



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

Appeal Number: PA022652016

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus House)**

**On 16 June 2017**

**Decision & Reasons  
Promulgated  
On 27 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**C H S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Neale instructed by Migrant Legal Project  
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

### **Introduction**

2. The appellant is a citizen of Iran who was born on [ ] 1964. He left Iran on 9 November 2015 and, travelling via Turkey and Italy, he entered the United Kingdom on 28 November 2015 using a false passport. He claimed asylum on arrival. The basis of the appellant's claim was that he had converted from Islam to Christianity and would be at risk on return to Iran as an apostate.
3. On 19 February 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.

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

4. The appellant appealed to the First-tier Tribunal. Judge Coaster dismissed the appellant's appeal on all grounds. The judge found that the appellant had failed to establish that he had converted to Christianity in Iran where he had attended a house church and that he had been detained and mistreated before being released by a compassionate Iranian official. In addition, Judge Coaster found that the appellant had not converted to Christianity in the UK.

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

5. The appellant sought permission to appeal to the Upper Tribunal on three grounds:
  - (1) That the judge had failed to take into account the country evidence when finding the appellant's account implausible;
  - (2) That the judge had misstated and misunderstood the evidence; and
  - (3) That it was procedurally unfair that the judge had taken an adverse point against the appellant which was not raised at the hearing.
6. On 1 December 2016, the First-tier Tribunal (Judge M J Gillespie) granted the appellant permission on all grounds.
7. On 26 January 2017, the Secretary of State filed a rule 24 response opposing the appellant's appeal.

### **Discussion**

8. I heard oral submissions from Mr Neale in which he developed the three grounds of appeal. In response, Mr Diwnycz sought to sustain the judge's decision and reasoning. In the result, I have concluded that Mr Neale correctly identified a number of errors in the judge's decision which were

material to her adverse credibility finding. It is necessary, therefore, only to deal with those points.

- 9.** First, Mr Neale submitted that the judge had failed to take into account the background evidence concerning the Iranian authority's monitoring of house church meetings when concluding in para 64 that it was implausible that the appellant would have been detected by the authorities having attended a house church only seven or eight times on a weekly or fortnightly basis at different locations. At para 64, the judge said this:

"I then assess the credibility of the Appellant's claim that he was taken away in hand cuffs by two unknown men at about 11am from his shop on 25<sup>th</sup> October 2015. By that time the Appellant had attended a house church seven or eight times when the house church met weekly or fortnightly. He said his attendance was irregular because of work commitments. It is not established whether the Appellant started attending the house church a week after the meal with his Armenian friends in April/May 2015 or in August 2015 as his evidence is not consistent. The Appellant describes however, that the members of the house church were given short notice by mobile phone of the house church meeting a few hours later and that they took steps to avoid the house church meetings being discovered by going on foot, or parking in another street. Nevertheless the two men who accused the Appellant of converting to Christianity said they had seen him at a house church in Zarkesh and that they asked him about visiting [R]. Given the measures taken by the Appellant to avoid detection it begs the question how the authorities could have so quickly (after seven or eight visits to a house church in different locations) could have identified him."

- 10.** Mr Neale submitted that the judge had failed to grapple with the evidence in the report "The Cost of Faith: Persecution of Christians, Protestants and Converts in Iran" published by the International Campaign for Human Rights in Iran (2013) at pages 57 and 58 of that report under the heading "Monitoring and Harassment" appears the following.

"Part and parcel of Iran's persecution of Protestants is a systematic practice of monitoring and harassment. While these government acts are not fully distinct from other rights violations, they represent the violations experienced by many Christians who might otherwise never face a jail cell or a courtroom.

Iran's Ministry of Intelligence and other government agencies, including the Ministry of Culture and Islamic Guidance, closely monitor the activities of recognized churches and house churches and their members. Information gathered by the Ministry of Intelligence then becomes the basis for arrests and prosecutions, as well as for the closures of churches.

Government monitoring can take both open and covert forms. Open monitoring usually involves Ministry of Intelligence officials forcing church leaders from both recognized churches and house churches to provide information about services, education programs, and members, including names and biographical data. Eleven Christians, all from house churches, reported to the Campaign that they had been summoned, often through their church leaders, in a few cases through their employers, to either the Ministry of Intelligence, police, or Revolutionary Courts for questioning and then released thereafter. Some Christians reported being summoned tens of times.

Christians told the Campaign that during these summons their interrogators would often try to convince them to return to Islam. Interrogators would also

insult and threaten them, repeatedly emphasizing they should stop their participation in the house church.”

- 11.** In my judgment, the judge erred in reaching her adverse conclusion in para 64 by failing to deal with this evidence which provided some support for the plausibility of his account that his involvement with a house church as he claimed could have brought him to the attention of the authorities who monitor not only official churches but house churches also.
- 12.** Secondly, Mr Neale contended that the judge had erred in concluding that a central aspect of the appellant’s claim was not, in effect, plausible. That is that he was approached by Protestant Armenian Christians (in particular “R”) who took him to a house church were engaged in proselytising and that the house church was holding services in Farsi. The judge dealt with this at paras 55-61 as follows:

“55. The Appellant’s claim to have been approached by three Armenians who introduced him to a Christian Armenian house church is not in accordance with the background information on Armenian Christians in Iran. The Country Information and Guidance Iran: Christians and Christian Converts report of December 2015 refers at Section 5 to Iran Focus reported in September 2014 that:

‘Iran’s traditional Christian communities, such as Orthodox Armenians and Assyrians, are protected under the Islamic Republic’s constitution as so-called People of the Book. Their daily lives are subject to various legal restrictions, however, their schools and church activities are closely watched, and they cannot lead most public institutions.’

56. The Country Information and Guidance report also states that in May 2015 the thematic official report of the Netherlands Ministry of Foreign Affairs states that:

‘the Iranian authorities generally do not interfere with the religious practices of Christians belonging to the “old” recognized affiliations. As long as these groups refrain from evangelizing, they are generally not targeted by the authorities solely on grounds of their faith. Christians of the “old churches” usually belong to the same ethnic group and are members of the Orthodox, Catholic and Protestant church. Armenian and Assyrian Christians live in closed social communities and do not engage in proselytizing activities’ (with reference being given to the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities).

57. The International Campaign for Human Rights in Iran 2013 at pages 1 – 76 of the Appellant Supplementary bundle refers to Armenians “who belong to an Orthodox church enjoy certain liberties within a framework that Iranian security forces have set: you speak in your own language, you preach to your own community and you don’t have anything to do with the Muslim, non Christian community”.

58. The Appellant seeks to contradict the background information by telling of an Armenian martyrs, including an Armenian Christian, Hayk Supyat who ran a house church; and his son Edward Supyat, who now lives in the United States. In submissions a reference was made to an Armenian

cleric who was persecuted for proselytising in 2012. I find that this evidence supports the Country Information and Guidance report rather than contradicts it and therefore seriously undermines the Appellant's credibility that he was introduced and converted to Christianity by three evangelising Armenians.

59. The Appellant also submitted that his Armenian Christian friends would have had no choice but to practice their evangelist faith through house churches if they were Protestant Armenians. The other participants at the house church were five Farsi speaking people and three Armenians.
60. I note that reference is made in the Appellant's Supplementary bundle, International Campaign for Human Rights in Iran 2013, that Iranian Protestants could be found by the late 2000s in nearly every ethnicity in the country including Persian, Armenian, Assyrian, Kurdish, Turkmen and Azari Turk. The Appellant said that his friends were Armenian Christian Protestants but he did not know which church they went to. He did state that his first house church meeting was in [R's] home because he could not take the Appellant to his church which suggests [R] was an Orthodox Armenian, not a Protestant Armenian.
61. In **SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082** it states that it was estimated that there were approximately 80,000-100,000 Orthodox Armenians in Iran and about 500 Armenian Catholics. There was no mention of Protestant Armenians whose faith requires them to evangelise or where they worship. At paragraph 26 of **SZ** it is clear that evangelising is not a practice in the Armenian Orthodox or the Roman Catholic Church. The weight of background evidence suggests that there are very few Protestant Armenians in Iran. I find that the Appellant fails to establish that his friends were Protestant Armenians in the light of the background evidence."

**13.** Mr Neale submitted that the judge had misread SZ and JM. He took me to the report of the case beginning at page E13 of the bundle before the judge. Mr Neale submitted that the judge appeared to only take into account paras 25 and 26 of the Tribunal's decision where evidence was set out concerning churches in Iran. In those paragraphs no reference is made to Protestant Armenian churches and, as a consequence, she had concluded that there were "very few Protestant Armenians in Iran". However, Mr Neale referred me to paras 27-28 where the existence of Protestant Armenian churches is identified in the expert evidence of Ms Enayat. At [27]-[28], the Tribunal set out the evidence as follows:

- "27. Ms Enayat said that however difficult it is to assess the current membership size of the ethnic Christian churches, it is even more difficult to assess the current membership size of the Protestant churches. She concluded that on the eve of the 1979 revolution there were (not counting expatriates) around 7,000, broken down as to approximately 2,000 Anglicans, 3,000 Presbyterians, 700 Pentecostals and an unknown, but very small, number of Plymouth Brethren, Seventh Day Adventists and Jehovah's Witnesses.
28. By the early 2000s she describes the figure as having declined precipitously by the early 2000s, with the Anglican Church congregation having fallen to between 60 and 80 and the Presbyterian Church (Injili) to 1,000 including the Armenian, Assyrian and Persian speaking branches. She concludes that the figure, in the early 2000s, would be a

total of about 3,000 to 3,500 people. Although that is about half the figure given by Human Rights Watch in 1997, she noted that her calculation does not tally with the figures given by Operation World in 2000. ...”

- 14.** Likewise, Mr Neale relied upon a passage in the “The Cost of Faith” report at page 20 of that report again identify the existence of Protestant Armenian churches:

“In the Protestant community, government-recognized churches are mostly comprised of Protestants of Armenian and Assyrian descent, or long-time (pre-1979) converts from Muslim backgrounds. After the 1979 Revolution, authorities allowed some government-recognized Protestant churches to remain open and hold services in Persian, but imposed restrictions on church attendance largely aimed at preventing the growth of Protestantism among Iranians. For example, they tried to require recognized churches to limit attendance to pre-existing church members, excluding recent converts and non-Christians, and refused to recognize any new Protestant church organisations.”

- 15.** Mr Neale submitted that the judge had failed to take this into account, despite her reference to other background material, in reasoning that she did not accept that R, whom the appellant claimed was an Armenian Protestant and had introduced him to a house church (therefore effectively proselytising) rather than taking him to his own church.
- 16.** In his submissions, Mr Diwnycz accepted that if the judge had failed to consider the evidence relating to the existence of Armenian Protestant churches and their evangelical nature, it would be difficult to sustain the judge’s adverse finding.
- 17.** In my judgment, Judge Coaster erred in law by failing to take this background evidence into account in reaching her adverse conclusion in para 61 on the core issue of whether the appellant’s account was to be believed that he had been approached by Protestant Armenian Christians and taken to a house church and, in effect, had been the subject of a proselytising by them.
- 18.** In support of his submission Mr Neale also sought to rely upon new material which he invited me to admit under rule 15(2A) of the Procedure Rules on an E & R basis (E & R v SSHD [2004] EWCA Civ 429) which established that a mistake of fact could amount to an error of law. The material re-enforced the [points made by Mr Neale on the material before the judge. In the result, it is unnecessary for me to decide whether the submission of new evidence would be proper on that basis, on which I have some doubts, because Mr Neale has made good his argument on this ground on the basis of the evidence that was before the judge.
- 19.** Thirdly, Mr Neale contended that the judge had acted unfairly in identifying an inconsistency in the appellant’s account at para 53 of her determination. This concerned an inconsistency in the dates of two events derived from the appellant’s evidence and the conversion of the dates

from the Iranian to the Gregorian calendar. In para 53 the judge stated that:

“In or about April/May 2015 three Armenian customers invited him to a meal. They disclosed that they were Armenian customers and the Appellant told them of the cross he had been given when he was fifteen. ... He was then asked if he would like to know more about Christianity and when he replied that he did, he was invited to a house church meeting by one of the three Armenian customers, [R]. The Appellant states that he started to feel different as a result of attending the church meetings in early June. However there is an inconsistency in the Appellant’s evidence he claims to have attended a house church meeting for the first time about a week after the meal and alternatively that [R] phoned him in about August 2015 to attend a house church meeting. Such an inconsistency undermines the Appellant’s credibility.

**20.** Mr Neale helpfully set out in paras 12 and 30 of the grounds the claimed inconsistency based upon conversion of the date given in the appellant’s evidence. His evidence was that R telephoned “at the beginning of Shahrivar 1394”. Mr Neale sets out that “Shahrivar 1394” began on 23 August 2015. The appellant’s evidence was that he started to feel different as a result of attending a house church on “17 Khordad 1394” which, when converted, is three months before “Shahrivar 1394”, i.e. in June.

**21.** Mr Neale submitted that that appears to be the derivation of the inconsistency in the timeline relied upon by the appellant. Mr Neale submitted that it is not clear how Judge Coaster arrived at the conversions from the Iranian to Gregorian calendar. He submitted that it was wrong in law for her to draw adverse conclusions without bringing the issue to the attention of the parties and he relied upon EG (post-hearing internet research) Nigeria [2008] UKAIT 00015. He submitted that had she done so the appellant would have had an opportunity to provide an explanation for the apparent discrepancy which was “self-evidently” a mistake.

**22.** As the AIT recognised in EG as set out in the head note:

“It is most unwise for a judge to conduct post-hearing research on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong.”

**23.** Here, it may be that the judge was entitled to take judicial notice of the conversion from the Iranian to Gregorian calendars. However, the self-evident inconsistency once that conversion was made had not been an issue raised by the Secretary of State in the refusal letter or at the hearing. The appellant was, as a consequence, effectively ‘taken by surprise’ on the inconsistency being relied upon by the judge. I accept Mr Neale’s submission that he was thereafter deprived of the opportunity to provide an explanation, if he wished, including the possibility that it was simply a mistake. In relying on the inconsistency, in my judgment, Judge Coaster erred in law for these reasons.

- 24.** Taking these three points together, I am satisfied that the judge materially erred in law in reaching her adverse credibility finding. Her decision cannot stand and is set aside.
- 25.** Although the grounds of appeal do not directly challenge her adverse finding in relation to whether the appellant had established that he had converted to Christianity in the UK that issue is, obviously, contingent upon proper findings being made about events in Iran prior to his arrival in the UK. For this reason, none of the judge's factual findings cannot stand and the appeal must be reheard *de novo*.

**Decision**

- 26.** The decision of the First-tier Tribunal involved the making of a material error of law. The decision is set aside.
- 27.** Having regard to the nature and extent of fact-finding required and para 7.2 of the Senior President's Practice Statement, it is appropriate to remit the appeal to the First-tier Tribunal and direct a rehearing of the appeal *de novo* before a judge other than Judge Coaster.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: 26 June 2017