



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06752/2014

**THE IMMIGRATION ACTS**

Heard at: Manchester  
On: 13<sup>th</sup> March 2015

Decision and Reasons Promulgated  
On 20<sup>th</sup> May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

AT  
(anonymity direction made)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr O’Ryan, Counsel instructed by Irving & Co Solicitors  
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of the Islamic Republic of Iran who is now aged 26 years old. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Fox)<sup>2</sup> to dismiss his appeal against a decision to remove him from the

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<sup>1</sup> Permission granted on the 4<sup>th</sup> December 2014 by First-tier Tribunal Judge Grant-Hutchinson

<sup>2</sup> Determination promulgated 7<sup>th</sup> November 2014

United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999<sup>3</sup>. That decision followed from rejection of the Appellant's claim to international protection.

2. When the Appellant claimed asylum in May 2014 the basis of his claim was that he faced persecution in Iran for reasons of his imputed religious belief and political opinion. He stated that he was a businessman working on the island of Kish, a popular tourist destination in the Persian Gulf. He claimed that whilst working there he had come to know other business owners, some of whom were Filipino Christians. He had befriended these people and they had discussed their faith with him. The local Baseeji observed these interactions and he was warned. The Appellant's friends had promised to bring him Christian reading material next time they went to Dubai and had surreptitiously passed him leaflets etc. Then during Newroz 2014 he got into an argument with the Baseeji because he was playing loud music. He was assaulted, his shop destroyed and his house raided, at which time the Christian materials were found in his possession. The Appellant fears that as a result he will come to serious harm in Iran.
3. The Respondent does not doubt that a Muslim suspected of converting to Christianity will face serious problems in Iran. She did not however accept that this was a description that applied to the Appellant. Finding his knowledge to be lacking she doubted his expressions of interest in Christianity and – somewhat bizarrely given the background material – also doubted his claim to be Muslim. The account being rejected, the claim was turned down.
4. By the time of the appeal before the First-tier Tribunal the Appellant claimed that he had converted to Christianity. The Tribunal rejected the Appellant's account. It was found implausible that Christian tourists would risk the punishments that await evangelists in Iran by giving out materials to shopkeepers such as the Appellant, and the Tribunal considered it equally implausible that Filipino nationals would do the same. Although it was accepted that the Appellant had been brought up as a Muslim it was considered that his knowledge of Christianity "left much to be desired". It was found to be a "strange co-incidence" that the church he now attends in the UK is opposite the Home Office building in Manchester. In respect of his claimed conversion the Tribunal wrote "there is little or no supporting evidence for this contention" [at 23]. The appeal was thereby dismissed.
5. The grounds of appeal are that the First-tier Tribunal erred in law in the following ways:
  - i) *Error of fact* amounting to an error of law. The Appellant's evidence was that other businesspeople on the island of Kish had given him Christian literature. It was not his evidence that pamphlets etc were provided by tourists whom he did not know.

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<sup>3</sup> Decision dated 28<sup>th</sup> August 2014

- ii) *Procedural unfairness.* Whilst the Tribunal may have been entitled (had this been the evidence) to find it “implausible” that tourists would try and convert strangers to Christianity in Iran, that was not the evidence about the Appellant’s contacts. His evidence was that the discussions and exchange of material took place behind closed doors with trusted friends. As such it was unfair for the Tribunal to place this evidence in this bracket, and further to take this point against the Appellant without giving him a chance to respond to it (it not having featured in the refusal letter).
  - iii) *Failing to take material evidence into account.* In finding there to be “little or no” evidence to support the Appellant’s claim to have converted to Christianity the First-tier Tribunal overlooked a certificate of baptism issued by his church in the UK, a photograph of him actually being baptised and a letter from Pastor Sheila Murphy of the World Harvest Baptist Church confirming his attendance at services and classes. No consideration has been given to the Appellant’s oral evidence.
6. For the Respondent Ms Johnstone submitted that the findings were open to the Tribunal on the evidence before it. She emphasised that the Tribunal had not misunderstood the evidence and had specifically referred to Filipino nationals. She argued that the findings were sustainable. As for the Appellant’s claim to have converted to Christianity she submitted that the evidence was so weak the Tribunal was not obliged to say more than it did.

**Error of Law**

7. I am satisfied that this decision contains errors of law such that it should be set aside.
8. The Respondent had given specific reasons for rejecting this claim, which the First-tier Tribunal had not upheld. That did not mean that the account had to be accepted, but in assessing the merits of the claim for itself the Tribunal was obliged, as a matter of fairness, to raise any new issues with the Appellant, and as a matter of law, to take all of the evidence into account. It may be that the evidence from the World Harvest Baptist Church would not have attracted any substantial weight but it was an error to say that there was “little or no” evidence when there plainly was some, in particular evidence that the Appellant had actually been baptised. Furthermore I am satisfied that the reasons given for rejecting the Appellant’s evidence about Kish are not sustainable. The only reason given is that it is “implausible” that tourists would risk their own position by giving out Christian pamphlets. That was not the Appellant’s case. The “implausibility” or otherwise of such behaviour cannot be extended to reject his evidence that he had a number of private conversations, over a relatively long period of time, with people he knew and trusted. If the Tribunal found that evidence to be inherently implausible it is not easy to understand why.

9. Before me the parties agreed that if the decision were to be set aside the matter should be remitted to the First-tier Tribunal. That is in part because of the fairness points raised in the grounds, but primarily because the re-making will involve at least two witnesses and take three hours. The Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal provide at paragraph 7 (b) that an appeal may be remitted to the First-tier Tribunal where “the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal”. Having regard to that guidance I agree that the matter should be remitted.

### **Decisions**

10. The determination of the First-tier Tribunal contains an error of law and it is set aside.
11. The matter is to be remade in the First-tier Tribunal.
12. In view of the subject matter of 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 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”.

Deputy Upper Tribunal Judge Bruce  
10<sup>th</sup> May 2015