



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/00320/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 17 January 2018

**Decision & Reasons
Promulgated
On 08 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**AZ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford instructed by Elder Rahimi Solicitors London
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Iran born on 3 December 1984 who appealed against a decision of the respondent dated 11 February 2016 to refuse his asylum claim. The appellant had been successful in an earlier appeal but the decision was overturned by the Upper Tribunal in a decision dated 25 January 2017 on the basis that there had been insufficient engagement with country guidance.

2. The case again came before the First-tier Tribunal and in a decision promulgated on 18 July 2017 First-tier Tribunal Judge Goodman dismissed the appellant's appeal on all grounds.

Grounds of Appeal

3. The appellant appealed with permission on the following grounds:

In summary, the judge accepted that the appellant's conversion was genuine and that if he returned to Iran he was likely to seek out other Christians and participate in a house church. However it was argued that the findings, that the appellant would be discrete were materially wrong in fact and law, and that the Tribunal erred in finding that the appellant would not be at risk of persecution on return as a Christian convert in Tehran, were contrary to case law and the respondent's country information reports.

Rule 24 Response

4. It was submitted by the respondent that the findings of the judge were open to her and she properly took into account **HJ Iran** and that the appellant had been discreet in his faith in the United Kingdom. The respondent further relied on **EG and NG (Upper Tribunal Rule 17: withdrawal rule 24 scope) Ethiopia [2013] UKUT 143 (IAC)** and it was contended that the judge had failed to properly balance the adverse findings regarding the appellant's poor immigration history and failed asylum claims and did not properly explain the conclusion that she reached.

Error of Law Discussion

5. It was argued, in the Rule 24 response, that this was a case where **EG and NG** was authority for the proposition [paragraph 46 relied on] that the respondent could rely on a further ground on which an application should have been dismissed upon. The example given, at paragraph 46, was where entry clearance had been dismissed:

'The Entry Clearance Officer in reply may well want to argue not only that the decision that the husband did not meet the maintenance requirements was right but that the decision that he did meet the accommodation requirements was wrong. In short, without wanting to appeal the decision, the Entry Clearance Officer may want to rely on a ground that failed before the First-tier Tribunal'

However, the grounds the respondent purports to raise before the Upper Tribunal in this appeal are not analogous to the example given in **EG and NG**. The respondent's purported challenge to the judge's credibility findings go to the heart of the decision and, in effect, the respondent is seeking to create a right of appeal without seeking permission to appeal. **EG and NG** is clear that Rule 24 does not create a right of appeal to a party who has not asked for permission to appeal and it is not an alternative to seeking permission where permission is needed. It seems to

me that the respondent in the Rule 24 response was attempting to circumvent the requirement to seek permission to appeal. I am not satisfied therefore that the challenge to the judge's credibility findings was before me.

6. In any event, even if it were, Mr Tufan accepted that such a challenge was on shaky ground. The challenge was predicated on the judge purportedly failing to give adequate reasons. However, Mr Tufan conceded that the judge at paragraphs [51] onwards discussed the appellant's history, which the judge had set out in some considerable detail, and went on to consider the negative history including his asylum claims on false grounds, but gave adequate reasons for finding that he was a genuine convert, including that he seemed to have attended steadily, that his views and comments in the immigration interview, as to the nature of the Christian religion, were persuasive of conviction, that he sounded genuine and although he had exaggerated the level of his attendance he had attended and that his evidence was supported by a number of different church members and an elder and a church Deacon. It therefore cannot be properly said that the judge failed to give adequate reasons for the decision she reached. Although it may well be a differently constituted Tribunal may have reached a different conclusion, the judge's reasons are sustainable. Mr Tufan conceded that this was not a rationality challenge. Any challenge to the judge's credibility findings of the appellant is a genuine Christian convert is not made out.
7. However, I am satisfied that the Tribunal fell into error, having made that positive finding that the appellant is a genuine convert, in applying those findings of fact to the relevant material and country guidance. The evidence that the judge accepted was that the appellant is a genuine convert and attends the Iranian Christian Fellowship two to three times a month. **HJ Iran and HT (Cameroon) [2010] UKSC 31** provides as follows:
 8. "The approach to be followed by Tribunals.
 82. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the Tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the Tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.

If so, the Tribunal must go on to consider what the individual applicant would do if returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution then he has a well-founded fear of persecution-even if he could avoid the risk by living "discreetly".

If, on the other hand, the Tribunal concludes that the applicant would in fact live discreetly and so avoid persecution it must go on to ask itself why he would do so.

If the Tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g. not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for the reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay. If, on the other hand, the Tribunal concludes that a material reason for the applicant living discreetly on his return would be in fear of the persecution which would follow if he were to live openly as a gay man, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the grounds he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to right-his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.”

9. Although the Tribunal sought, at [59] to draw a distinction, which is not sustainable in my view, between someone who is gay and someone who is a Christian, in terms of the applicability of **HJ Iran**, it was incumbent on the Tribunal, having found that the appellant was a genuine convert, to consider whether Christians who practice openly in Iran would be at risk of persecution. Having made that assessment, if satisfied that those who practice openly would be at risk, the judge ought to have gone on to consider whether, as a matter of fact, the appellant would practice discreetly or openly and if so for what reason he would practice discreetly.
10. I also take into account that the jurisprudence (**SSC, SSH and HR v Secretary of State for the Home Department (illegal exit - failed asylum seekers) Iran CG [2016] UKUT 308; BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36** and the reported case of **AB and Others (internet activity - state of evidence Iran) [2015] UKUT 257**) indicates that failed asylum seekers are likely to be questioned about their activities in the UK and will be questioned on arrival regardless of whether they have a passport. It is settled law that an appellant should not be expected to lie or conceal a matter and there was no consideration by the judge as to what the risk might be for the appellant if he were asked about his activities in the UK and would have to truthfully confirm that he was a practising Christian. The evidence would indicate that he would be subject to further questioning and the accompanying risk of serious harm during that questioning.

11. Having accepted that the appellant is a genuine convert the judge went on to find, that the evidence of the appellant's evangelism is 'thin' and that 'except for evangelism the fear of persecution is not well founded'. However the judge failed to apply the country guidance before her in particular the respondent's own Country Policy and Information Note in relation to Christians and Christian Converts Iran February 2017.
12. In the country guidance case of **SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082** the Upper Tribunal found that conditions for Christian have not deteriorated sufficiently to necessitate a change to the guidance in **FS (Iran) CG [2004] UKIAT 00303**. However, for some converts to sacrament based churches, the conditions may be such that they could not reasonably be expected to return to Iran. In addition it was the respondent's view that those who have converted whilst abroad but do not actively seek to proselytise may be able to continue practising Christianity discreetly. Although Mr Tufan initially sought to rely on **AS (Iran) v SSHD [2017] EWCA 1539**, he accepted that this case was not on all fours with the appellant's case and did not assist the respondent.
13. It was the respondent's own guidance, at 3.1.4 of the Country Policy and Information Note on Christians, that "members of Evangelical and house churches, and those who actively seek to evangelise and engage in proselytising activities, are at real risk of persecution in Iran and a grant of asylum is likely to be appropriate". In light of the judge's own findings that the appellant would return and join a house church the subsequent finding that he would not be at risk is not rational or sustainable including in the context of the respondent's own guidance. In addition the judge found that the appellant as a member of a house church the appellant may be subject to detention if he speaks 'about his faith with any enthusiasm'. However he failed to provide any adequate reasoning as to why the appellant would not act in the way he has in the UK which has evidently included speaking about his faith with enthusiasm.
14. Given the finding that the appellant is a genuine convert, there was insufficient reasoning therefore as to why the appellant would choose to practice discreetly, when the evidence indicates that he has not done so in the UK, and if so why that would be the case. Although the judge found that the appellant had engaged in little or no evangelising activity in the UK, the judge had accepted that the appellant participates in the UK in an open weekly youth group of the church, which includes publicising those activities on Facebook. The judge also accepted that the appellant worships openly at the Iranian Christian Fellowship in the UK. Although the judge went on to state at [59] that 'there is no reason to think that he will manifest his Christian belief in Iran any differently to the way he manifest it here, that is, by occasional participation within a limited group of like-minded people' such a finding is not sustainable given that the judge had accepted the evidence of the appellant's open Christian practice in the UK. The fact that he has on occasions chosen not to attend worship but instead pray privately and has not undertaken a leadership role does not negate his continuing open practice of his religion at least 2 or 3 times a month.

15. The decision of the First-tier Tribunal contains an error of law. I preserve the findings of fact including that the appellant is a genuine Christian who is likely to continue to practice his faith on return to Iran.

Remaking the Decision - Risk on Return

16. As considered at paragraph 10 above, the evidence indicates that failed asylum seekers are likely to be questioned about what they have been doing in the UK on arrival, whether or not they have a passport and the appellant should not be expected to lie or to conceal a matter fundamental to his identity, in order to avoid harm. I am satisfied that if the appellant were to truthfully explain his conversion and ongoing regular worship at a Christian church over the past number of years, he would be subject to further questioning which carries with it a risk of serious harm (see **SSH and HR**, including paragraph 23).
17. Further and in the alternative, as a genuine Christian convert, since 2013, who practices his faith openly and who has participated in what would be considered proselytising activities in the UK, including with the youth group, I accept that the appellant if he were to continue such activities in the same manner in Iran, he would be at risk of persecution. The appellant has maintained that he 'could never be discreet in the practice of my faith' including on return. If he were to continue in the manner that he has done in the UK, which I am satisfied contains elements of proselytising, the background country information and country guidance confirms that the appellant would be at risk of persecution.
18. If on the other hand the appellant were to exercise a measure of discretion, I am satisfied to the lower standard, this would be in an effort to afford persecution and therefore applying the principles of **HJ Iran** the appellant is a refugee. The appellant is equally at real risk of treatment contrary to Article 3 ECHR for the same reason.

Decision

19. The decision of the First-tier Tribunal contains an error of law such that it cannot stand. I remake the decision allowing the appellant's appeal on asylum and human rights grounds.

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: 2 February 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee award application was sought or is made.

Signed

Date: 2 February 2018

Deputy Upper Tribunal Judge Hutchinson