feared persecution in his own country. The same point was made by the CJEU in the context of religious practices exposing an individual to persecution in Bundersrepublik Deutschland v Y and Z (Cases C-71/11 and C-99/11) [2013] Imm AR 87.
35. HJ (Iran) was, therefore, concerned with the issue of whether an individual can be *required* to behave or conduct him or herself in their own country in a way which avoids persecution. Consequently, a gay man or lesbian woman cannot be expected to act in a way that restricts his or her fundamental right to express their sexual orientation. Likewise, in the religious context, a person cannot reasonably be expected to avoid persecution by practising his faith in a discrete way so as to avoid persecution which would follow if he did so openly.
36. The underlying rationale of HJ (Iran) is that an individual cannot be required or expected to behave in a way that is inconsistent with the exercise of a fundamental right or freedom reflected in the Convention reason, for example his political or religious beliefs. Leaving aside that this claimant has been found not to possess a fundamental right or freedom based upon his religious beliefs because his conversion to Christianity was found to be disingenuous, HJ (Iran) is not concerned with how the individual will *in fact* behave in their own country. Rather, it is concerned with whether, if he or she would behave in a way that would expose them to persecution, they can be reasonably expected to modify their behaviour in order to avoid persecution. In other words, HJ (Iran) cannot assist to determine whether the claimant would tell the whole truth (including that his conversion was false) or whether he would only tell the partial truth (omitting reference to his disingenuousness).
37. One further case we should make reference to is the Supreme Court’s decision on RT (Zimbabwe) and another v SSHD [2012] UKSC 38; [2012] Imm AR 6. That case concerned returnees to Zimbabwe and whether, in particular, they would be at risk from the militia and others supporting the ruling ZANU-PF Party. The basis of the claim was that, at least in some areas of Zimbabwe, returnees were at risk of being confronted by militia and required, in effect, to establish their loyalty to ZANU-PF.

The case gave rise directly to the issue of whether HJ (Iran) applied to the expression of political beliefs such that an individual who did not support ZANU-PF or was apolitical could be expected to dissemble or lie by falsely stating that they were actual supporters of, or loyal to, ZANU-PF.

38. The Supreme Court held that the principle in HJ (Iran) applied to a person who had political beliefs and was obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them. At [26] Lord Dyson stated:

“The *HJ (Iran)* principle applies to any person who *has* political beliefs and is obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them.”

39. The Supreme Court, however, went further and concluded that approach applied not only to those who held opposing political beliefs but also to those who did not hold any political belief. In both cases, the claimant had a fundamental right which is protected by the Refugee Convention either to hold a political belief or to hold no political belief at all and such a person could not be expected or required to dissemble on pain of persecution. At [42] Lord Dyson said:

“... The right *not* to hold the protected belief is a fundamental right which is recognised in international human rights law, and for the reasons that I have given, the Convention too. Nobody should be forced to have, or express a political opinion and which he does not believe. He should not be required to dissemble on pain of persecution. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. A focus on how important the right not to hold a political or religious belief is to the applicant is wrong in principle.”

40. RT (Zimbabwe), therefore, provides support for the application of the principle in HJ (Iran) where, for example, an individual is questioned about his political or religious beliefs. A genuine Christian convert could not be expected to lie when asked about that on return to Iran if giving the answer “I am a Christian convert” would put that individual at risk of persecution. The individual would fall within the protection of the Refugee Convention either if he were to disclose it or if he were forced to lie in order to avoid the persecution.
41. What, however, RT (Zimbabwe) does not establish, any more than does HJ (Iran), is what an individual would actually say if questioned. That is a factual finding which must be made upon the basis of all the evidence. If what the individual would say would put them at risk of persecution, a combination of HJ (Iran) and RT (Zimbabwe) would not disentitle an individual to Refugee Convention protection simply on the basis that he ought to lie in order to avoid the persecution. He is entitled to express his political opinion or religious faith rather than conceal it.

3. *The Judge’s application of HJ(Iran)*

42. In our judgment, the Secretary of State’s grounds of appeal correctly identify that the Judge misapplied HJ (Iran). However, they obfuscate when asserting that HJ(Iran) required the claimant to tell the whole truth, i.e. his *sur place* Christian activities including his baptism were disingenuous and undertaken purely to bolster an

unmeritorious asylum claim. The focus should have been on what the claimant *would* say on return to Tehran which required a factual finding on the basis of all the evidence. HJ(Iran) tells us nothing about what this claimant *would* say.

43. Whilst, therefore, we do not consider that the Secretary of State's reliance upon HJ (Iran) makes good her contention that the judge should have found that the claimant would tell the whole truth, the ground does point up an error by the judge in finding that the claimant would (because he would be presumed to) tell the truth (albeit partial) about his baptism, Church attendance etc (at paras 56 and 57 of the determination). In para 57 the judge said: that "according to the Supreme court (*sic*) one must presume that the [claimant] would tell the truth" about his baptism etc. His reliance on HJ (Iran) - no doubt reflecting the way the case was argued before him - to reach that finding is a misapplication of HJ (Iran) which did not entitle the judge to "presume" what the claimant would say to the Iranian authorities. The principle derived from HJ(Iran) (and applied in RT(Zimbabwe)) would only become relevant if it was found as a fact that the claimant would tell the authorities something about his background in the UK which would put him at risk of persecution and it was contended that he should modify what he said (including having to lie) in order to avoid that persecution.
44. It follows that in paras 56 and 57 of his determination the judge erred in law in reaching his finding that the claimant would tell the truth, in the sense of the partial truth about his religious activities in the UK in reliance upon HJ (Iran). In the course of his oral submissions, Mr Gayle acknowledged that the judge had erred in this regard but contended that the error was immaterial as the claimant would be at risk even if he told the whole truth. We will return to this latter point shortly which requires us to consider the background material and existing country guidance case law.
45. Consequently, we set aside the judge's decision to allow the appeal on asylum grounds which we must, therefore, remake.

Remaking the Decision

46. We heard detailed argument from both representatives, in particular in relation to the position of the claimant on return to Tehran.
47. The basis of the claimant's claim arises, as we have already noted, on the basis that he would be at risk because of what he would tell the Iranian authorities on return. In SSH, the Upper Tribunal recognised that a failed asylum-seeker would not as such be at risk on return to Iran nor would an individual be at risk simply on the basis of illegal exit. Judge Boyes found that there was no basis upon which the claimant's activities in the UK would be known to the Iranian authorities and so, the only basis upon which he would be at risk (at least potentially), is if he told them about his religious activities in the UK (but see above at para 27 an additional point made before us).
48. That, then, raises two principal questions. First, what would the claimant tell the Iranian authorities on return to Tehran? That, as we have already identified, is a

factual question which must be determined on the basis of all the evidence. Secondly, having determined what the claimant would tell the authorities, is it established that that would put him at risk of persecution. The basis of that risk was, at least in respect of how it might arise, common ground between the parties. In SSH the Upper Tribunal recognised that there was a two-stage questioning process on return. At the first stage, there would not be a real risk of persecution or serious ill-treatment. However, if at that first stage of questioning, “any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they had returned from” arose, there would be a risk of further questioning, detention and potential ill-treatment (see [23]).

49. A third question, which may therefore arise, is whether, if the claimant were to tell the authorities something which would lead to that second stage of questioning, he is entitled to lie or modify what he says in order to avoid the real risk of persecution or serious ill-treatment. That, of course, is where HJ (Iran) is relevant.
50. We turn now, therefore, to make the relevant findings to determine this appeal. In doing so, we apply the lower standard of proof applicable in international protection cases namely that of ‘real risk’ or ‘reasonable likelihood’.
51. What, then, would the claimant tell the Iranian authorities on return? There is no directly relevant evidence from the claimant himself. In his witness statement, he said that on return it would be his “duty to share my faith” and:

“If I was returned to Iran, it is inevitable that I would be interrogated. I would not be able to deny my faith. I could never be discrete in the practise of my faith. Therefore, I would be considered a proselytising apostate.”

52. That statement by the claimant was, of course, made on the basis that he was a genuine Christian convert. Judge Boyes disbelieved the claimant and did not accept that he was a genuine convert. The underlying premise for the claimant’s statement that he would feel compelled to disclose (and practise) his Christian faith is, consequently, removed and so there is no underpinning for his evidence that he would consider it his duty to disclose his faith.
53. Consequently, we have no direct evidence from the claimant as to what he would say in relation to his failed asylum claims in the event he accepted the Judges’ conclusions that the basis of his claims, including to be a Christian convert, had been an entire fabrication. As we noted earlier (para 44), Mr Gayle appeared to accept that in telling about his *sur place* activities, it was also incumbent upon the claimant to reveal the judicial finding that his claims were all disingenuous.
54. It is clear from the decision in SSH (and the evidence presented to the Upper Tribunal in that case) that the questioning at the first stage, although not reaching the level of Art 3 ill-treatment, would nevertheless be of an intensity that an individual is likely to cooperate. In that context, the Upper Tribunal at [23] noted that a returning failed asylum seeker who had exited illegally and who “could be expected to tell the truth when questioned” would not face a real risk of ill-treatment at the airport. The Tribunal’s chosen phrase of “expected to tell the truth” is, in our judgment, no more

than a reflection of the reality of interrogation at Tehran Airport. That pressure would, in our view, apply to this claimant also. He would, as a result, we find, disclose in answer to questions about what he had done in the UK. Namely, he had claimed asylum on political grounds but that had been unsuccessful having been found to be disingenuous. He had followed that by claiming asylum on religious grounds based upon his involvement with the Christian Church and had been baptised but that claim had also been found to be false and disingenuous, carried out in order to bolster a claim for asylum. He would disclose that he was, and remains, a Muslim. In our judgment, it would simply be irrational for the claimant to continue to persist in the lie that he is a genuine Christian convert or to deny that he was Muslim. To do so would, on any view, run the risk of enhancing the chances that he would be persecuted and we see no reason to infer that the claimant would deliberately 'put himself in harms way' at Tehran Airport. Consequently, we find that the claimant would disclose his full circumstances in the UK relating to his two failed claims for asylum.

55. The second question, to which we now turn, is whether, as a result of that, the claimant would be at risk of persecution or serious ill-treatment.
56. As we have already identified, that issue arises if what the claimant says would result in further questioning, detention and potential ill-treatment as recognised by the Upper Tribunal as the process followed at Tehran Airport (see [23] of SSH). That, as Mr Gayle submitted, is the 'pinch point'.
57. We begin with the most recent Country Guidance decision in SSH. The Upper Tribunal concluded that a failed asylum seeker, who had illegally exited Iran, and who had no history other than being a failed asylum seeker would not face a risk of persecution on return (see [23] and [32]). The context in which the Upper Tribunal reached that finding was that the failed-asylum seeker (at [23]) "could be expected to tell the truth when questioned ...".
58. It does not appear that the arguments presented to us were directly considered by the Upper Tribunal in SSH. Nevertheless, the decision provides no support for the claimant's case before us. The Tribunal may well have implicitly considered the position of a claimant who had made a failed asylum claim and who had confessed his disingenuousness to those who questioned him at Tehran Airport. It is difficult to conceive that the Upper Tribunal only considered the risk on return on the basis that by "telling the truth" when questioned the individual, whom they were considering, would only say he had claimed asylum and his claim had been rejected but would not be asked, and would not elaborate, to explain the basis of his failed claim. It may well be, and we consider this may lie at the heart of Mr Gayle's position, that the Upper Tribunal was only concerned with individuals who had "no history" other than being a failed asylum seeker. Indeed, Mr Gayle placed reliance upon the fact that the claimant had actually undergone baptism in the UK. He is, perhaps, therefore, someone who has a "history" albeit one created. For the present purposes, we are content to accept that the Upper Tribunal did not consider the circumstances which we find would apply to the claimant on return to Tehran and, it may be, that he cannot be said to be someone who has "no history" other than being

a failed asylum seeker because he has, in fact, undergone baptism albeit mendaciously.

59. On behalf of the claimant, Mr Gayle placed reliance upon para 6.5.4 of the Danish Immigration Service document entitled "Human Rights Situation for Minorities, Woman and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc." (dated April 2009) which relates to a fact-finding mission to Iran in August – September 2008. There under the heading "Sur place conversion" the report says this:

"6.5.4 Sur place conversion

A western embassy (2) stated that if an Iranian refugee converts abroad, he/she can not go back to Iran as there is an effective control system amongst many Iranians abroad with connections to Iranian embassies.

In general, asylum seekers and refugees are kept under strict surveillance by any Iranian embassy and its network of informers. Thus, conversion abroad may very likely come to the knowledge of the Iranian authorities. The embassy explained that the Iranian Embassy in their home country has at its disposal a very strong network of informants, who keep an eye on Iranians living in that country.

According to an international organisation in Turkey, a British group of Evangelists conducted a mass conversion in the city of Van in Turkey four years ago. The group filmed the episode to document their missionary activities. This created problems for the converts as there is now visual evidence of their conversion that might be used against them by Iranian authorities upon return.

A Christian church in Tehran confirmed that if a convert returns to Iran from a country where he has converted, he might face difficulties. However, the source has not heard of any such cases but added that sometimes converts might risk the death penalty should they return to Iran."

60. First, we note that the judge's (unchallenged) finding was that the Iranian authorities would not have any prior knowledge of the claimant before his arrival in Tehran (see para 27 above). They would have no knowledge of the claimant's activities prior to his arrival in Tehran. Secondly, the difficulties identified relate to actual Christian converts and not those that confess to a disingenuous conversion. Although Mr Gayle did not refer us to the Home Office, "Country Policy and Information Note – Iran: Christians and Christian converts" (February 2017) at A126 of the claimant's bundle, we note that at page A139, citing from a Danish Immigration Service update in relation to Christian converts in Iran from June 2014 the following is set out:

"With regard to the situation of converts who return to Iran after being baptized abroad, be it in Turkey, Armenia, UAE or another country, the source found that they may return to Iran quietly and not encounter any problems. If the person is already monitored by the authorities, he or she could risk consequences upon return to Iran."

'According to AIIS [Amnesty International's International Secretariat] it is difficult to obtain information on potential risks an individual may face upon returning to Iran after conversion abroad. If Iranian informants have gathered information regarding an individual who has returned to Iran, the authorities may arrest them for questioning. It is possible that charging and conviction will ensure the arrest and questioning. A wide

group of people could be in that position: students, political activities, family members of political persons might even be questioned as well as Christian converts.'

'Regarding whether baptism abroad would put a person at risk from the authorities in Iran, AIIIS considered that the importance of baptism should be balanced against how the Iranian authorities perceive a convert. A person who has attended trainings and sessions abroad may be considered a convert, although he or she may not have officially been baptized.'

'Asked about the situation for a convert who returns to Iran after having converted abroad, i.e. in Europe or a Western country, Mansour Borji (Advocacy Officer for Article 18) found that there would be no difference in the way the Iranian authorities would deal with the case. If the person is known to the authorities and they have shown an interest in him or her before he or she left the country, there could be a risk to him or her upon returning. If the person is unknown to the authorities, the source did not consider that there would be a huge threat towards him or her. The source referred to a case of a family that went back to Iran and upon return, they were threatened and followed around/harassed. It was considered that perhaps relatives or others had reported them to the authorities causing the harassment. Ultimately, the family left Iran again. They had secretly begun to attend a house church.'

'Concerning the consequences for an individual upon return to Iran after having converted abroad, CSW [Christian Solidarity Worldwide] said that any convert who wishes to practice his or her faith upon return, would face serious risk.'

'When asked about the consequences of returning to Iran after having been baptized abroad, Elam Ministries said that many Iranians do go abroad and return to Iran after a while. If the authorities in Iran became aware of the fact that a person has been baptized abroad such an individual may risk interrogations and repercussions. The source considered that the authorities may find out that an individual has been baptized through informers and telephone/internet tapping.'

'It was considered that persons who return from Western countries after converting would have to be very careful about doing any evangelizing. When considering the situation of an individual who has converted in Europe who then returns to Iran, their situation would be much the same as that of Iranians who convert in Iran. Such individuals would have to lay low and not speak openly about their conversion. If their conversion is uncovered and the authorities are notified, there is a risk that such an individual will be suspected of links with foreign organizations much the same as a convert who has been living in Iran.'

'The source added that those who are outside of Iran for extended periods of time may be more at risk in that the authorities may suspect them of spying. It was further added that this counts not only for Christian converts but also for other Iranians.'

'Asked about the situation of Christian converts who return to Iran after coming to Turkey or another country, and meeting with other believers, the representatives of the Union Church informed the delegation that if the converts stay 'quiet'; i.e., they do not associate with other believers, they may not be discovered and the visits to a foreign country will then not make a lot of difference for them.'

'According to the representatives of the Union Church, even if not known to authorities, converts can face shunning and even 'honour killing' by their families.'"

61. We make a number of comments about this evidence. First, it is also concerned with those who genuinely convert to Christianity. The reported comments relating to the position of those who return having been "baptised abroad" must, therefore, in our

judgment be seen in that light. Secondly, the document goes on to identify at para 8.1.1 that Christian converts are more likely to face difficulties if they evangelise. At para 8.1.2 quoting a Finish Immigration Service report from 2015, the risk factor of the “public practise of religion” and “proselytising” is again emphasised:

“8.1.2 A Finish Immigration Service report on Christian converts in Iran, dated 21 August 2015, citing various sources stated: ‘No research data on the return of Christian converts to Iran is available, but the common pre-ception is that they will get into trouble mainly if they try to proselytise or otherwise make their religious view public. The state’s interest is focused more on the public practice of religion and proselytising than on one’s private convictions.’”

62. There is no evidence (to which we were referred) concerning the risk to disingenuous Christian converts on return to Tehran. The background evidence to which we have made reference does not, in our judgment, establish a real risk that an individual such as the claimant on telling the truth about his failed asylum background (whether as a political opponent or religious convert) would be at real risk of being transferred to the second-stage of questioning and then subjected to a real risk of persecution or serious ill-treatment.
63. Mr Gayle placed some reliance upon the Iranian regime being a repressive one and, applying what was said by the Upper Tribunal in AB & Others, he submitted that the Iranian authorities would not be interested in the motives of an individual making a claim for asylum in the UK.
64. In AB & Others at [464] the Upper Tribunal said this:

“We do not find it at all relevant if a person had used the internet in an opportunistic way. We are aware of examples in some countries where there is clear evidence that the authorities are scornful of people who try to create a claim by being rude overseas. There is no evidence remotely similar to that in this case. The touchiness of the Iranian authorities does not seem to be in the least concerned with the motives of the person making a claim but if it is interested it makes the situation worse, not better because seeking asylum is being rude about the government of Iran and whilst that may not of itself be sufficient to lead to persecution it is a point in that direction.”

65. Likewise, at [472] the Upper Tribunal, noted in the context of risk arising from internet activity, that:

“It is not relevant if a person has used the internet in an opportunistic way. The authorities are not concerned with a person’s motivation.”

66. We make two observations about what is said in AB. First, it is not a country guidance case and any findings made by the Upper Tribunal were necessarily made on the basis of the evidence before it. Secondly, in the context of political dissent, the Upper Tribunal in SSH (which is a country guidance case) effectively reached the opposite view on the evidence before it at [30]:

“We can understand the sensitivity that the Iranian authorities may have towards perceive slights against their own state in the form of untruthful allegations about the conduct of the state, but equally one can expect a degree of reality on their part in relation

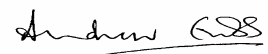
to people who, in the interests of advancing their economic circumstances, would make up a story in order to secure economic betterment in a wealthier country.”

67. The evidence before us does not, in our judgment, gainsay that position and its application in the context of a person who disingenuously converts to Christianity and confesses, in effect, that he ‘went through the motions’ of baptism in order to remain in the UK.
68. Consequently, we find, he would tell the truth about his two failed claims for asylum in the UK based upon political opposition and disingenuous conversion to Christianity. We find that he would be subject to the second stage of questioning at Tehran Airport. Taking into account all the evidence, we are not satisfied that there is a real risk that the claimant would suffer persecution or serious ill-treatment on return to Iran.
69. Since, on our findings, the claimant would not be at risk on the basis of what he would tell the Iranian authorities, the issue does not arise in this appeal whether he could be expected to modify what he said (perhaps by lying) in order to avoid persecution. In other words, the HJ (Iran) point does not arise in this appeal on the basis of our findings. It is not, therefore, necessary for us to consider the application of what was said *obiter* in SSHD v MSM (Somalia) [2016] EWCA Civ 715 at [35]-[48] in relation to whether an individual may be required or expected to modify their behaviour when, in fact, they do not possess the protected characteristic under the Refugee Convention but their potential persecutor will impute that characteristic to them. On the basis of our findings, there is no real risk to the claimant on the basis of imputed religious opinion as a result of what he would tell the Iranian authorities on return and, therefore, there is no question of him modifying what he says in order to avoid any persecution.

Decision

70. The decision of the First-tier Tribunal to allow the claimant’s appeal on asylum grounds and under Art 3 of the ECHR involved the making of a material error of law. We set the decision aside.
71. We remake the decision dismissing the claimant’s appeal on all grounds.

Signed



A Grubb
Judge of the Upper Tribunal

6 December 2017