



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07833/2013

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 18 September 2015

Decision Promulgated  
On 7 October 2015

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**IRAJ ALIZADEH-DALLAL**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Medley of Broudie Jackson & Cantor

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Brunnen promulgated on 10 January 2014 which dismissed the Appellant's appeal against a decision to remove him following a refusal of an application for asylum .

### Background

3. The Appellant was born on 19 September 1985 and is a national of Iran.
4. The Appellant claimed to be at risk because of his political opinions which resulted in his arrest and detention by the authorities in 2009 and the murder of his brother and the arrest of friends in 2013 with whom he was engaged in political activities after which he went into hiding. The Appellant also claimed to be at risk as a convert to Christianity.
5. On 23 June 2013 the Appellant applied for asylum.
6. On 31 July 2013 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
  - (a) There was a contradiction between the claim that the Appellant was required to report for a year after his release in 2009 or until the elections 3 years later.
  - (b) There are inconsistencies in the chronology given in relation to the Appellant's girlfriend.
  - (c) It is not credible that the Appellant would not immediately warn his girlfriend that she was at risk of arrest after their friend was arrested.
  - (d) It is not credible that his girlfriend would not tell him on whose behalf they were distributing leaflets.
  - (e) The Appellant's claim that he undertook the leaflet distributing in 2013 in response to the murder of his brother is inconsistent with the fact that his brother was allegedly murdered in 2009.
  - (f) As the Appellant's account was rejected and the credibility of his claim to have left Iran with the help of an agent is not accepted.
  - (g) The Appellant's risk on return was considered by reference to SB ( risk on return – illegal exit) Iran [2009] UKAIT 00053 and the Appellant was therefore not at risk on return.

### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Brunnen ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
  - (a) There was an inconsistency between his account in his screening interview as to when he was arrested in 2009 and what he said later.
  - (b) There was no mention in the asylum interview or the supplementary letter from his representatives that he suffered a broken thumb in detention and this was first mention in the medical report of Dr Lord.
  - (c) The Appellant claimed that his brother's death certificate stated that his cause of death was unknown whereas the certificate was in fact blank in relation to that.
  - (d) There were inconsistencies in relation to the date of his brother's death.

- (e) There were inconsistencies as to the date and circumstances of his father's death.
  - (f) He accepted that there may have been interpretation problems in relation to the period for which he reported and how long he had known his girlfriend.
  - (g) He found the Appellant's account of how he was recruited to distribute leaflets by his girlfriend highly unlikely.
  - (h) The Judge found the Appellant's delay in telling his girlfriend and his family that their mutual friend and leaflet distributor had been arrested was surprising.
  - (i) The injuries found by Dr Lord could all have been the result of a road traffic accident.
  - (j) He did not accept the authorities were interested in the Appellant or that he left the country illegally.
  - (k) He found that the Appellant had made a sincere conversion to Christianity.
  - (l) As an ordinary convert the Appellant was not at risk on return as he would only be at risk of questioning or brief detention and it was speculation to suggest that he would seek to proselytise.
  - (m) In relation to the argument that the Appellant would be at risk if he was an enforced return on a temporary travel document the Judge considered a decision to grant permission for judicial review of a decision by the First-tier and Upper Tribunal in a case where it was argued that the tribunal had failed to give adequate consideration to the argument that the applicant would be at risk returning without a valid Iranian passport. He found that there was no information as to the eventual outcome of the case . He found that since the Appellant had not established that he left Iran illegally then the records at the airport would show he left legally and even if he left illegally he would only be subject to a fine.
  - (n) He considered the argument that the Appellant would be at risk on return solely as a failed asylum seeker on the basis that he would be detained and conditions in Iran's prisons were harsh and life threatening. He found that this would result in all failed asylum seekers being at risk of Article 3 ill treatment and he did not accept that the COIS should be read as having such a far reaching effect as the report was made over 2 years ago and there was no evidence to show that any such practice has been adopted by the Iranian regime in relation to failed asylum seekers.
  - (o) The Judge found that the Appellant faced nothing more serious than a fine if found to have left illegally and to be a failed asylum seeker.
8. Grounds of appeal were lodged arguing that the Judge failed to properly apply the caselaw in relation to Christian converts, FS and others (Iran-Christian Converts) Iran CG [2004] UKIAT; failed to recognise that the Appellant would be treated as a de facto illegal exit as he would have a passport without a valid exit stamp and therefore he would be questioned about his activities in the United Kingdom and this would include his Christian conversion; the Judge failed to consider the conditions in detention centres as well as prisons and that these would breach Article 3; failed to have regard to the low level of returns to Iran and therefore he was not entitled to

draw conclusions about the lack of evidence of adverse treatment of failed asylum seekers.

9. An application for permission to appeal was initially refused on 31 January 2014 and when renewed it was refused again by Upper Tribunal Judge Allen on 7 March 2014. An application was made for Judicial Review and the by order of the Honourable Mr Justice Stewart the refusal of permission dated 7 March 2014 was quashed. The permission stated:

*“In the helpful Acknowledgement of Service, the IP makes reference to a number of documents and cases which post date the FTT decision. While the IP submits with some justification that the position should be the same, there is sufficient in the interpretation of the 2014 document and the pending case of AAF(Iran) for the case to be granted permission. The UT can then determine the case in the light of the updated guidance/caselaw.”*

10. The Appellant did not attend the appeal and Mr Medley explained that he had housing problems hence all correspondence was served care of his solicitors. He was content to proceed in the Appellant's absence as he had not anticipated him attending court.

11. At the hearing I heard submissions from Mr Medley on behalf of the Appellant that :

- (a) The case referred to in the permission of the Administrative Court was not imminently expected and Ms Johnstone agreed. They were both content for the matter to proceed and neither party requested an adjournment.
- (b) The OGN of 2014 referred to by the grant of permission was based on material that predated it.
- (c) He suggested that the decision in FS was inconsistent with HJ Iran as the Appellant could not be expected to reduce his risk by living discreetly.
- (d) In applying FS the Judge had failed to engage with the OGN of October 2012 which at 3.8.5 and 3.8.9/10 which reflected the deteriorating position of Iranian converts.
- (e) The Judge also accepted that even at the time of FS there was a risk of detention and the OGN that he had in front of him confirmed that detention conditions in Iran breached Article 3.
- (f) In relation to his assessment of the Appellant's risk on return as someone returning without a passport which would result in him being treated as someone who had left illegally because he did not have a valid passport with an exit stamp.
- (g) The Judge failed to properly assess his risk as someone who would be questioned about his asylum claim and the fact of his conversion would be disclosed. Any detention for questioning at the airport would breach Article 3 given the Judge also had in front of him documents about the routine use of torture in such questioning.

12. On behalf of the Respondent Ms Johnstone submitted that :

- (a) In relation to the issue of illegal exit there was a country guidance case pending.

- (b) Mr Medley appeared to suggest that the Appellant would be at risk because he would be returned without a valid travel document but that was not the case.
- (c) The Judge also made a finding at paragraph 512 that the database maintained by the authorities would show that the Appellant had left legally and this finding has not been challenged.
- (d) Since 2011 there was no evidence that it was not possible to return anyone to Iran without documents and there was nothing before the Judge to that effect.
- (e) There was no evidence in the OGN that the Appellant would be questioned about his religion on arrival at the airport . This amounts to a fresh submission.
- (f) She accepted that the policy had now changed in respect of Iranian converts but on the basis of the material before him the Judge made findings that were open to him.

13. In reply Mr Medley on behalf of the Appellant submitted\;

- (a) The Judge was also required to take into account BA Iran is a CG case and should be taken into account.
- (b) He suggested that 3.15.5 of the 2012 OGN should not be construed in the way Ms Johnstone suggests: he was not suggesting that the Appellant would be returned without a document but he would be without a valid passport with an exit visa. Even if the Appellant had a *laissez passez* that would lead to questions at the airport. To suggest that he might have a passport would be speculations.

### **Finding on Material Error**

- 14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
- 15. The Judge in this case made findings in respect of the Appellant's reasons for leaving Iran that have not been challenged: he did not find them credible. He went on to consider from paragraph 43 onwards the Appellant's claimed conversion to Christianity since he had been in the United Kingdom and accepted that it was genuine. The Judges assessment of the Appellant's risk on return as a convert to Christianity is challenged.
- 16. The Judge in assessing that risk followed the guidelines set out in FS a country guidance case from 2004. Dr Mynott who represented the Appellant before the first tier tribunal sought to argue that the case should no longer be followed on the basis that it was no longer possible to draw a distinction between ordinary converts and proselytisers in the light of HJ Iran and because the circumstances for Christians had deteriorated in Iran. The Judge addressed these arguments in detail at paragraphs 44-47.
- 17. The conclusion that he drew was that on the basis of the material before him that was largely contained in the OGN of October 2012 was that ordinary converts , a category in which he placed the Appellant , would be subject to a degree of disruption (paragraph 46) and that such disruption might include 'being questioned or briefly

detained.' The Judge had before him at page 46 of the Appellant's bundle the OGN of October 2012 which concluded in relation to prison conditions at 3.17.12-13 that :

"Conditions are harsh and life threatening in Iranian prisons; this for all categories of prisoners/detainees..."

As conditions in prison and detention facilities are harsh and potentially life threatening in Iran, they are likely to reach Article 3 threshold."

18. The failure of the First-tier Tribunal to address and determine whether the period of detention that it was acknowledged was a real risk for the Appellant as a convert to Christianity put him at risk on return constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different.
19. In relation to the argument that the Judge had failed to properly assess the risk on return as an enforced returnee on a temporary travel document I am satisfied that Mr Medleys arguments amounted to no more than an attempt by a different advocate to re argue issues that were full addressed by the Judge at paragraphs 48-55. The Judge took into account all of the relevant caselaw placed before him and although concluding that since he did not accept that the Appellant had established that he had left the country illegally he was entitled to assume that the authorities database would show that he had left legally the most that the Appellant would face on return even if he had left illegally would be a fine: but having found that the Appellant had not left illegally he did not in the Judges view face that risk.
20. The Judge addressed the argument that the Appellant faced a risk simply as a failed asylum seeker as this would potentially lead to a period of detention and gave cogent reasons at paragraph 53-54 for rejecting the conclusion that return as a failed asylum seeker inevitably led to detention. This was an conclusion based on the evidence that was before him that he was entitled to reach.
21. I therefore found that errors of law have been established in respect of the Appellant's risk on return of a period of detention as a convert to Christianity. I am satisfied that the Judges decision must be remade in respect of that issue only. While Ms Johnstone suggested that such a decision could be delayed pending the outcome of the outstanding CG case on illegal exit given that I have upheld that part of the decisions that addresses illegal exit I see no purpose in such delay.

#### Re making the decision

22. The Judges decision at paragraph 43 accepts that it is possible that the Appellant made a sincere conversion to Christianity.
23. Ms Johnstone conceded before me that the most recent COIS dated December 2014 Iran: Christians and Christian Converts concludes at 1.4;

*"The right of Muslims to change their religion is not recognised under Sharia law. The religious conversion of Muslims is illegal in Iran. Christians who have converted from Islam are at real risk of persecution in Iran, and a grant of asylum is likely to be appropriate."*

24. There was nothing placed before me or in the guidance to suggest therefore that the Appellant having made a sincere conversion to Christianity would not be at risk on return to Iran.

### **Conclusion**

25. There was an error on a point of law in the decision of the First-tier Tribunal with regard to the risk on return of detention as a convert to Christianity such that the decision is set aside
26. I remake the appeal.
27. I find that the Appellant has discharged the burden of proof on him to show that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the Appellant's removal would cause the UK to be in breach of its obligations under the Geneva Convention.
28. On the facts as established in this appeal, there are substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

### **Decision**

29. The appeal is allowed on asylum grounds.
30. The appeal is allowed on human rights grounds.
31. No anonymity direction is made

Signed

Date 5.10.2015

Deputy Upper Tribunal Judge Birrell