



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10100/2018

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MA

(anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1981. He seeks international protection on the grounds that he faces a real risk of persecution in Iran for reasons of his religious belief – he is a Muslim who has converted to Christianity.
2. The Respondent refused protection on the 3rd August 2018 and on the 8th January 2019 the First-tier Tribunal (Judge CJ Wooley) dismissed the Appellant’s appeal. The Appellant now has permission to appeal to the Upper Tribunal. The hearing of the appeal was originally listed for the 7th June 2019 but was adjourned pending the country guidance case on Iranian Christians.

3. The country guidance decision is now available: PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC). The headnote, in material part reads:

3. *Decision makers should begin by determining whether the claimant has demonstrated that it is reasonably likely that he or she is a Christian. If that burden is discharged the following considerations apply:*

i) *A convert to Christianity seeking to openly practice that faith in Iran would face a real risk of persecution.*

ii) *If the claimant would in fact conceal his faith, decision-makers should consider why. If any part of the claimant's motivation is a fear of such persecution, the appeal should be allowed.*

iii) *If the claimant would choose to conceal his faith purely for other reasons (family pressure, social constraints, personal preference etc) then protection should be refused. The evidence demonstrates that private and solitary worship, within the confines of the home, is possible and would not in general entail a real risk of persecution.*

4. The First-tier Tribunal in the instant case finds, at its §37-40, that the Appellant has genuinely converted to the Christian faith and that he manifests that faith by engaging in collective worship in the United Kingdom. The Tribunal goes on at its §48-52 to find that as an 'ordinary' Christian the Appellant would not face a real risk of persecution in Iran and this underpins its finding at §53 that the Appellant concealed his faith in Iran out of "choice".

5. In my written directions of the 1st April 2020 (sent to parties on the 9th April 2020) I indicated that I had reviewed the decision and the grounds of appeal, and had come to this preliminary conclusion:

*"I find the ratio of the First-tier Tribunal decision to be *prima facie* inconsistent with the country guidance given in PS (Iran). As an 'ordinary' Christian the Appellant *would* be at risk of persecution if he tried to live openly in Iran and his 'decision' to live discreetly must be re-assessed in that context."*

6. My directions further indicated that in light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I reached the provisional view that it would in this case be appropriate to determine the following questions without a hearing:

(a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

(b) whether that decision should be set aside; and if so

(c) what would be the appropriate disposal of the appeal.

7. I sought the response of the parties to all of the above.
8. I am now in receipt of the Secretary of State for the Home Department's written submissions dated the 30th April 2020, and of the Appellant's undated response, received on the 7th May 2020. I am grateful for both. I note that neither party objects to the matters set out at paragraph 6 above being determined on the papers.

Error of Law

9. In reasoned and unchallenged findings between §37 and 40 of its decision the First-tier Tribunal finds that the Appellant has genuinely converted to Christianity. It accepts that in the United Kingdom he regularly attends church services and that he participates in other activities organised by members of the congregation such as volunteering at the food bank. Applying the country guidance in PS (Iran) to these facts I find that the question put at §3 of the headnote is answered in the affirmative.
10. That burden having been discharged the following considerations apply. A convert to Christianity seeking to openly practice that faith in Iran would face a real risk of persecution. If the Appellant sought to live in Iran as he does in the United Kingdom he would face a real risk of persecution.
11. The next question to be considered is whether in fact the Appellant would seek to conceal his faith if returned to Iran; if he would then it must be determined why. If any part of his motivation is a fear of persecution, applying the principles set down by the Supreme Court in HJ (Iran) (FC) v Secretary of State for the Home Department [2010] UKSC 31, he is a refugee.
12. In her written submissions (prepared by Senior Presenting Officer Mr I. Jarvis) the Secretary of State submits that the First-tier Tribunal did ask itself the appropriate HJ questions. It concluded that the Appellant had lived discreetly and had managed to buy a bible from a local shop. He had not indicated any particular need to evangelise. It is submitted that these findings of fact support the conclusion that the Appellant's discretion was simply a matter of choice.
13. I have considered the findings and approach of the First-tier Tribunal. I note that it appears to accept, at its §35-36, the Appellant's evidence that he and his wife had become interested in Christianity whilst living in Iran. They had allowed their garden to be used by a small group who would come together and read the bible. They did not come to the attention of the authorities for doing so and experienced no difficulties with the security services. This leads the First-tier Tribunal to conclude, at its §53, that "the appellant and his wife have always lived discreetly in Iran as a matter of choice and I find that they would continue to do so on return".

14. I find that in that conclusion at its §53 the First-tier Tribunal erred in law. I do so for the following reasons.
15. First, it is clear from the decision overall that the Tribunal's assessment of the Appellant's behaviour was underpinned by its conclusion that 'ordinary' Christians in Iran do not face a real risk of persecution. That conclusion has been shown to be incorrect by PS (Iran). Had the Tribunal made its assessment of the Appellant's behaviour against the background of the PS findings - that ordinary Christians are in fact subject to sustained persecution - it is likely that its decision would have been other than it is.
16. Second, in reaching that finding the First-tier Tribunal appears to have overlooked material evidence about why the Appellant and his wife behaved as they did. At its own §9 the Tribunal records the evidence:

"He knew at the time that conversion from Islam was punishable by death. His wife had been suffering from depression but got better the more they talked about Christianity. Two more couples were introduced to the gathering. He was extremely discreet in Iran...."

Nowhere in its analysis does the Tribunal consider whether the threat of the death penalty might have played a part in why the Appellant was "extremely discreet".

17. Similarly, the First-tier Tribunal does not consider any of this evidence from the Appellant's asylum interview:

"when I was in Iran I was extremely discreet and extremely careful that nothing goes wrong. In other words, the security was measured" [Q45]

[in respect of the individual who attended the Appellant's home to discuss Christianity]: "he checked if the place was safe enough for having conversation" [Q61]

[how he was advised by a priest]: "silence is better than bloodshed, better than being killed" [Q95]

The failure to take such pertinent evidence into account amounts to an error of law.

18. Third, the First-tier Tribunal does not appear to weigh in the balance its own positive findings about the way that the Appellant manifests his faith in this country. The finding that he is a regular churchgoer (who also participates in other Christian activity) would appear to be inconsistent with the finding that it is in fact his 'choice' to simply study the bible or access Christian content in the privacy of his own home.

19. I am satisfied for the foregoing reasons that the decision of the First-tier Tribunal, insofar as it relates to the Appellant's 'discretion' is flawed for error of law and must be set aside.

The Re-Made Decision

20. The Appellant is a Christian convert and as such would face a real risk of persecution for reasons of his religious belief should he choose to live 'openly' in Iran: PS (Iran) applied.

21. In the past he has been discreet about his faith, and was indeed advised by a priest to continue to do so, in order to preserve his own safety. Having had regard to all of the evidence I am satisfied that he did not do so because he is content to practice his faith discreetly, like the 'hidden believers' discussed at §121 of PS, but because, as he explained at his asylum interview and hearing, he was afraid for his life. I note that since he arrived in this country he has been participating in collective worship and has openly expressed his faith through attendance at church and other activities of his Christian community. There is nothing in the evidence before me to indicate that he would freely choose to alter his form of worship in the future. Rather all of the evidence points to a quite different conclusion: that if returned to Iran, he would hide his faith, and he would do so because he is afraid of the persecution that would follow if he didn't. Applying the fundamental principles of the refugee convention, as set out in HJ (Iran), he is a refugee.

Decisions

22. The decision of the First-tier Tribunal contains an error of law and it is set aside.

23. The appeal is allowed on protection grounds.



Upper Tribunal Judge Bruce
11th May 2020