



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11457/2016

THE IMMIGRATION ACTS

Heard at Newport  
On 7 September 2017

Decision & Reasons Promulgated  
On 11 October 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

TH  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimmons instructed by Migrant Legal Project  
For the Respondent: Mr I Richards, 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. She arrived in the United Kingdom on 31 May 2016 and claimed asylum. The basis of her claim was that she was a Christian convert

and, together with her husband, was at risk on return to Iran. On 4 October 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds under Art 8 of the ECHR.

### **The Appeal**

3. The appellant appealed to the First-tier Tribunal. In a determination sent on 6 April 2017, Judge Fowell dismissed the appellant's appeal on all grounds. He rejected the appellant's account that on 16 May 2016 a gathering of her church members was raided by the Iranian authorities and that they discovered documents relating to the appellant in her car which was parked near the house in which the gathering took place. As a result, the appellant is wanted by the Iranian authorities. The judge also rejected the appellant's account that she was a Christian convert.
4. The appellant sought permission to appeal to the Upper Tribunal on four grounds. First, the judge erred in law in finding that some aspects of the appellant's account were implausible. Secondly, the judge acted unfairly by taking a number of points against the appellant which had not been raised at the hearing and on which, therefore, she had not had an opportunity to comment or in respect of which she had not had the opportunity to adduce supporting evidence. Thirdly, the judge failed to take into account material evidence in reaching his findings. Fourthly, the judge erred in law in failing to give proper weight to the evidence of three witnesses from the appellant's church in the UK supporting her conversion to Christianity.
5. Permission to appeal was initially refused by the First-tier Tribunal. However, on 20 June 2017 the Upper Tribunal (UTJ Southern) granted the appellant permission to appeal on the second, third and fourth grounds. He refused permission in respect of the first ground.
6. On 17 July 2017, the Secretary of State filed a rule 24 notice seeking to uphold the judge's decision.

### **The Claim**

7. The appellant claims that she converted to Christianity in 2015/2016 when a friend, "M" supported her at a time when she was depressed. Through talking to M, listening to CDs about Jesus and reading the New Testament, the appellant became interested in Christianity. On Christmas Day 2015, M invited her to a house church meeting and the appellant decided to convert to Christianity. After that, she attended a house church every week and at Easter her husband came with her.
8. At Pentecost in 2015, there was to be a gathering of a number of house churches in the garden of a house outside Tehran. The location was secret and the plan was only to give the location an hour or two before the gathering. M told the appellant that she was going to the meeting early in order to help with preparations and so the appellant (and her husband) lent M their car. The appellant and her husband were collected by friends to travel to the gathering. On the way, however, another friend "S", who had also gone early with M to help organisation, telephoned the appellant to say that the police had come and arrested everybody. As a result, the appellant

and her husband decided that they could not go home and they took a taxi to another location four or five hours away where they stayed, paying for two nights' accommodation. After two days, the appellant contacted her family by telephone. Her father told her on the phone that he had been arrested and detained for a few hours the previous day. He had been told during his detention that the authorities had found documents concerning the appellant and her Christian faith in her car which had been parked near the house which had been raided. The appellant's father made arrangements for the appellant and her husband to leave Iran which they did, arriving in the UK on 31 May 2016.

### **The Judge's Decision**

9. Before Judge Fowell, both the appellant and her husband gave oral evidence. In addition, there was evidence from three witnesses connected with the appellant's church in the UK.
10. The substance of the judge's reasons for rejecting the appellant's account is set out at paras 36–58 of his decision.
11. At paras 36–38 the judge considered the appellant's knowledge of her claimed Christian faith, concluding that: "her level of knowledge gives only modest support to her account".
12. Then, at paras 39–48 the judge set out seven points relating to her account of the raid by the Iranian authorities on the gathering on 16 May 2016 as follows:
  - "39. Against that, in considering her account of fleeing Iran, the factors relied on by the Home Office, by their cumulative weight, appear to me strong, and in fact decisive. I will begin with the account of the raid itself.
  40. The first point raised is the unlikelihood of such a big gathering. I have been unable to find any country report supporting the view that such gatherings take place, although the possibility cannot be excluded. The Country Information and Guidance report from February 2017 quotes, at paragraph 5.5.3 a report of the Finnish Immigration Service which stated 'At most a dozen people convene in individual home churches in order to not attract the attention of the neighbourhood.' That seems to accord much better with the general background information about the risks run by attendees and the extent to which the authorities are able to monitor and penetrate these groups.
  41. Assuming it did take place, there is then a chain of circumstance relied on, none of which is impossible but which taken together seems extremely implausible.
  42. Firstly, they lent their car to [M] even though that left them without a car and reliant on a lift.
  43. Secondly, the authorities then raided the event before they arrived. There was no mention that they were running late, so presumably, having through intelligence means worked out the time and place of the meeting, they struck before the main congregation turned up.

44. Thirdly, [S] was not caught in this gathering. He had gone to do some shopping, a fact he presumably explained when he was calling to alert them, and returned to see police vehicles.
45. Fourthly, they had enough cash on them to leave immediately on a four or five hour taxi ride and pay for two nights' accommodation. Their choice of destination, in particular why they went so far if their purpose was simply to lie low for a couple of days, was not explained.
46. Fifthly, when they telephoned the appellant's parents on the second day after their arrival, they found out a good deal of fortuitous information:
  - (a) The police had been to the parents' house the previous day and arrested her father and taken him away.
  - (b) They had also raided the appellant's house and confiscated a bible and other property.
  - (c) They got their address from documents in their car.
47. Sixthly, there is the fact of this this obtaining of documents from the car, which was not really explained. Ms. Capel submitted that it was natural that the authorities would check registration numbers, but the appellant's account was that they actually entered the car by one means or another and found there documents showing who the owner was. This was presumably explained by the police to her father and relayed to her in their phone call. Again, this is not impossible by any means, but having rounded up the individuals involved it does not necessarily follow that they would search all adjacent cars. If the owners were different from those apprehended, it does not follow that the owners too were implicated.
48. Seventhly, the police also seem to have acted with remarkable speed on this occasion, not only tracing the appellant, but tracking down her father the day after these first arrests".

13. Then, at paras 49-54 the judge addressed a number of further points raising issues of "general plausibility" of the appellant's account and an inconsistency in the evidence of the appellant's husband as follows:

- "49. Some gaps also struck me from this account. There was little mention of what happened to the two friends who were in the car when the warning came through. They would have had the same pressing need to lie low for a couple of days. According to [the appellant's husband's] witness statement they went to a friend's house but he and the appellant wanted to go further, but this strikes me a rather superficial explanation. They were not mentioned again. No claim was made, for example, to have called them, or other members of the house church to find out what had gone on. The only people called were the appellant's parents.
50. If this was an invented account, it depends on placing the appellant's car at the scene of the raid. That in turn requires a plausible reason for them not to be in it, and hence that they were getting a lift with friends. The friends however have dropped out of the story when this purpose has been served.
51. Similarly, no real concern was expressed in the appellant's account, or that of her husband, over what happened to [S] or [M]. It was only in response to my last question that the appellant said that [M] was still in prison, and they too have dropped out of the story, but when this was learned or how was not explained.

52. These are all concerns about the general plausibility of the account. Not all of them were explored with the witnesses, although that is inevitable in such cases. Not everyone will agree about which aspects are plausible and which are not. But in one respect at least, there was a sharp inconsistency, as set out above in the section from paragraph 15 of [the appellant's husband's] statement. Although this was not a consistency issue led by the respondent, it is difficult to ignore. This passage says in clear terms that he gave an account in interview that he saw 'friends attending the church being arrested, before we went in so we fled.'
53. That is of course an entirely different account. Although he explained at the hearing that he was stating what [S] had told him, I cannot accept that. That was not the explanation which [the appellant's husband] gave in his witness statement, prepared with the help of his solicitors long after the apparent confusion arose. There, he put it down to stress; i.e. he did say this but he was confused. The explanation involving [S] has emerged in the week between that statement and the hearing.
54. More generally, on the appellant's account, they then simply left the country, presumably in just the clothes they stood up, with the cash they had on them, her father making all necessary arrangements. They did not attempt to return to get their things or say farewells. That is perhaps an indication of the risk they felt they were running, but it also contrasts with the apparently casual way in which first the appellant and then her husband became involved in Christianity. In [the appellant's husband's] statement, for example, he expressed no surprise or concern about his wife's process of conversion and was simply pleased that she was calmer and happier as a result. Her account was much the same. There was no sense of risk or fear until the final day".

14. At para 55, the judge also took into account that there were no supporting documents provided:

"55. A further aspect is that no supporting documents of any kind have been produced, although the appellant remains in contact with her parents and has been told by them that the police have returned three more times. Despite this there have been no warrants or summons issued".

15. The judge then went on to cite extracts from the *Country Information and Guidance, the Background Information Report*, July 2016, in relation to Iran at paras 12.4.1-12.4.4. At para 56 the judge, having done so, reached the following conclusion:

"56. The net result is that although the authorities do resort to arbitrary arrests to short-cut matters from time to time, a warrant or subpoena ought to be issued. I have been referred to extensive country information about the readiness of the police to take action against suspected converts, but from the point of view of the authorities these are genuine crimes, for which an appropriate procedure will have been established. In a case where the authorities have, as is claimed here, attempted to find the appellant at her parents' house and found her missing, they might be expected to have placed an advert in a newspaper. No documents of any sort appear to have been given to her father either, despite seizing him and taking him to the station. Again, it is not impossible that the appellant has been unlucky, and no proper process has been undergone, this lack of documentation is a further part of an extended chain of implausible events".

16. Finally, at paras 57-58, the judge dealt with the evidence from the three witnesses from her church in the UK:

- “57. Against this I have to weigh the evidence of the supporting witnesses from [.....] Church. In every case I have no doubt of their sincerity or integrity. I accept that they genuinely believe in the reality of the appellant’s conversion. They have even gone to the lengths of having interviews in which the person’s history is explo/red (*sic*). No information was given as to how these interviews were carried out, and whether the sorts of issues explored above were gone into. It is hard to imagine that they had, since they have caused me very considerable concern, which was not at all reflected in the evidence given. Understandably on such occasions, their focus is likely to be on the spiritual aspect, and how the person came to believe, rather than these practical and logistical. There will also be, as devout Christians, a wish to help and support someone in need, and not to turn them away or doubt them when they claim to be Christian too. I accept too that the appellant and her husband have been attending classes and services as claimed. It would be surprising if they did not. It would also be natural for the appellant to show her best side, to be diligent and to take an intelligent interest in the classes provided. It is not at all clear to me in these circumstances how any lack of real faith is to become apparent. Although, by way of example, [Mr S] said that he was well versed in the tricks and techniques of manipulation, he did not expand on what these were. He inferred that the appellant was a person of deep faith from the way she led her life, but that appears to boil down to her attendance at services and perhaps her general conduct. However blameless, many non-Christians may lead blameless lives.
58. I have weighed all these factors and taken into account, as stated above, the guidance in **SA (Iran)** about being a window into souls. In the absence of the concerns I have about the truthfulness of the appellant’s account of her flight from Iran, which may well not have struck her supporting witnesses at all, I should have found it quite plausible that she had made this religious conversion. But it is far less easy to accept an account as truthful if it has been granted onto an untruthful stem. That, in my view, is what has occurred on this occasion, and so I am not able to accept the appellant’s account. It follows that her claim to asylum, and other claims based on the risk of return, must be dismissed”.

### **The Submissions**

17. On behalf of the appellant, Ms Fitzsimmons relied upon grounds 2, 3 and 4 upon which permission had been granted. In support of those grounds, Ms Fitzsimmons relied upon the contemporary Record of Proceedings provided by the appellant’s (then) Counsel, Ms Capel and attached to her witness statement of 6 September 2017. Mr Richards, who represented the Secretary of State, accepted that Ms Capel’s record broadly corresponded with that of the Presenting Officer’s record in his file.
18. Dealing first with ground 2, Ms Fitzsimmons drew my attention to the ten points set out in para 19 of the grounds as follows:
- “i. That it was implausible that she would have lent her car to [M] (at [42]);
  - ii. That a gathering of this size was implausible on account of the risk it created (at [40]);
  - iii. That it was implausible that [S] would not have been arrested, notwithstanding the Appellant’s explanation that he had gone shopping for the event (at [44]);
  - iv. That it was implausible that the Iranian authorities raided the gathering before the full congregation arrived (at [43]);

- v. That it was implausible that the Appellant and her husband would have travelled 4-5 hours to Kelardasht if their intention was imply to 'lie low' (at [45]);
- vi. That she had provided inadequate detail about what happened to [E] and [F], who gave the Appellant and her husband a lift to the gathering (at [49]);
- vii. That her account of her father's telephone call was implausible (at [46])
- viii. That her account of the police being able to trace the Appellant and her father within 2 days of the event was implausible, notwithstanding her account that they obtained her personal information from the documents contained in her car, which was found on the private property at which the event was to take place (at [48]);
- ix. That she had showed 'n real concern' about what had happened to [S] or [M] (at [51]);
- x. The absence of documentation relating to (i) the Appellant being wanted by the authorities; and (ii) her father's detention was not an issue raised by the Respondent in the RFRL, hence the Appellant did not adduce evidence to address the matter. Nor, importantly, were any questions put to the Appellant by the Respondent or the FTTJ at the hearing".

19. In the course of her submissions, I raised with Ms Fitzsimmons which of the ten points made in para 19 in substance deprived the appellant of an opportunity to give additional evidence or present additional evidence to deal with the point. Ms Fitzsimmons accepted that only points (i), (v), (vii) and (ix) fell into that category. Ms Fitzsimmons continued to rely upon those points as ones upon which the appellant could have given, or produced, further evidence.
20. In response, Mr Richards pointed out that the appellant, and indeed her husband, had been cross-examined in relation to the events that they claimed occurred in Iran. He submitted that, although the cross-examination was not "aggressive", it was clear that submissions had been made as to the plausibility of aspects of the appellant's account as was clear from Ms Capel's record. Ms Capel had not raised any unfairness with the judge. Mr Richards submitted that, in effect, if matters had been put to the appellant, then she would have simply, no doubt, have confirmed that was what happened and that she was telling the truth. He submitted that there was no unfairness.
21. In addition, Ms Fitzsimmons relying upon point (x) and para 20 of the grounds, submitted that the judge had been wrong to take into account the absence of any supporting documentation (at [56]) given that he had accepted that the authorities did not always comply with requirements and conducted arbitrary arrests and detained individuals arbitrarily at para 56 of his determination. Ms Fitzsimmons relied on the *Country Information and Guidance* document (at paras 5.2.4, 6.2.1 and 6.2.3) as supporting the appellant's claim that arbitrary arrest and detention took place. Further, she relied upon a parliamentary document entitled "The Persecution of Christians in Iran" at C4 of the bundle, in particular at C15 which noted that:

"Each year, scores of Christians are detained for weeks or months without being formally charged without access to a lawyer, and without any opportunity to be brought before a judge. Due process is flagrantly violated in the case of most Christians".

22. A comment is then cited relating to an arrest where the individual's evidence was that no warrants were produced.
23. Ms Fitzsimmons submitted that the judge's inference in para 56 failed to take into account this evidence.
24. Mr Richards submitted that the judge had been entitled to take into account the absence of any supporting documents and, in relation to the arrest of the appellant's father, he was not a Christian and so the evidence concerning the arbitrary arrest and detention of Christians was not relevant.
25. In respect of ground 3, Ms Fitzsimmons submitted that the judge had failed to take into account all the material evidence in reaching his findings.
26. First, she submitted that, contrary to the judge's statement at para 40 of his determination, there was evidence that gatherings of the size claimed by the appellant did take place. Ms Fitzsimmons relied upon the parliamentary report (to which I have already referred) at page C11 where evidence is quoted that:

"we had 30-40 members in our house church but they have no pastor at the moment; they have been scattered".
27. In doubting, therefore, that a gathering of the size claimed by the appellant would occur, Ms Fitzsimmons submitted that the judge at para 40 had been wrong to state that there was no background evidence to support such a gathering occurring.
28. Secondly, Ms Fitzsimmons submitted that it was not implausible, as the judge found in para 47, that the police could have obtained documents relating to the appellant from her car. She submitted that the judge was wrong to conclude that the way in which the police obtained the documents from the car "was not really explained". Ms Fitzsimmons submitted that the appellant's evidence, in her witness statement, was that her father had told her over the phone that the police had obtained the documents from the car.
29. Thirdly, Ms Fitzsimmons submitted that it was not implausible that the police would track down the appellant's father. She relied upon the respondent's *Country of Information Report* dated February 2017 at paras 2.2.5, 7.1.1 and 7.1.2 as demonstrating that family members of Christian converts were targeted by the authorities.
30. Fourthly, she submitted that at para 51 the judge had been wrong to take into account adversely to the appellant that she had only expressed concern about the fate of her friend, M until she responded in the last question put to her by the judge that M was still in prison. Ms Fitzsimmons submitted that was not the appellant's evidence. In her interview, she had said that M was in prison and she had been told that by her father (see page 55 of 56 of the voice script transcript).
31. As regards ground 4, Ms Fitzsimmons adopted para 22 of the grounds which contend that the judge impermissibly speculated, in relation to the three supporting witnesses, when he stated at para 52 that as Christians they would no doubt wish to support and help someone such as the appellant. That, it is contended, ran counter



to their evidence that they had come to their view that the appellant was a genuine convert conscientiously and had previous experience.

32. In respect of this ground, Mr Richards submitted that the judge had not simply dismissed the evidence of the three witnesses on the basis that they were gullible or naïve. He had merely commented upon their noble motives and had given adequate reasons for not accepting that, despite their genuinely held views, the appellant was, in fact, a Christian convert.

### **Discussion**

33. I have set out at length the judge's reasons above. Before turning to Ms Fitzsimmons' specific submissions, I would make the following general observations. Whilst many of the judge's reasons are clear, it is not always readily apparent what weight, if any, the judge places upon a particular reason, comment or observation that he makes. So, for example, in para 40 whilst observing that the background material did not support a gathering of the size claimed by the appellant, and apparently taking that into account in assessing whether he accepted her account, he also observes that "the possibility cannot be excluded". Likewise, at para 47 when doubting the appellant's account that documents had been found in her car by the police, the judge comments that whilst this is "not impossible by any means ... it does not necessarily follow that they would search all adjacent cars". The latter was, of course, no part of the appellant's claim. So, if it was "not impossible" that her car had been searched it is not entirely obvious why, given the appellant's explanation that she had been told this is what had happened by her father, the judge treats this as an adverse point.
34. Turning now to Ms Fitzsimmons' specific submissions, I begin with ground 3. In that regard, I accept that there a number of flaws in the judge's decision.
35. First, there was evidence before him that gatherings of Christian converts of the size claimed by the appellant did take place in Iran (see page C11 of the bundle). The judge made no reference to that evidence in para 40 preferring, instead, to cite the *Country Information and Guidance Report* for February 2017 at para 5.5.3 referring to gatherings of "[a]t most a dozen people". The judge's observation that that evidence "seems to accord much better with the general background information", fails to take into account the evidence which did support the appellant's account. In addition, as I have already pointed out, it is not entirely clear why, in para 40, having concluded that the possibility of a gathering of that size "cannot be excluded", the judge then treats the claimed size of the gathering as an adverse point turning against the reliability of the appellant's account.
36. Secondly, in para 47, it was not correct for the judge to say that it was "not really explained" how the authorities had obtained the documents concerning the appellant. The appellant's evidence was clear that her father had told her that during his interrogation the police had said that the documents were found in the appellant's car. The appellant's car was, on her account, parked near to the house having been lent to, and taken there by, M.

37. Thirdly, in doubting the plausibility of the appellant's father being arrested, detained and interrogated, the judge makes no reference to the background evidence which, consistently with the appellant's account, shows that family members of Christian converts are in fact detained and interrogated.
38. Fourthly, the point made by the judge at para 51 that the appellant had expressed "no real concern" about what had happened to M or, indeed, S (who had telephoned to warn her of the authorities' raid), is perhaps an extremely weak point in doubting the plausibility of the appellant's account. But, as Ms Fitzsimmons submitted, the judge was wrong to assert that the appellant had only addressed the fact that M was in prison in her response to the judge's "last question" during her evidence. As Ms Fitzsimmons pointed out, that was the appellant's evidence given in her asylum interview.
39. Finally, despite the judge's reference to the *Country Information and Guidance* document at para 55 of his determination, in counting against the appellant the absence of a warrant or subpoena directed against her father, the judge did not grapple with the background evidence (which Ms Fitzsimmons relied upon and I set out earlier) which is consistent her account that it was plausible that her father would be arrested (as a family member) of a suspected Christian convert without the usual formalities being followed.
40. Ground 3 is, in my judgment, established.
41. In relation to ground 2, Ms Fitzsimmons accepted that a number of the points made in para 19(i)-(x) did not assist the appellant. However, she pointed out that a number of the points taken by the judge could have been matters upon which the appellant could have given evidence, for example why it was that she and her husband had lent M their car (19(i)); why she had her husband had travelled four-five hours to evade the authorities (19(v)); that her account that her father had given her "fortuitous information" in his phone call was implausible (para 19(vii)); and why she had shown "no real concern" as to what had happened to S or M (para 19(ix)).
42. Whilst it is not necessary for every point to be put to an appellant, particularly one who is legally represented, points that are not obvious but are ultimately taken against an appellant by a judge in a determination, raise the possibility that the appellant has been denied the opportunity to deal with matters considered to be adverse to her claim. In para 52 of his determination, having set out a number of matters which raise concerns about the appellant's "general plausibility", the judge noted that: "not all of them were explored with the witnesses, although that is inevitable in such cases". Although taken alone, I am not persuaded that the points raised in ground 2 would warrant setting aside the judge's decision, when taken with ground 3, I have very real concerns as to whether the judge's reasoning and approach to the evidence can properly sustain his adverse findings. The appellant was not given permission directly to challenge the judge's "implausibility" reasoning (Ground 1), although some aspects of that reasoning are effectively challenged in grounds 2 and 3. There are, for other reasons, flaws in his reasoning but it must lie at

the edge of sustainability that his reasons at paras 42–48 can properly support a finding that the appellant’s account is “extremely implausible” as the judge concludes in para 41.

43. In the result, however, for the reasons I have given, a combination of grounds 3 and 2 lead me to conclude that the judge materially erred in law in reaching his adverse findings.

44. I need say little more about ground 4 which, as UTJ Southern observed in granting permission, in itself may lack merit. But, as the UTJ Southern points out, the judge’s rejection of the supporting witnesses’ evidence in para 58, is, in part, tainted by his adverse finding in relation to her account of events in Iran. At para 58, the judge goes so far as to say that he would have

“found it quite plausible that she had made this religious conversion. But it is far less easy to accept an account as truthful if it has been grafted onto an untruthful stem”.

45. In the result, for the reasons I have given the judge materially erred in law and his adverse findings cannot stand.

### Decision

46. Consequently, the decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of a material error of law. That decision cannot stand and is set aside.

47. Having regard to the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President’s Practice Statements, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Fowell.

Signed



A Grubb  
Judge of the Upper Tribunal

11 October 2017