



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12285/2016

**THE IMMIGRATION ACTS**

Heard at Bradford IAC  
On 25th April 2018

Decision and Reasons Promulgated  
On 11th May 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MA  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Greer, Counsel instructed by Parker Rhodes Hickmotts Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iran born in 1965. He appeals with permission the 28<sup>th</sup> April 2018 decision of First-tier Tribunal GRJ Robson to dismiss his protection appeal.

**Anonymity Order**

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **The Appeal Before the First-tier Tribunal**

3. The basis of the Appellant’s claim for international protection is that he is a former Muslim who has now converted to Christianity and as such would face a real risk of persecution in his home country for reasons of his religious belief.
4. The Respondent did not believe him, and nor did the First-tier Tribunal.
5. The primary reason for doubting the Appellant’s claims to have “started his faith journey” to Christianity as early as 2007 was that he failed to mention any of that during the course of a fresh claim for asylum in 2011. He had in particular failed to make any mention of his new faith at a hearing in March 2012 before First-tier Tribunal Judge Upson. The Appellant had not told the Home Office that he had converted to Christianity until 2015 and when he did he had given contradictory evidence about whether he had been evangelising or whether he kept his faith private.
6. A number of ordained ministers had written letters in support of the Appellant’s claim. Reverend Rutherford of King’s Cross Church in Hexthorpe wrote to confirm that the Appellant had been attending church every Sunday, and bible study groups on Thursdays. Reverend Omid Moludy, Minister in charge of the Persian study group at King’s Cross Methodist Church said that he had met the Appellant in May 2013 when he started attending bible study groups. Of these letters the Tribunal said this [at §62]:

“Regrettably, neither of these gentlemen was present to enable cross examination to take place and go into more detail about the depth of study and understanding of the Appellant of his Christian faith”
7. Further evidence came from a Reverend Edwards of a Methodist Church in Rotherham, dated 19<sup>th</sup> June 2015. He stated that the Appellant had been attending his church between 2012 and 2013, including participation in the Iranian Christian Fellowship study sessions. He had undertaken study on the ‘Alpha Course’, but because he was moved to Doncaster he could not complete it. Of this letter the Tribunal concluded [at §63]:

“I find that that letter is lacking in detail as to the nature of the practising of the Appellant’s faith and again, is not supported by the presence of the actual Minister in question”.
8. The Tribunal went on to attach minimal weight to a letter from Reverend Philip Ireson of the Christs Church, Pitsmoor, Sheffield: this letter had simply confirmed that the Appellant volunteered and helped cook. Sheffield

Community Church had written to confirm that he had attended one event. St Thomas' Church in Philadelphia, Sheffield had "endorsed" the view of one of the Farsi prayer leaders, a man named Karim, who said "I am satisfied as far as I can be that he is genuine in his faith". Since Karim himself had given no direct evidence, the Tribunal found that very little weight could be attached to that letter.

9. In sum the Tribunal was not prepared to attach any significant weight to any of the six letters written in support because none of the authors attended court in person. It was further significant that there was no evidence from the vicar of the Appellant's current place of worship, a church in Dewsbury. It was said that this vicar was "too busy" to attend. The Tribunal concluded [at §69]: "I have taken into account the decision in *Dorodian*. The absence of a vicar does detract from the weight to be put on the evidence prepared otherwise". Although it was accepted that the Appellant had undergone "some form of baptism" it was not accepted that he was a genuine convert to Christianity.
10. Turning to assess risk the Tribunal referred itself to the guidance in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] 00308 (IAC). Finding that the Appellant is nothing more than a failed asylum seeker the protection appeal is dismissed.
11. Although there is no discrete challenge to this part of its decision, I note for the sake of completeness that the Tribunal went on to consider Article 8 and to dismiss the appeal on human rights grounds.

### **The Appeal to the Upper Tribunal**

12. The Appellant sought permission to appeal on the grounds that the First-tier Tribunal:
  - i) Gave inadequate reasons for its findings;
  - ii) Failed to have regard to material evidence;
  - iii) Made a material legal misdirection.
13. The composite complaint made by grounds (i) and (ii) is that the Tribunal erred in its approach to the Appellant's claimed conversion. It is submitted that the determination does not give intelligible reasons for disbelieving the Appellant's evidence and fails to make clear whether the evidence of the six *Dorodian* witnesses was accepted (in respect of his church attendance). In the absence of reason to reject that evidence, it is submitted that the burden of proof must have been discharged. As to (iii) it is submitted that the Tribunal failed to have regard to the evidence in SSH about what is likely to happen to an individual such as the Appellant upon return to Iran. That evidence, read in line with the principles set out in HJ (Iran) and HT (Cameroon) [2011] UKSC 596 establishes a real likelihood of risk.

## Discussion and Findings

14. I granted permission in this case. By my decision of 25<sup>th</sup> October 2017 I pointed out that if the witnesses failed to attend court it is arguable that they are not *Dorodian* witnesses at all. I was nevertheless prepared to grant permission. Ground (iii) was in particular arguable, since the Tribunal does not appear to have considered whether the fact of the Appellant's baptism or attendance at church would in itself place him at risk, regardless of whether he was 'genuinely' a Christian.

### *Grounds (i) and (ii)*

15. As I note above, the grounds as originally drafted (by counsel other than Mr Greer) had submitted that the error in approach was to have declined to place weight on, or to have failed to make findings on, the evidence of the six Christian ministers who had written in the Appellant's support.

16. In granting permission I observed that the Tribunal must have been rationally entitled to place limited weight on the evidence of these witnesses in view of the fact that they had not attended court to be cross examined. Basic principles of evidence make it so, but in this case the very guidance upon which the Appellant placed reliance expressly stipulates that such witnesses should attend the hearing. The guidelines in Dorodian (01/TH/01537) are:

- a) no-one should be regarded as a committed Christian who is not vouched for as such by a minister of some church established in this country: as we have said, it is church membership, rather than mere belief, which may lead to risk;
- b) no adjudicator should again be put in the position faced by Mr Poole in this case: a statement or letter, giving the full designation of the minister, should be sent to the Home Office at least a fortnight before the hearing of any appeal, which should give them time for at least a basic check on his existence and standing;
- c) **unless the Home Office have accepted the appellant as a committed church member in writing in advance of the hearing, the minister should invariably be called to give oral evidence before the adjudicator: while witness summonses are available, adjudicators may reasonably expect willingness to do so in a genuine case;**
- d) if any doubt remains, there is no objection to adjudicators themselves testing the religious knowledge of the appellant: judicial notice may be taken of the main beliefs and prayers of the Church.

17. In light of my comments in the grant of permission Mr Greer shifted the emphasis in his submissions. He pointed out that the Tribunal had in fact accepted two central matters arising from the evidence of the six witnesses. It had been expressly accepted that the Appellant knew something about Christianity, and that he was regularly attending church. Given that their evidence had held good in respect of these two central issues, Mr Greer suggested that it was incumbent on the Tribunal to give significant weight to

the third matter arising from that evidence: the belief of the witnesses that the Appellant was a genuine Christian. If they did not accept that evidence, it was obliged to give reasons why not.

18. I am afraid that I am unable to accept Mr Greer's analysis.
19. First, the evidence itself does not uniformly speak to whether the Appellant is a genuine believer. Revd Edwards, for instance, says nothing at all about the Appellant's beliefs; Revd Ireson simply confirms that he helps run a monthly meal for asylum seekers; as the Tribunal noted, all that Revd Findlay could do was to report the views of a third person who had not himself written directly.
20. Second, what evidence there is in the letters is not so powerful as to compel acceptance. The closest that the written evidence comes to confirming the witnesses' views on the Appellant's true belief is in the letter from Revd Moludy, who said that he thought that the Appellant had shown "passion and love for Jesus Christ"; Revd Rutherford states that he discerned the Appellant's change of heart to be "sincere". The Tribunal was rationally entitled to find that it could place less weight on these scant few lines than if the witnesses had attended the hearing "to enable cross examination to take place and go into more detail about the depth of study and understanding of the Appellant of his Christian faith".
21. Third, and most importantly, the Tribunal must make its own assessment of credibility. It had before it the Appellant's entire immigration history and interview records, and it was bound to make its assessment in light of *all* of that evidence. Even if the Tribunal had wholeheartedly accepted that Revds. Moludy and Rutherford believed the Appellant, it did not mean it had to.
22. Finally I note that the subject of Judge Freeman's oft-misquoted 2001 decision was not whether Mr Dorodian was *actually* a Christian. That had already been established. It was about whether he could demonstrate that it was a fundamental part of his new faith to openly practice it by participating in common worship: pre HJ such cases had been routinely refused on the grounds that Christians could conduct themselves "discreetly". Contrary to Mr Greer's submissions the 'guidelines' were in no way concerned with whether the putative refugee has accepted Jesus into his heart; confirmation of that matter is not the purpose of a *Dorodian* witness. The argument for the Appellant before me was ultimately based on a fallacious syllogism: 'the Appellant attends church, Christians attend church, therefore the Appellant is a Christian'. Plainly, that is not so.
23. I can find no deficit in the Tribunal's reasoning, nor error in its approach to the written evidence.

*Ground (iii)*

24. The focus of ground (iii) is an entirely different argument, and one that the First-tier Tribunal does not appear to have considered. That is this. If the Appellant is a complete mountebank and is not a Christian at all, is he nevertheless at risk upon return to Iran? That was the question posed by HHJ Gilbert in *SA (Iran), R (on the application of) v Secretary of State for the Home Department* [2012] *EWHC 2575 (Admin)*:

*“Thirdly*, there is a matter closely related to the second point of concern. What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant's conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church. But I accept that such judicial boldness as this judge showed does not necessarily undermine a decision in law if he does so, and his decision was not successfully appealed. But that is not the only point. **There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy.** On the basis of the Home Secretary's now stated position, that amounts to a potentially different circumstance from that addressed by the Immigration Judge”.

It is a question that Mr Diwnycz accepts that the First-tier Tribunal does not address, notwithstanding that it was expressly argued before it. I therefore consider it here.

25. The First-tier Tribunal accepted that the Appellant had undergone a baptism (the parties agreed that nothing appeared to turn on the words “a form of” baptism). It accepted that he had been attending church for a number of years.
26. We know that when he is returned to Iran as a failed asylum seeker he is likely to be questioned about what he has been doing in the UK: SSH and HR v Secretary of State for the Home Department (illegal exit – failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC), BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC), AB and Others (internet activity – state of evidence) Iran [2015] UKUT 257 (IAC). It was the evidence of the expert before the Tribunal in SSH, Dr Kakhki, that this would include questioning about his failed asylum claim: see paragraph 35 of Appendix A to that decision. The Appellant would at that point have a choice about what to say.

27. He could lie and say that he had simply lived in the UK illegally with no contact with the authorities, or that he had claimed asylum on some other ground. He would of course have to do so in the hope that none of the Iranians he had come into contact with through the numerous churches he has attended in UK were actually informants for the government (see AB, BA), or that the authorities had otherwise discovered his history. He would have to do so in the knowledge that he had *in fact* publicly denounced Islam, an offence punishable by death according to classical principles of Islamic law. Setting these difficulties aside, the requirement that he lie in order to avoid persecution is now settled to be contrary to the Refugee Convention. In RT (Zimbabwe) and Others [2012] UKSC 38 the Supreme Court made a significant extension to the principles set out in HJ (Iran) and HT (Cameroon) [2011] UKSC 596. In HJ the court held that claimants should not be expected to conceal matters fundamental to their identity in order to avoid harm. In RT the court held that even absent any 'core' characteristic - in that case political opinion - claimants should not be expected to lie. That is because the 'core' right is the right not to be persecuted - in this case for religious beliefs that the Appellant, on the findings of the First-tier Tribunal, does not have.

28. The question therefore becomes: if the Appellant decides to tell the truth, will he face a real risk of harm? The truth would be that he had claimed asylum on the basis that he was an apostate from Islam, and in order to support this claim had regularly attended church and had undergone baptism. In both SSH and BA the Tribunal heard evidence to the effect that the Iranian authorities are aware that economic migrants make false asylum claims in Europe, and that in the case of, for instance, alleged political opponents they will be discerning in their treatment of returnees; decision-makers are urged to consider whether the political activity in question would give the impression of real commitment to a cause, rather than opportunism. At paragraph 23 of SSH the Tribunal puts it like this:

“The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment”.

29. Would there be any “particular concerns” arising from the Appellant’s activities in the UK? It seems to me that in the context of Iran - an oppressive and paranoid theocracy - there is good reason to suppose that there will be a particular sensitivity around religion (as opposed to general antipathy towards the regime). I am doubtful whether protestations that it was all a sham would carry much weight. A baptism itself constitutes a formal denunciation of Islam. It would arguably matter not to the Appellant’s interrogators whether he did this because he was a Christian, an atheist, or an economic migrant. Applying the lower standard of proof I am satisfied that there must be a real risk that many years of regular Christian worship and having been baptised will be the kind of facts that would give an Iranian border guard cause to transfer the

Appellant for “further questioning”, where, it is accepted, there may be a real risk of serious harm.

30. As unpalatable as it might be, I can only conclude that a real risk of harm arises from the simple fact of the Appellant’s open adherence to Christianity as opposed to Islam. Applying the principles in Danian v Secretary of State for the Home Department [2009] EWCA 3000 the Appellant cannot be excluded from protection because of bad faith. It follows that his appeal must be allowed.

### **Decisions**

31. The decision of the First-tier Tribunal is set aside to the extent identified above.

32. The decision in the appeal is remade as follows:

“the appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection because he is a refugee”.

33. There is an order for anonymity.



Upper Tribunal Judge Bruce

3<sup>rd</sup> May 2018