



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

Appeal Number: PA/01726/2017

THE IMMIGRATION ACTS

Heard at Liverpool Justice Centre
On 21 December 2017

Decision & Reasons Promulgated
On 23 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**HE
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shwenk, Counsel instructed by Broudie Jackson and
Canter

For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction because the Appellant has made a protection claim.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Holt sitting at Manchester whereby his protection claim had been dismissed.
3. In a detailed and well set out decision the Judge dealt with the Appellant's claim that he had converted to Christianity before he had left his home country of Iran. The Judge concluded at paragraph 30 that she was not satisfied that the Appellant had converted to Christianity before he had left Iran. She also concluded that the coincidence of the House Church having been raided just as the Appellant was about to leave Iran was simply unbelievable. Having come to that conclusion, the Judge then went on to consider the Appellant's more recent activities and she noted that the Appellant demonstrated quite a good knowledge of the bible and Christian doctrine. She also said that the Appellant had been able to persuade a Reverend from a Baptist Church to attend before her to give supporting evidence. She therefore held that the weight of the evidence suggested that the Appellant was a genuine and willing convert to Christianity.
4. The Judge had considered various case law including Country Guidance. She also applied the Supreme Court's decision in **HJ (Iran) v Secretary of State for the Home Department** [2010] UKSC 31, [2011] 1 AC 596. She had specifically referred to paragraph 82 of the judgment of Lord Rodgers,

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 he were 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 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 a fear of the persecution which

would follow if he were to live openly as a gay man, then, 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 ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – 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.

5. Then the Judge concluded that in view of her earlier findings about the untruths in respect of the conversion to Christianity in Iran and about the “coincidence” in respect of the House Church in Iran that the Iranian authorities could really only ever find out about the Appellant’s conversion if he told them.
6. The Judge then said at paragraph 39 of her decision, *“I therefore ask myself would the appellant be likely to tell the authorities about his conversion or behave in such a way as to bring himself to their attention through his religious behaviour? Considering all the evidence about the appellant and his background, I find that there is ample evidence in the way that the appellant came to the United Kingdom and gave evidence about his background that I do not find to be remotely credible. I find this good evidence that he can and will dissemble when it suits him. I find he is confident and ‘streetwise’ in behaving so as to promote his own private agenda. He has been able to navigate French, Dutch and English culture without language skills and with precarious immigration status.”* The Judge also said that, *“...Linked to this is my noting that there is scant evidence of the appellant going out his way to ‘evangelise’ other people or unnecessarily drawing attention to himself in a way likely to attract the adverse attention of the Iranian regime”*.
7. At the hearing before me, Mr Shwenk amplified the grounds of appeal. He submitted that the Judge had accepted the core account about the Appellant’s conversion to Christianity. The reference to the Appellant having to dissemble was fraught with difficulty. The Judge had found that the Appellant could lie about his conversion to Christianity. The reason the Appellant would lie is because he was a Christian. That was fraught with danger. The reason that the Appellant would lie would be because the Appellant would fear adverse consequences. There was no reason to hear any more evidence and I should allow the appeal.
8. In his submissions Mr Bates said he agreed that the appeal concerned a narrow point, namely has **HJ (Iran)** been applied correctly? The Judge found that the Appellant was no longer loyal to Islam. The Judge rightly noted that she was forbidden from taking into account the Appellant’s motivation for the conversion to Christianity. At paragraph 38 the Judge

found that the Appellant could live openly. Perhaps paragraph 39 was not spelt out as clearly as it could have been, but the Judge was not saying that there was no fear of the authorities, but that Christianity is a difficult religion to follow in Iran. Harassment and dissembling is not persecution. There would be no unnecessary difficulties. That would not therefore amount to persecution. **HJ (Iran)** requires the fear to be because of persecution. If the Appellant chose to dissemble then it would be for non-persecutory reasons. The Appellant will not evangelise. He will be discreet and practice his religion in a private manner. As a consequence, no protection was required as the Appellant was unlikely to draw the attention of the authorities in Iran.

9. Despite the detailed and well-prepared decision by the Judge and despite Mr Bates' persuasive submissions, I conclude that there is a material error of law in the Judge's decision. I do so with some hesitation, but ultimately in my judgment the Judge was saying at paragraph 39 of her decision that the Appellant could lie about his conversion to Christianity. In my judgment, the only real reason that the Appellant would lie about his conversion would be to avoid persecution and ill treatment. It would not merely be to avoid harassment. Although the death penalty for apostasy is rarely carried out, there is no dispute that persecution of a serious nature does follow in apostasy cases in Iran.
10. I have some sympathy for the Judge because the claim was multi-faceted with various issues arising out of what was alleged to have occurred in Iran, in Europe and then here in the United Kingdom, but ultimately, I conclude that the expectation of the Appellant being able to lie his way out of difficulties (as he has apparently done so many times before) went against the case law. The Judge dealt with the facts and the background and the evidence in a very good way. There was specific reference to most of the relevant case law.
11. The material error of law though is in respect of the application of **HJ (Iran)**. Specific assistance as to the further interpretation of **HJ (Iran)** was provided by the Supreme Court in **RT (Zimbabwe) and others v Secretary of State for the Home Department** [2012] UKSC 38, [2013] 1 AC 152. Lord Dyson with whom all of the other Supreme Court Justices agreed said,

26 The HJ (Iran) principle applies to any person who *has* political beliefs and is obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them. Mr Swift accepted that such a person would have a "strong" case for Convention protection, but he stopped short of an unqualified acceptance of the point. In my view, there is no basis for such reticence. The joint judgment of Gummow and Hayne JJ in the Appellant S395/2002 case [2004] INLR 233 contains a passage under the heading "'Discretion' and 'being discreet'" which includes the following, at para 80:

“If an applicant holds political or religious beliefs that are not favoured in the country of nationality, the chance of adverse consequences befalling that applicant on return to that country would ordinarily increase if, on return, the applicant were to draw attention to the holding of the relevant belief. But it is no answer to a claim for protection as a refugee to say to an applicant that those adverse consequences could be avoided if the applicant were to hide the fact that he or she holds the beliefs in question. And to say to an applicant that he or she should be ‘discreet’ about such matters is simply to use gentler terms to convey the same meaning. The question to be considered in assessing whether the applicant's fear of persecution is well-founded is what may happen if the applicant returns to the country of nationality; it is not, could the applicant live in that country without attracting adverse consequences.”

27 I made much the same point in the *HJ (Iran) case* [2011] 1 AC 596 , para 110:

“If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention is intended to secure for him. The Convention would be failing in its purpose if it were to mean that a gay man does not have a well-founded fear of persecution because he would conceal the fact that he is a gay man *in order to avoid persecution* on return to his home country.”

28 In the context of religious belief, the United Nations High Commissioner for Refugees has said (in my view, rightly):

“ *Applying the same standard as for other Convention grounds* , religious belief, identity or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution”: *Guidelines on International Protection: Religion-Based Refugee Claims under article 1A(2) of the 1951 Convention and/or Protocol relating to the Status of Refugees* (2004), para 13 (emphasis added).

12. In my judgment it is not possible to uphold the Judge’s decision to dismiss the Appellant’s appeal. As indicated by the parties, the appeal was on a narrow point. Having found a material error of law, I remake the decision using the facts found by the Judge in respect of the genuine conversion to Christianity in this country. When I apply the decisions of the Supreme Court in both **HJ (Iran)** and in **RT (Zimbabwe)** I conclude that the only reason that the Appellant would dissemble about his conversion to Christianity would be to protect himself from persecutory treatment. That ill treatment could be from the regime in Iran or non-state actors acting with relative impunity. Although the Appellant would not evangelise, I do not see how he could live discreetly in view of the apparently accepted background material.

13. I therefore allow the appeal on asylum grounds.

Notice of Decision

The First-tier Tribunal Judge's decision contains a material error of law and is set aside.

I re-make the decision and I allow the appeal on asylum 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 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.

Signed. A Mahmood

23 12 2017

Deputy Upper Tribunal Judge Mahmood