



IAC-CH-AP-V1

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

Appeal Number: AA/05602/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 24<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 01<sup>st</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**H H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Smith, Counsel instructed on behalf of Parker Rhodes Hickmotts Solicitors

For the Respondent: Ms R Peterson, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a citizen of Iran, seeks permission to appeal against the decision of the First-tier Tribunal (Judge Upson) who, in a determination promulgated on 10<sup>th</sup> June 2015 dismissed her appeal against the decision of the Respondent taken on 10<sup>th</sup> May 2012.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269 as amended) I make an anonymity order as result of the medical evidence provided. Unless the Upper Tribunal or court directs

otherwise, no report of these proceedings shall directly or indirectly identify the applicant. For the avoidance of doubts, this order also applies to both the applicant and to the Respondent. The failure to comply with this order could lead to contempt of court proceedings.

3. The Appellant's history is as follows. The Appellant first entered the United Kingdom on 25<sup>th</sup> February 2011 in possession of a valid student visa. On 17<sup>th</sup> April 2012 she claimed asylum, having undertaken a screening interview on 17<sup>th</sup> April of that year and substantive interview on 26<sup>th</sup> April. Her application for asylum was considered by the Secretary of State but was refused in a letter dated 10<sup>th</sup> May 2012. The Appellant appealed that decision and as a result of that it came before the First-tier Tribunal (Judge Upson).
4. In his determination promulgated on 10<sup>th</sup> June 2015, he considered the basis of her claim for asylum, firstly, by rejecting her account of having been the subject of abuse at the hands of a family relative which had led to anti-regime material being discovered with an arrest warrant being issued. As to a second issue relating to her conversion to Christianity, he reached the conclusion on the evidence having heard from two witnesses in addition to the Appellant, that she had converted to Christianity and could be "properly described as a Christian" however in the determination at [56-57] the judge found that she was not a proselytising Christian and also that she would not be at risk on return to Iran by reason of her conversion to Christianity.
5. The Appellant applied to the First-tier Tribunal for permission to appeal and permission was granted by Upper Tribunal Judge Martin on 7<sup>th</sup> July 2015. The reasons for that were as follows:-

"It is arguable as asserted in the grounds that the judge erred in finding that the Appellant's claims are not credible with regard to sexual abuse on the basis of one discrepancy which the evidence indicates was not a discrepancy.

It is also arguable that the judge erred in having found the Appellant to have converted to Christianity, failing to take into account **HJ (Iran) [2010] UKSC 31.**"
6. The Respondent filed a Rule 24 notice on 22<sup>nd</sup> July 2015. In that response it was argued that the credibility finding at paragraph 49 was open to the judge and that whilst the judge accepted that she was a Christian he did not accept that she had been proselytising. It was further found that the judge considered the degree of risk associated with the Appellant and it was open for her to return to Iran.
7. The matter came before the Upper Tribunal and the Appellant was represented by Ms Smith of Counsel and the Secretary of State by Ms Peterson, Senior Presenting Officer. Ms Smith relied upon the written Grounds before the Tribunal. In respect of the judge's findings as to risk on return relating to her religion and conversion to Christianity, she submitted that the judge failed to have regard to material evidence and in

that respect made reference to the evidence of the Reverend and also the Appellant. In particular she made reference to page 15 (evidence of the Reverend ) who referred to her “having recently brought a friend along to the group as she shares her Christian faith with others”. She also made reference to the Appellant’s witness statement at paragraphs 29, 31 and 32, all of which related to her conduct and in particular at paragraph [29] she stated that she had brought an Iranian friend, Daniel to church. She made reference to the fact that as a result of that he was now attending a church and wanted to become a Christian. At [31] she made reference to conversations with her sister who was a devout Muslim but she was “trying to convince her to become a Christian”, but that she was very much against it. She also said at [31] “I will continue to talk to both of them about Christianity”. At [32] the Appellant gave evidence about what she would do upon return to Iran having converted to Christianity and speaking to others about her faith. In this context, she referred the Tribunal to the country guidance decision of **FS** at [161] as set out at paragraph 5 of the Grounds and therefore she submitted that the judge’s finding at [57] that she was in effect an “ordinary convert” was flawed.

8. In the alternative she also submitted the situation in Iran had worsened since 2004 when the decision of **FS** had been decided. She made reference to the evidence in the Appellant’s bundle highlighted in the key passage index relating to the decision of Christian converts in Iran as at today including the arrests of members of house churches and the abuse of those who had converted from Islam. There was also reference made to the Country Information Report provided on behalf of the Respondent at page 56 of the Appellant’s bundle which made reference to members of evangelical and house churches who actively seek to evangelise others and engage in proselytising activities are at real risk of persecution in Iran. Thus it was submitted that the judge erred in failing to make findings on the country evidence and by failing to take into account the worsening country situation in Iran.
9. Ms Peterson on behalf of the Secretary of State conceded that the judge had made an error of law and in particular that his assessment and analysis of risk on return to Iran was not complete in that it failed to take into account the principles set out in **HJ (Iran)** as to the Appellant’s conduct if she were to return to Iran. Thus she was in agreement with Ms Smith that the determination did disclose an error of law in the judge’s determination and as a result the decision relating to the asylum claim could not stand.
10. I am satisfied that the judge’s determination does disclose an error of law. It is plain from reading the determination that he accepted the Appellant was a convert to Christianity notwithstanding the late stage that it had been made in her claim at [55] and he reached the conclusion on the evidence and in particular following the evidence from two witnesses that she was properly described as a Christian. Whilst at [56] he made reference to “all of the evidence” before him pointing to the Appellant being “no more than a good member of the congregation of the church”, that did not

take into account the evidence highlighted by Ms Smith set out not only in the Appellant's evidence but also that of the Reverend and that it went beyond having brought a friend referred to in the determination as David, but is referred to as Daniel in the documents. In any event, as Ms Peterson accepts, there was no consideration of the principle set out in **HJ (Iran)** and her conduct upon return to Iran which is relevant to any risk. The evidence before the judge in the Appellant's statement at [32] made it plain that if she were returned she would carry on speaking to others about her faith. I also consider that Ms Smith is correct in her submission that at [57] the judge did not consider the most up-to-date information relating to the position of Christian converts in Iran. Consequently for those reasons the decision cannot stand.

11. I would observe that there was a second ground relied upon by Ms Smith in which it was submitted that the judge's rejection of her claim to have been a victim of sexual abuse because of an alleged discrepancy referred to by the judge at [49] was in fact not a discrepancy. Whilst it is not necessary for me to consider that matter any further, given that I have found an error of law in relation to Ground 1, for sake of completeness, it is plain to me that there was no discrepancy as Upper Tribunal Judge Martin stated when granting permission. The judge at paragraph [49] made reference to the Appellant's witness statement and also to her evidence in cross-examination. He recorded that in cross-examination the Appellant had said that "she and her sisters had been sexually abused. The abuse of her sisters did not involve intercourse". The judge made reference to this by stating that, "at no point did she say that the abuse of her sisters had involved rape", however the notes attached to the Grounds when read with paragraph 24 make it plain that it was the Appellant's case that her sister was raped later in February 2012 and that the answer that she had given was in response to a question about what had happened when she first came from the UK and therefore there was no discrepancy in that regard.
12. Both advocates agree that this appeal and the basis upon which it was set aside falls within the Practice Statement (as amended) at paragraph 7.2 in the light of the factual nature of the evidence to be given. Thus it was agreed by consent between the parties that the appropriate course was for the decision of the First-tier Tribunal to be set aside and for the appeal to be remitted to the First-tier Tribunal for there to be an assessment of all the evidence which will include the evidence of the Appellant and also the country materials. Whilst it is not the ordinary practice of the Tribunal to remit cases to the First-tier Tribunal, there are reasons why in this case such a course should be adopted, having given particular regard to the overriding objective and that there are issues of fact that are central to this appeal that require determination which have not been taken into account.
13. Therefore the decision of the First-tier Tribunal is set aside and the case is to be remitted to the First-tier Tribunal at Bradford or Manchester for a hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and

Enforcement Act and paragraph 7.2 of the Practice Statement of 10<sup>th</sup> February 2010 (as amended).

14. None of the findings of fact shall remain save for the finding at paragraph 52 of the determination in which the judge found that the Appellant was a Christian convert.

## **Decision**

The decision of the Immigration Judge is to be set aside and remitted to the First-tier Tribunal for hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act and Practice Statement of 10<sup>th</sup> February 2010 (as amended).

### **An anonymity direction is made.**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269 as amended) I make an anonymity order as a result of the medical evidence provided. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the applicant. For the avoidance of doubt, this order also applies to both the applicant and to the Respondent. The failure to comply with this order could lead to contempt of court proceedings.

Signed  
Upper Tribunal Judge Reeds

Date