



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

Appeal Number: AA/02565/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
On: 27<sup>th</sup> February 2015**

**Determination Promulgated  
On 28<sup>th</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**SK  
(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation:

For the Appellant: Mr Medley-Daley, Broudie Jackson and Canter Solicitors

For the Respondent: Mr Harrison Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Iran date of birth 12<sup>th</sup> July 1982. She appeals against the decision of the First-tier Tribunal (Judge A.K Simpson) dated 23<sup>rd</sup> May 2013 to dismiss her asylum and human rights appeal.
2. The basis of the Appellant's claim was that she would face persecution in Iran for reasons of her religious belief, and/or imputed political opinion and/or membership of a particular social group (women). She claims that she had moved to America in order to attend university. Whilst in America she met a Cypriot Turk, H, with whom she started a relationship. They were married. Unfortunately the marriage did not work out; her husband

had become aggressive and verbally abusive and she had discovered that he was taking prescription medications. The Appellant went on a trip to Cyprus, to visit his family, and then went on to Iran to see her own. After about 10 days her husband contacted her to say that he had filed for divorce and instructed her not to apply to renew her USA visa. When she found her application at the US embassy had been refused the Appellant contacted her husband's employers in America, a University, and informed them about his drug-taking. She told his friends about his behaviour. In retaliation her husband told the Iranian authorities about her having attended a church whilst in the US. He also told them that she had offered to work for the FBI. It was against this background that the Appellant fled Iran in December 2012 after a house church she regularly attended was raided.

3. The Respondent did not believe the Appellant's account and the claim was rejected. The Appellant appealed to the First-tier Tribunal.

### **The Determination of the First-tier Tribunal**

4. The Tribunal accepted that the Appellant had been through a "vitriolic" divorce. Facebook messages were exhibited which showed the high level of animosity between her and her ex-husband. It was not however accepted that the raid on the house church in Iran had anything to do with this history: there was no evidence to suggest that H was aware that the Appellant had been attending a house church, much less its location, and if the authorities were looking for her they would have come to her home. It was accepted that the Appellant had offered to work as a translator for the FBI but not that anything had come of it nor that the Iranian authorities would be interested if it had come to their attention. As to her "claimed conversion" the Tribunal found that the Appellant had started attending the Anglican Cathedral in Liverpool, and accepted that she had attended church in America. However, it was noted, the Appellant had not actually formally converted, not having been baptised. A "self-serving diatribe" about Islam posted by her on Facebook was discounted as not presenting any risk since it was highly unlikely to have come to the attention of the Iranian authorities. The appeal was dismissed.

### **The Appeal**

5. The Appellant sought permission to appeal to the Upper Tribunal and was twice refused. Designated First-tier Tribunal Judge Manuell noted that the Judge had "examined the evidence with great care" and gave "multi-faceted reasons" for rejecting it. He refused permission on the 13<sup>th</sup> June 2013. Then Upper Tribunal Judge Eshun upheld his decision on the 22<sup>nd</sup> July 2013. The Appellant sought judicial review of that refusal. On the 2<sup>nd</sup> January 2014 HHJ Pelling QC quashed Judge Eshun's decision in the following terms:

"I am giving permission with a degree of hesitation but in the end consider I

**am bound to do so because the determination of the FTT Judge does not address a critical issue of fact.**

The determination records at paragraph 38 that it had been submitted on behalf of the Claimant that she would be interrogated at the airport and that she could not be expected to be discreet about her claimed "conversion" to Christianity. This mis-describes the position because the Claimant's case is that she on the spiritual path to conversion to Christianity but that is probably a matter of degree only in the context of a single woman being returned against her will to Iran. The IJ concluded that the Claimant's ex-husband had not denounced her to the Iranian authorities. That was a conclusion that the IJ was entitled to reach. However, it does not assist on the point I am now considering. The country guidance material referred to by the Claimant suggest that all failed asylum seekers who are returned face interrogation. **Thus it was necessary for the IJ to make findings as to the degree to which if at all the Claimant had moved along the path to conversion and then to decide whether in the circumstances as they were found to be whether she faced a well founded fear of persecution....**

....the least that the person concerned is entitled to from the process are clear findings of fact as to whether his or her factual case as to his or her religious beliefs is accepted before a conclusion is then reached as to whether on that basis he or she has a well founded fear of persecution ..."

6. On the 24<sup>th</sup> January 2013 Upper Tribunal Judge Southern granted permission on the basis of HHJ Pelling's judgement.
7. At the 'error of law' hearing on the 2<sup>nd</sup> October 2014 Mr Medley-Daly relied heavily on HHJ Pelling's comments. He submitted that determination's focus of enquiry was all backwards looking. All the findings were about her husband, the divorce and the raid on the house church. Whilst the Tribunal had been obliged to make findings on those matters, it had failed to go on to consider the future; the question was whether the Appellant would face questioning on return to Iran, and if so, whether she should be expected to conceal that she had left Islam and was on her way to becoming a Christian. He relied in particular on the Respondent's Operational Guidance Note which states that anyone being returned without a passport would be so questioned.
8. The Respondent was at that stage represented by Senior Presenting Officer Ms Johnstone. She pointed out that the First-tier Tribunal had rejected the Appellant's claim to have left Iran illegally. It had been expressly found that she had lied about her journey to the UK, and about having left Iran using a passport to which she was not entitled [paragraphs 45-46]. In those circumstances there can be no error in the Tribunal having failed to consider the point being advanced by the Appellant and taken up by HHJ Pelling QC.

**Error of Law**

9. This is a reasoned determination. The First-tier Judge was clearly not

impressed with the Appellant as a witness, and although many of the factual assertions underpinning the appeal are accepted, the Judge has rejected the conclusions drawn by the Appellant as being unsupported by the evidence. It is for instance accepted that she attended church in America and the UK, offered to work for the FBI, went through a difficult divorce and denounced Islam on Facebook, but the Judge has rejected the Appellant's analysis that any of these matters will be known to the Iranian authorities or thereby place her at risk.

10. I am nevertheless satisfied that the determination does contain an error of law in that there is an omission as identified by Judge Pelling. Although the Appellant did not leave Iran unlawfully, the country background material before the Tribunal - primarily in the OGN and the COIR - indicated that persons subject to questioning on arrival are in fact a wider group. For instance paragraph 3.15.5 of the October 2012 OGN indicates that it is the circumstances on arrival that should have been the focus of enquiry: "if an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to this court...this procedure also applies to people who are deported back to Iran not in possession of a passport containing an exit visa...". Since no-one (except possibly the Appellant) now knows where her Iranian passport might be, it must be presumed that she would present as someone travelling on emergency documents issued by the UK, or Iranian, governments. There needed to be some consideration of whether she would face questioning in those circumstances, and whether at that point she could be expected to conceal the fact that she had left Islam and was on a spiritual path to conversion to Christianity.
11. The findings in the determination are preserved save that further findings must be made on a) whether the Appellant will be questioned on arrival b) whether it is reasonably likely that such questioning would lead to detention (however short in duration) c) whether the Appellant would be asked about her religious beliefs d) whether she would hide them, and if she would, the reason for that.

### **The Re-Made Decision**

12. At the resumed hearing on the 27<sup>th</sup> February 2015 the Appellant gave further evidence going to those matters identified at paragraph 11 above. I also heard live evidence from Canon Richard White of Liverpool Cathedral following his adoption of his detailed letter of the 5<sup>th</sup> February 2015. A full transcript of their testimony can be found in the record of proceedings but for the purposes of this determination I summarise it below.

#### *The Appellant's Evidence*

13. The Appellant stated, as she has done before, that whilst living in the United States of America she attended a Baptist church. She was at that time nominally Muslim but was non-practising. Her family were not

particularly religious although her father was “a bit” observant. At the time of the appeal before Judge Simpson she had been attending at Liverpool Cathedral but had not then been baptised. She said that she had not felt herself ready to take this step, and in any case to her it was not so important – it was a formality, but to her it was what she felt inside that counted. She confirmed that she has been attending services at Liverpool Cathedral since she arrived in the city. She was baptised there in August 2013. The Appellant was asked what she would say if she were asked on arrival in Tehran why she had left Iran. She said that she would not know what to say; she would be frightened. She would feel she would need to admit to having claimed asylum and having attended church. If asked whether she was a Muslim she said that she felt she would have to say “no”.

*Canon White*

14. Canon Richard White is one of the full time clergy based at Liverpool Anglican Cathedral. He has particular responsibility for the ‘outward looking mission’ ie evangelism. He has a lot of contact with the Iranians in the congregation and runs the Farsi language Alpha Course. He was ordained in 2003 but had worked as a Christian missionary since 1988.
15. In his letter Canon White confirmed that the Appellant has been attending the Cathedral for two years. She completed the Alpha Course in 2013. She was confirmed on the 11<sup>th</sup> August 2013 in a service conducted by the Dean of Liverpool and the former Bishop of Iran, Bishop Iraj Motahedeh. Canon White states that the Appellant has remained questioning of her new faith: “while many other asylum seekers seek only to give the ‘right’ answer or to agree enthusiastically with whatever is taught, her approach indicates a much more honest evaluation of the Christian faith”. He lists the Appellant’s activities with the Cathedral as follows:
  - i) She acts as an interpreter for the Alpha Course and during services including the Lent lecture series. She is currently working on translating service materials for the Sunday morning choral Eucharist.
  - ii) Since completing the Alpha Course herself she has helped to run a further five Farsi language courses.
  - iii) She runs English language classes for other Iranians at the university.
  - iv) She regularly attends all services including additional, English language, programmes including “breakfast with the bible”, a weekly lecture series delivered by the Dean.
  - v) Since April 2013 she has volunteered on a weekly basis to help run the ‘Hope+’ food bank. She is now training new volunteers and has recruited other Iranians to come and participate.
  - vi) In December 2013 she was invited to take part in a year-long leadership course, within which she has been an enthusiastic

participant.

16. Mr Harrison asked the Canon to explain how he satisfied himself that an individual, particularly someone who was formerly a Muslim, was a true convert to Christianity. Canon White accepted that he does not have the power to look into someone's deepest thoughts: he could not for instance say with absolute certainty that the Archbishop of Canterbury was a genuine Christian. He does however have considerable experience in talking to people about their experiences and beliefs; the Cathedral keeps a careful record of attendance and involvement and claims of conversion by Muslims are subject to close scrutiny by him and the other senior clergy at the Cathedral. This is for two reasons. First of all because of the serious consequences for Muslims who are considered by their co-religionists to be apostates. Secondly because the clergy are aware that the process might be used cynically by someone who wishes to make a false claim for asylum. This is something that they are very much alive to and they make it very clear to Iranians wishing to join the congregation that no-one from the Cathedral will be attending court for them. They only do so in exceptional cases, such as this one. Canon White states that in the past 18 months 110 Iranians have been baptised at the Cathedral but he has only agreed to attend court for 4 of them, including the Appellant.
17. Canon White was asked about the process by which the clergy at the Cathedral can be satisfied that a person is ready for baptism. He said that the rules of the Church of England are such that someone must have an adequate knowledge of the faith in order to be baptised. Ordinarily someone would be expected for instance to attend a course, and demonstrate their knowledge in conversation with the clergy. An English person would be subject to the same expectations - for instance if they wanted their child baptised at the Cathedral.
18. Applying these criteria to the Appellant Canon White was able to say that he has had close involvement with her during her time as part of the congregation. He and other clergy identified her as a potential leader within the church and this was why she did the course - it was not something she could apply for, it was by invitation only.

#### *My Findings*

19. The Appellant claims to have left Iran unlawfully, using a passport to which she was not entitled. The First-tier Tribunal rejected that. It is however agreed to be the case that the Appellant, if returned against her will to Iran, will have to travel on an emergency travel document, whether issued by the UK or Iranian authorities. The Appellant's representatives have in their bundle reproduced the application form that the Iranian consulate requires to have completed before a travel document will be issued. This includes a question about the description of entry into this country, the length of stay and the "type of residence". Mr Medley-Daly points to this as evidence that the Iranian authorities will already be alerted to the fact that the Appellant was seeking asylum in the UK prior to her arrival in

Tehran.

20. The Appellant will therefore arrive at Mehrabad Airport with a travel document issued in the UK. She will at that point have been in the UK since January 2013. I find that any competent officer will in those circumstances make some enquiry into what she has been doing in the UK: it is accepted country guidance that all returnees are screened<sup>1</sup>.
21. It is at this point that the authorities of HJ (Iran) and HT (Cameroon) [2010] UKSC 31 and RT (Zimbabwe) [2012] UKSC 38 become relevant. The background material indicates that the Appellant is likely to be questioned about what she has been doing in the UK. The Appellant cannot be expected to lie about her attendance at Liverpool Cathedral. Having heard the detailed evidence of Canon White I accept, as indeed did Mr Harrison, that she has discharged the burden of proof and shown herself to be a genuine convert to Christianity. It was already accepted that she had attended a Baptist church in the USA and that she attended a Christian university there. I find as fact that the Appellant has been attending regular services, lectures and courses at Liverpool Cathedral for well over two years and that she is playing an active role in that community, to the extent that she has been singled out and trained as a potential leader within the congregation. I accept that she was baptised in August 2013, a few months after the appeal before Judge Simpson. She has taken a leading role in the life of the Iranian congregants in particular, and has a public profile in Liverpool, acting as an interpreter and facilitator for any Iranian attending there. I accept that she is a genuine convert to Christianity, and that she cannot be expected to conceal this fact should she be returned to Iran. It is accepted that in those circumstances she must succeed in her appeal.

## **Decisions**

22. I find there to be an error of law in the making of the decision of the First-tier Tribunal, to the extent identified above.
23. I remake the decision in the appeal by allowing it on asylum and human rights grounds. The Appellant is not entitled to humanitarian protection because she is a refugee.
24. In view of the subject matter in this appeal I make a direction for anonymity 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.

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family, nor any former member of her family. This direction applies both to the Appellant

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<sup>1</sup> BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Deputy Upper Tribunal Judge Bruce  
17<sup>th</sup> April 2015