



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

Appeal Number: PA/01298/2019 - P

THE IMMIGRATION ACTS

**Determined on the papers
At Field House on 23 July 2020**

**Decision & Reasons Promulgated
On 13 August 2020**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**SK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

**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 his 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.

Introduction

1. The appellant is a citizen of Iran. He arrived in the United Kingdom in July 2018 with his wife and daughter (born in 2005), at which time he claimed asylum. The respondent refused the application and the appellant thereafter appealed to the First-tier Tribunal.

2. In a decision sent on 11 April 2019, FtT Judge Skehan dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds. In doing so, Judge Skehan, made, *inter alia*, the following findings of fact:
 - (i) The appellant left Iran unlawfully in 1984/5 and lived in Turkey, before being deported to Iran in 1987. The appellant left Iran because he did not complete compulsory military service and was caught working when it was illegal for him to do so absent a military service/conscription completion certificate. Upon return to Iran the appellant was detained for four or five months and tortured. Upon release he was monitored closely and required to undertake military service.
 - (ii) The appellant found it difficult to obtain a job in Iran. He moved to Japan, living there between 1990 and 1992. Upon his return to Iran he opened a shop which was subsequently closed down by the Iranian authorities.
 - (iii) The appellant and his wife have been active members of an evangelical Church in the UK and were both baptised in 2018. They are genuine Christian converts.
3. The FtT rejected the appellant's claim that he would evangelise upon return to Iran and, also, concluded that the appellant is not considered by the Iranian authorities to have links with MEK or to have any other political profile.

Proceedings in the Upper Tribunal

4. The appellant appealed against the FtT's decision and, in a decision promulgated on the 6 August 2019, Deputy Upper Tribunal Judge Harris dismissed that appeal. DUTJ Harris' decision was, however, subsequently set aside by Upper Tribunal Judge O'Callaghan in a decision dated 25 September 2019, pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. The matter thereafter came before Upper Tribunal Judge Plimmer and Her Honour Judge Stacey ("the Panel") on 5 November 2019. At that hearing Ms Everett, appearing on behalf of the Secretary of State, confirmed that the respondent did not seek to challenge Upper Tribunal Judge O'Callaghan's decision.
6. In a decision promulgated on the 7 November 2019, the Panel set aside the decision of the FtT providing, *inter alia*, the following reasons for doing so:
 - "5. The FTT did not make any clear findings on two aspects of the appellant's claim (which were supported by his wife, who gave evidence before the FTT): (i) they received leaflets and pamphlets about Christianity and attended house Churches/meetings in Iran co-ordinated by Sister Helen, from the beginning of 2018; (ii) they were told that their lives were in danger because Sister Helen was

arrested by the Iranian authorities, and they would therefore have their details in connection with Christianity in Iran. It is for this reason that they claimed they abandoned everything to flee Iran. The FTT also failed to make any findings on the reliability of the appellant's wife's evidence at all.

6. The appellant appealed against the FTT's decision, relying on three grounds of appeal:

- (i) The FTT failed to provide adequate reasons for its conclusion that the appellant would not evangelise in Iran and failed to apply the principles in HJ (Iran) v SSHD [2010] UKSC 31.

- (ii) The FTT failed to engage with the country background evidence ...to the effect that upon return to Iran the authorities would be adversely interested in him as a result of his illegal exit, his Christianity and the authorities past adverse attention in him.

...

9. Ms Everett conceded that grounds 1 and 2 have been made out... We are satisfied that this concession was properly made for the reasons we set below.

10. Ms Everett agreed with the submission in ground 1 that the finding that the appellant would not evangelise in Iran is inconsistent with the finding that he is a genuine Christian convert who has chosen to belong to an evangelical Church in the UK and carried out evangelical activities here. Ms Everett also agreed that the FTT failed to make clear findings of fact on the matters we set out at [5] above. Ms Everett accepted that the claim that Sister Helen was arrested and it was reasonably likely that the authorities would have come to know about the appellant's and his wife's Christian activities whilst in Iran, was a significant component of the asylum claim and it was an "Robinson" obvious error of law to fail to engage with this aspect of the claim, albeit this was not clearly pleaded in the grounds.

11. Ms Everett also acknowledged that the FTT was required to apply the country guidance contained in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) wherein the UT said this at [23] (our emphasis):

"In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. 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. In this regard it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they co-operated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a

fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a 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 during the period of questioning at the airport."

- 12 Ms Everett accepted that at no point in its decision did the FTT assess whether "particular concerns" would arise in the sense that within the context required by SSH. In particular, when cumulatively assessing the risk posed by the appellant's Christianity at [16c], the FTT failed to assess the risk at the point of return at Tehran airport or to take into account the additional ingredient that the appellant would be liable to prosecution as an illegal deportee, in addition to being a Christian convert. Although ground 2 does not expressly rely upon SSH it makes the broader point that the FTT failed to address the 2019 CPIN that illegal departure in combination with other matters may lead the Iranian authorities to take an adverse interest in the appellant.
 13. We did not hear any submissions on ground 3, which relates to Article 8. This remains a live issue albeit the focus of the appeal has always been on asylum and not human rights grounds."
7. Since the decision of the Panel, there has been further country guidance authority from the Upper Tribunal relevant to this appeal - PS (Christianity-Risk) Iran CG [2020] UKUT 00046. As a consequence, the matter was listed for a Case Management Hearing (as was envisaged would be necessary at the hearing before the Panel).
 8. At the Case Management Hearing both parties indicated that the appeal could properly be determined on the papers i.e. did not require a further oral hearing. It was observed in particular that the Panel had preserved the 'positive' findings of fact made by the FtT and the respondent did not, in such circumstances, seek to re-open these preserved findings. I concurred and issued Directions (given orally at the Case Management Hearing) providing a timetable for written submissions.
 9. The appellant's written submissions were received in accordance with the timetable. The SSHD has chosen not to provide written submissions, which were required to be lodged by no later than 19 June 2020. That this was so was envisaged as a possibility by the Presenting Officer who appeared at the CMH.

Decision and Reasons

10. Turning then to the initial task before me, to determine whether the appellant has demonstrated a real risk that he would be persecuted for a Refugee Convention reason should he be returned to Iran. I conclude he has for the following reasons.
11. The preserved findings of the FtT are set out at [2] above and I do not repeat them at this stage, save to highlight the finding that the appellant

is a genuine Christian convert. I also note Ms Everett's acceptance before the Panel (recorded at [10] of the Panel's decision) that the FTT's preserved finding that the appellant is a genuine Christian convert who has chosen to belong to an evangelical church in the UK and who has carried out evangelical activities here is inconsistent with the finding that the appellant would not evangelise in Iran. The SSHD has not sought to resile from such acceptance before me.

12. Although I do not concur with Ms Everett's view that it must necessarily follow from the fact that the appellant is a genuine Christian convert who has chosen to belong to an evangelical church in the UK and who has carried out evangelical activities here that he would evangelise in Iran, I find that conclude otherwise would need a clear and rational foundation in the evidence.
13. On the evidence before me I accept the appellant's assertion that he would seek to keep his conversion private if returned to Iran though fear of being persecuted by the Iranian authorities should they become aware of his conversion. The evidence before me of the appellant's activities on behalf of the Church in the UK, which I accept, is strongly supportive of such a conclusion and I find that there is nothing else in the evidence which leads me to conclude otherwise.
14. The assessment of risk upon return to Iran, given the preserved findings and the finding I have made at [13] above, must be viewed through the lens of the recent Upper Tribunal Country Guidance decision - PS - which bears heavily on this case. The headnote to PS reads:
 1. This country guidance applies to protection claims from Iranians who claim to have converted from Islam to Christianity.
 2. Insofar as they relate to non-ethnic Christians, this decision replaces the country guidance decisions in FS and Others (Iran - Christian Converts) Iran CG [2004] UKIAT 00303 and SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082 which are no longer to be followed.
 3. **Decision makers should begin by determining whether the claimant has demonstrated that it is reasonably likely that he or she is a Christian. If that burden is discharged the following considerations apply:**
 - i) **A convert to Christianity seeking to openly practice that faith in Iran would face a real risk of persecution.**
 - ii) **If the claimant would in fact conceal his faith, decision-makers should consider why. If any part of the claimant's motivation is a fear of such persecution, the appeal should be allowed.**
 - iii) If the claimant would choose to conceal his faith purely for other reasons (family pressure, social constraints, personal preference etc) then protection should be refused. The evidence demonstrates that private and solitary worship,

within the confines of the home, is possible and would not in general entail a real risk of persecution.

4. In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival:

- i) All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum;
- ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;
- iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;
- iv) If there are any reasons why the detention becomes prolonged, the risk of ill-treatment will correspondingly rise. Factors that could result in prolonged detention must be determined on a case by case basis. They could include but are not limited to:
 - a) Previous adverse contact with the Iranian security services;
 - b) Connection to persons of interest to the Iranian authorities;
 - c) Attendance at a church with perceived connection to Iranian house churches;
 - d) Overt social media content indicating that the individual concerned has actively promoted Christianity.

(my emphasis)

15. Bringing this together, it is clear that applying the country guidance to the established factual matrix - both the preserved facts and those facts I have found above - the appeal must be allowed on Refugee Convention grounds. The appellant is a genuine Christian convert who would conceal his faith upon return to Iran through a fear of being persecuted. Those parts of the Country Guidance emphasised above point to only one conclusion on such facts, that the appellant has established his case under the Refugee Convention.

16. In this particular case there are also a number of other 'risk factors' which the appellant does not need to deploy in order to succeed in this appeal but go to reinforce the conclusion that he should succeed i.e. that he left Iran illegally and has had previous adverse contact with the Iranian authorities. In addition, I accept as reasonably likely to be true the appellant's and his wife's evidence of the attendance and meetings in Iran

coordinated by sister Helen, as well as the evidence regarding Sister Helen's subsequent arrest, are also reasonably likely to be true.

17. For the reasons given above the appellant's appeal is allowed.

Decision

For the reasons given above, upon remaking the decision on appeal the appellant's appeal is allowed on Refugee Convention grounds. For the same reasons it is also allowed on Article 3 ECHR grounds.

Signed
M O'Connor
Upper Tribunal Judge O'Connor

Date: 7 August 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.