



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

Appeal Number: AA/02907/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 24th May 2016

Decision & Reasons
On 26th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**[N R]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Gita Patel (Counsel)
For the Respondent: Mr Andy McVeety (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N Manuel, promulgated on 27th August 2015, following a hearing at Manchester on 17th July 2015. In the determination, the judge dismissed

the appeal of the Appellant, whereupon the Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, who was born on [] 1980. He appeals against the decision of the Respondent dated 3rd February 2014 refusing his application for asylum and for humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is based upon imputed political opinion and religion on account of the fact that he converted to the Christian faith from Islam and that the Appellant would be considered as an enemy by the state of Iran on account of his activities in the Iranian air force during the Iran-Iraq war.

The Judge's Findings

4. The judge first considered the risks to the Appellant on account of his claim to imputed political opinion. This was based upon the claim of the Appellant's sister, [GR], who was a computer engineer, and who claimed to have helped design, maintain and manage a website relating to immigration for a man named [RS] for a payment of 300,000 toman each month (see paragraph 16). The authorities in Iran considered [RS] to be an enemy of the state because of his activities in the Iranian air force during the Iran Iraq war (paragraph 17). The Appellant's claim was that he came to the attention of the authorities because of his sister's alleged activities and association with [RS], but the judge held that, "I find no merit in this submission because the Appellant's claim is based on the same facts as that of his sister and therefore of relevance in the appeal" (paragraph 31). The claim of the sister, [GR], however, had been dismissed by Judge Ghani in the First-tier Tribunal and the judge referred to this (at paragraph 34) and concluded that since the Appellant's claim was based upon that of his sister, with the sister's claim having fallen away by the decision of Judge Ghani, it must follow that on the question of imputed political opinion, the Appellant's claim must also fall away (see paragraph 35).
5. Second, the judge dealt with the Appellant's conversion to Christianity. At the time of his interview by the immigration authorities the Appellant had not yet been baptised (see paragraph 56). When asked whether the authorities in Iran knew that he had converted to Christianity the Appellant said that he did not know (paragraph 56). The Appellant now attended a church in Liverpool and Pastor [MS] had provided a letter of support (see paragraph 60). However, the judge found there to be serious discrepancies and inconsistencies in the evidence of Pastor [MS] (see paragraphs 64 to 67). The judge went on to hold that the pastor had in fact "compounded his contradictory evidence" (paragraph 68). This was

particularly serious given that the pastor had said that he had appeared as witness some five to six times this year before the Tribunals and the judge held that “it is reasonable to expect that he would be familiar with the requirement to give accurate and reliable evidence, including in the letters he provides” (paragraph 68). The judge then went on to consider the objective material and concluded that the Appellant’s position was that of an “ordinary convert” such that under the country guidance case in relation to Iran, “the ordinary convert would not be at a real risk of persecution” (paragraph 70). What was required instead were “additional risk factors” which could change the situation but these were not evident in the present case (see paragraphs 70-71). This is because “the Appellant has not provided any evidence to show that he participated in any Christian activities in Iran and/or that the authorities were aware of his interest in Christianity” (paragraph 71). The judge found that the Appellant lacked credibility (paragraph 72). The judge also added that the pastor also was an “unreliable witness” (paragraph 73). In particular, the judge was concerned about the “speed and timing of the baptism” (paragraph 73) that had been undertaken by the pastor of the Appellant in the circumstances of this case.

6. Finally, the judge held that given the absence of any political profile, together with the absence of evidence to show that the authorities are aware of the Appellant’s conversion, “I fail to see why the authorities would be interested in his face book account” (paragraph 78) given that the Appellant had publicised himself and his activities whilst he was in this country.
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge had reached a decision that was procedurally unfair because he did not have before him an email from the representative of the Appellant’s sister that might have made a difference to the outcome of the appeal, as it drew attention to the possibility of a fresh claim, being made on the basis of new evidence. This email was not before Judge Manuel because the Appellant’s representative was off sick and the email was not produced to the Tribunal prior to the hearing. The grounds also state that the judge may have erred in relying too heavily on the case of **FS (Iran - Christian Converts) Iran CG [2004] UKIAT**, and not taken sufficient notice of the more recent background evidence as to the risk to Christian converts. It was also possible that there was inadequate consideration of the issue of whether the Appellant will be perceived as a Christian convert by the Iranian authorities even if his conversion is not genuine. The Appellant was also at possible risk in having put up face book entries when he returned to Iran.
9. On 17th September 2015, permission to appeal was granted.

10. On 1st October 2015, a Rule 24 response was entered by the Secretary of State to the effect that the judge had properly considered the risks to the Appellant as an actual or perceived Christian convert. Furthermore the judge had adequately dealt with the issue in relation to social media. Furthermore the judge found that the Appellant was not of any interest to the authorities and did not accept the Appellant's account of events that caused him to leave Iran.

Submissions

11. At the hearing before me on 24th May 2016, Miss Gita Patel, appearing on behalf of the Appellant as his Counsel, relied upon the four Grounds of Appeal that had been put forward. These were that the judge had engaged in a mistaken analysis of the facts that resulted in an error of law. Second that the Appellant faced risk as an actual or perceived Christian convert. Third, that there had been a failure to consider the evidence relating to social media. Fourth, that there was a failure to consider the evidence in relation to the risk to undocumented failed asylum seekers. In relation to this last matter, Mr Andy McVeety conceded, on behalf of the Respondent Secretary of State, that there had been a material change in the country conditions. The Respondent accepted that detention conditions in Iran could amount to persecution. This being so it was not enough simply to cite the country guidance case which pre-dated this change in policy.
12. At this stage, Mr McVeety intervened to say that whereas this was the case, it was still important to have a finding that the Appellant was likely to be detained, and this would only happen if the Appellant was of interest to the authorities, which the judge had found not to be the case here on the basis of either of his two separate claims in this case.
13. Miss Gita Patel submitted that the judge had given consideration to irrelevant circumstances in referring to the determination by Judge Ghani with respect to the Appellant's sister. Mr McVeety replied that this was not an irrelevant consideration because the Appellant's imputed political opinion claim was based upon the claim of his sister, which in turn was based upon her association with a man by the name of [RS].
14. Miss Patel also referred before me to the materials that were contained in the email to the Appellant's solicitors, which had not been disclosed before the Tribunal, and upon the basis of which permission had now been granted by the Tribunal. This was an email by Margaret Finch and it was in relation to the Appellant's sister and what it was saying was that a fresh asylum application was going to be made for the Appellant's solicitor on the basis of compelling fresh evidence that was not available earlier. That evidence had not yet been disclosed.

15. Mr McVeety replied that this was simply too far-fetched. The suggestion that Judge Manuel could have fallen in error on the basis of an email, which had not been disclosed to the Tribunal on account of the solicitor's illness, and even more importantly, on the basis of a fresh claim application that had yet to be made, and furthermore, on the basis of evidence that had not even been produced yet, could not be used as a basis for impugning Judge Manuel's decision. He could not be said to have fallen in error of law simply because an email in relation to the Appellant's solicitor, with respect to her claim, did not find its way forward before the Tribunal of Judge Manuel.
16. Mr McVeety went on to add that the Appellant could simply not succeed and there was no error of law for the following particular reasons. First, the Appellant was simply an ordinary convert, as found by the judge, if he was a genuine convert. Second, the judge has not found him to be a genuine convert because of the "apparent speed and timing of the baptism" (paragraph 73). Third, the judge had not found the Appellant or Pastor [MS] to have been credible witnesses. Third, the judge's findings were that the Appellant had embarked upon these activities named simply in order to claim asylum. Accordingly, any suggestion that the detention conditions had a bearing upon the Appellant's asylum claim, now that it had been conceded that the established position on detention was no longer fully applicable as before, was untenable. If the Appellant was not at risk either on account of his imputed political opinion or on account of his alleged conversion, then he was not likely to be detained.
17. In reply, Miss Patel submitted that even if the Appellant's conversion was not a genuine conversion, and even if his face book entries were contrived, an opportunist asylum seeker, could still face ill-treatment and persecution upon return to his country and this had been well-established in case law such as **Danian [1999] EWCA Civ 300**. The fact was that the Appellant had been baptised, and whether or not criticism was made about the manner and speed of this baptism, the fact was that his baptism would attract adverse attention upon return to Iran. He would be questioned on return. He would then be detained. He would suffer persecution.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside the decision. My reasons are as follows.
19. First, the existence of the email by Margaret Finch, in relation to the Appellant's sister's claim, which had been rejected, and which was going to be resurrected again by her solicitors, on the basis of a fresh claim application, drawing attention to fresh evidence, cannot be used as a basis for suggesting that Judge Manuel had fallen into error. A judge can only decide a case on the evidence that is before him. If the evidence was not

in existence, the fact that it may or may not arise at some future point in time, cannot amount to an error of law on his part.

20. Second, the fact that the Appellant may have been engaged in sur place activities, even if this is in bad faith for the purpose of creating an asylum claim, as **Danian** allows for the possibility of, does not mean that the Appellant would succeed. **Danian** made it quite clear in the words of Sedley LJ that, “nothing in it should be seen as giving any kind of green light to bogus asylum seekers.” But more importantly, if the Appellant were to be questioned upon return, there is no obligation upon him to be untruthful to the authorities there, because if Judge Manuel has found his claim to be lacking in credibility on both scores, then what the Appellant would be stating to the authorities there would in itself be lacking in credibility. He could quite simply state the truth which is that he does not fear persecution on account of his political opinion as imputed and he has not been engaged in a genuine conversion from Islam to Christianity. That was the finding of the judge.
21. Third, that finding of the judge is one that was reasonably open to him on the basis of the evidence that the judge heard both from the Appellant and from Pastor [MS] because the judge observed that, “I have concerns about the basis on which the assessments were made and the apparent speed and timing of the baptism” (paragraph 73).
22. Fourth, with respect to the face book activities the Grounds of Appeal refer to the case of **A and B (Iran) [2015] UKUT 257** where it is stated (at paragraph 467) that,

“The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their face book password.”
23. However, the judge dealt with this with the conclusion that, “the Appellant has no political profile, has not come to the adverse attention of the Iranian authorities and they would not therefore have any interest in him on return” (paragraph 84). For all these reasons, the judge was entitled to come to the findings and conclusions that he did.

Notice of Decision

24. There is no material error of law in the original Judge’s decision. The determination shall stand.

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 their 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.

Signed

Date

Deputy Upper Tribunal Judge Juss

23rd July 2016