



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

Appeal Numbers: AA/09381/2013  
AA/09422/2013

**THE IMMIGRATION ACTS**

**Heard: Birmingham hearing centre  
On 11 November 2014**

**Decision Promulgated  
On 12 December 2014**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**FS**

**SK**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr Vokes, instructed by Britannia Law Practice LLP

For the Respondent: Mr Smart, Senior Presenting Officer

**DECISION AND REASONS**

***Background***

1. An anonymity direction is made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of documents or information relating to the proceedings or any matter likely to lead members of the public to be able to identify the appellants or any members of their family.

2. The appellants are husband and wife. The second appellant's appeal, at least insofar as this decision is concerned, is accepted to be entirely dependent upon the outcome of first appellant's appeal. For the purposes of the hearing before the Upper Tribunal I shall refer to the first appellant as "the appellant".
3. The appellants are nationals of Iran and they arrived in the United Kingdom together on 30 June 2013. The first appellant claimed asylum on the same date. This application was refused by the respondent in a decision of 25 September 2013 (the second appellant also being named on the respondent's decision titled "Determination of Asylum Claim"). Both appellants were refused leave to enter the United Kingdom in decisions also dated the 25 September 2013, but not served until the 27 September 2013. The appellants appealed to the First-tier Tribunal against the latter decisions.
4. These appeals were heard by First-tier Tribunal Judge Sommerville and dismissed in a determination signed on 4 December 2013. Permission to appeal to the Upper Tribunal was granted by Designated First-tier Tribunal Judge Macdonald in a decision of 20 June 2014.

### ***Summary of Refugee Convention claim***

5. The appellant claims to be at real risk of suffering from persecutory treatment upon return to Iran for two reasons. He, first, asserts that he would be at risk upon return to Iran as a consequence of the anti-regime activities he undertook whilst he was living there. In this regard he states, in summary, that whilst living in Iran he and his friends disseminated anti-regime material via CD. On one occasion in 2009, when he was distributing CDs, he intervened when plain clothes officers were beating a 14 year old boy; this led to his arrest and detention - during the course of which he was stabbed by the authorities. He was subsequently arrested on numerous occasions by the authorities for, *inter alia*, demonstrating against them. During the course of his detentions he has been burnt with cigarettes and had his arms slashed with broken glass. In 2012 his shop and flat were raided and 300 anti-regime CDs, as well as his computer, were removed by the authorities. The police also searched his father's house - arresting his father. At this time the appellant fled the country with his wife and came to the United Kingdom.
6. As to the second limb of his claim, the appellant states that he has converted to Christianity since his arrival in the United Kingdom, having been baptised on 22 September 2013, and that as a consequence of either the fact of his conversion, or the fact he is now Christian, he will be at risk in Iran

### ***First-tier Tribunal's determination***

7. In paragraphs 29 to 38 of its determination the First-tier Tribunal analysed the first limb of the appellant's case and concluded as follows:

“38. I note that in his witness statement he says that he was detained twenty times. In his screening interview at 5.1 he was arrested ten times. In oral evidence before me he says he was arrested 'sixteen or seventeen times, maybe more'. Given the seriousness of being arrested in Iran it is reasonable to expect the appellant to have been more precise. This together with the foregoing leads me to find that this appellant is capable of inaccuracy and exaggeration.

39. Having considered the entirety of the evidence I find that the appellant has failed to satisfy me, even to the lower standard of proof, by way of cogent and corroborated

evidence that he is at real risk on return to Iran as a deserter and because he was engaged in anti-regime activities.”

8. As to the second limb of the appellant's claim, i.e. that he is a Christian convert; the First-tier Tribunal accepted the appellant's evidence in this regard, concluding in paragraph 41 that:

“[t]he appellant's adoption of the Christian faith was not a belated attempt to bolster a weak asylum claim”.

8. The Tribunal thereafter set out a brief summary of the decision of the Tribunal in SZ and JM (Christians FS confirmed) Iran CG [2008] UKAIT 0082 and quoted from the decision of the Supreme Court in HJ (Iran) UKSC 31. Having done so the Tribunal concluded:

“44. As to the second question I accept from a consideration of the country background material that those who have converted to Christianity and openly follow that religion will be liable to persecution in Iran.

45. As to the third question, the difficulty is that there is a dearth of evidence as to what he would do if returned to Iran. There is some brief and vague reference in paragraphs 20 to 23 to him evangelising in the UK but it is clear from his oral evidence and that of Pastor Jones that it amounted to no more than bringing one Iranian friend along to a service. The only reference as to what would happen in Iran is at paragraph 21 where he says ‘I wanted to share what I was feeling with many other people and I began to evangelise so people would see what I do. In Iran this would not be allowed and I regret that no one could teach me openly about Christianity and so now I have the chance to teach others’. At paragraph 23 he states ‘Christianity for me is a way of life and there is a serious violation of human rights, if I was to return to Iran, I will be killed and prosecuted for converting to Christianity’.

46. As to the fourth question, for the reasons given above in the context of the first reason for claiming asylum, I found that he exaggerates risk. I find that even having regard to the lower standard of proof the appellant has failed to satisfy me that he would openly practice Christianity on return to Iran and I conclude that he would not be at risk for that reason. In view of this finding it is not necessary for me to consider the remaining questions.”

### ***Decision on Error of law***

9. Having carefully considered the submissions of both Mr Smart and Mr Vokes I prefer Mr Vokes’ submissions and conclude that the First-tier Tribunal erred in respect of its conclusions on both limbs of the appellant's claim.

10. As to the First-tier Tribunal’s conclusion that the appellant would not be at risk as a consequence of having converted to Christianity, although the Tribunal finds that the appellant would not openly practice Christianity upon return to Iran, there are no findings as to why this is would be so.

11. This is significant given the terms of the decision of the Supreme Court in HJ Iran, and in particular the approach commended by Lord Rogers at paragraph 82 of that decision:

“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 discretely.

If, on the other hand, the Tribunal concludes that the applicant would in fact live discretely 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 ...

If, on the other hand, the Tribunal concludes that a material reason for the applicant living discretely on his return will 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 as a well-founded fear of persecution.”

12. In the instant case I observe that the Tribunal record in paragraph 41 of its determination that whilst the appellant was living in Iran he only attended church twice “*because the priest said it was too dangerous*”. This behaviour by the appellant supports the contention that he would not openly practice Christianity upon return to Iran because of the risk attached to doing so. This issue was a matter which the First-tier Tribunal was required to determine and in my conclusion it failed to do so. Such a failure is plainly capable of having an affect on the outcome of the appeal and, consequently, the First-tier Tribunal’s determination ought to be set aside for this reason alone.
13. In any event, in my conclusion the First-tier Tribunal also materially erred in law in its consideration of the first limb of the appellant’s claim. It is impossible to ascertain from paragraphs 29 to 38 of the determination, where this limb of the claim is considered, what if any of the appellant's evidence was accepted by the Tribunal. Whilst the First-tier Tribunal concluded that the appellant was capable of inaccuracy and exaggeration in his evidence, it did not state that as a consequence the whole of such evidence was rejected.
14. In particular, I agree with paragraph 7 of the appellant's grounds of application to the Upper Tribunal i.e. that the First-tier Tribunal did not identify whether it accepted or rejected the appellant's evidence that:
  - (a) he collected and disseminated anti-regime material;
  - (b) he was detained in 2009 and ill-treated;
  - (c) he was involved in anti-regime protests in 2010;
  - (d) he was detained in 2010;
  - (e) two of his friends were arrested in 2012;
  - (f) his father’s home had been searched and his father arrested.
15. These are all important features of the appellant's case and even if not all but some of these aspects of his claim were accepted, there would need to be a reasoned assessment as to whether such events led to there being an interest by the authorities in appellant, and whether that interest would put the appellant at real risk of suffering persecutory treatment upon his return.

16. Although the First-tier Tribunal concluded, on the basis of the evidence that it did accept, that the appellant would not be at risk – absent the appellant being able identify what evidence was accepted he is not able to bring proper challenge to such conclusion. The appellant is entitled to know what features of his case were accepted and which were rejected in order that he may bring challenge, if so advised, to the ultimate conclusion based on those findings.
17. In my conclusion this error is capable of affecting the outcome of the appeal; indeed I observe that at paragraph 46 of the determination the First-tier Tribunal relies on its findings made in relation to the first limb of the appellant’s claim as a matter relevant to the determination of the second limb.
18. For these reasons I set aside the determination of the First-tier Tribunal.
19. Both parties agreed that the appropriate course was to remit this matter back to the First-tier Tribunal for a further hearing - with the conclusion that the appellant is a genuine Christian convert to be preserved. Having considered paragraph 7 of the Senior President's Practice Directions of 2012, I agree that this is the appropriate course and I so direct.
20. For the sake of completeness I observe at this stage, in order that the First-tier Tribunal may properly case manage this matter, that the second appellant is said to have now made an independent asylum claim. Unfortunately, neither of the representatives were able to provide any further details as to the progression of this claim. It may be that in these circumstances that the First-tier Tribunal would think it appropriate to hold a Case Management Hearing prior to any substantive rehearing of this appeal. This, though, is entirely a matter for the First-tier Tribunal to determine.

Signed:



Upper Tribunal Judge O'Connor  
Date: 26 November 2014