



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

Appeal Number: AA/05355/2015

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 23 February 2016**

**Determination issued  
On 8 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**[S B]**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Ms C Warren, instructed by Halliday Reeves Law Firm

For the Respondent: Mr J Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Iran, born on [ - ]. She has not asked for an anonymity order.
2. The respondent refused the appellant's asylum claim for reasons explained in a letter dated 12 March 2015. She filed an appeal to the First-tier Tribunal on 27 March 2015.
3. Neither the appellant's original claim nor her grounds of appeal to the FtT are based on a religious aspect. However, when the case came for

hearing before First-tier Tribunal Judge Kempton on 28 April 2015 the appellant added a claim based on her conversion from Islam to Christianity since she came to the UK.

4. In her determination, promulgated on 8 May 2015, Judge Kempton rejected the original claim on credibility grounds.
5. Judge Kempton dealt with the conversion to Christianity at paragraphs 28 to 33. At paragraph 31 she noted the case of *SZ and JM* (Christians – FS confirmed) Iran CG [2008] UKAIT 00082. At paragraph 32 she said it was not clear how the authorities would know of the appellant’s conversion, that there was no evidence that she could not live discreetly if she wished to continue her Christian faith, and that there is:

“... a clear option in Iran to live discreetly and to move to a more remote area away from Tehran, as the background evidence suggests that many people do in order to avoid persecution.”

At paragraph 33, she said:

“... the appellant] was not interested in Christianity before she left Iran. If she is now interested in Christianity, it is a new interest and not one which is deeply rooted. She has not expressed any desire to go out and publicly convert as many people as she can. She has not said that she cannot live without Christianity. There is no evidence of this being a burning desire in her whole being. I cannot see her having a desperate need to evangelise if she were returned to Iran ... Rather, I have the impression that Christianity has been helpful to her ... in the UK and primarily has prevented her from being socially isolated ... that is more important to her than the religion itself, however well meaning the Reverend and clergy of the church might have been in coming to court to give evidence on her behalf.”

6. The grounds of appeal to the Upper Tribunal firstly suggest that the judge went wrong regarding the standard of proof. Ms Warren, who was not the author of the grounds, did not press that point. There is no error to be detected along those lines in the determination.
7. The grounds next criticise the judge for failing to allow the appeal on the basis of the appellant’s particular social group as a woman in Iran. However, the adverse credibility findings left no scope for such an outcome.
8. The final point in the grounds, and the one substantially pursued by Ms Warren, is that the judge went wrong by basing her decision on whether Christian converts might be expected to tolerate living discreetly, which has not been the correct test since *HJ and HT* [2010] UKSC 31, [2010] Imm AR 4.
9. Mr Kingham conceded that there was an error of legal approach. He fought a valiant rearguard action along the lines that notwithstanding that error, the prior country guidance left scope to hold that converts living discreetly (by choice) would not be at risk of persecution; that the appellant had not shown that she would have any objection, or would wish

to choose anything other than living discreetly; and that the questions set out in *HJ and HT* could be answered only against the appellant.

10. I indicated that in my view the decision required to be set aside.
11. *HJ and HT* is not to the effect that all those who behave discreetly and avoid persecution are entitled to protection; everything depends on whether they modify their behaviour, and, if so, why.
12. If the judge's analysis had been restricted to the last two sentences of paragraph 33, that might arguably have amounted to a finding that on return the appellant would either have little interest in Christianity, or if she did, would pursue that interest with all discretion, because that is the extent of her interest and not because of modification of her behaviour to avoid persecution.
13. The judge's analysis, however, also went into the territory of what people might do specifically in order to avoid persecution, and into such observations as the appellant not having a burning desire to evangelise. That suggests that the bar was being set above what is required by *HJ and HT*. I did not think that the outcome can safely stand.
14. Parties agreed that in consequence of my finding, the case required a rehearing in the First-tier Tribunal.
15. Mr Kingham asked for the judge's conclusions on the original political asylum aspect of the claim and on the appellant's particular social group as a woman to be preserved. For the reasons briefly given above in relation to the relevant grounds of appeal, I agree. Ms Warren did not suggest that those findings fell to be set aside. The conclusions reached at paragraph 24, in particular, are preserved.
16. The future hearing of the case is to focus on the aspect of religious conversion - in particular, on how the appellant is likely to behave on return and why, and what consequences, if any, her conduct might attract. The stages or tests, to be adapted as necessary, are as set out in *HJ and HT* by Lord Hope at paragraph 35 and by Lord Roger at paragraph 82.
17. The determination of the First-tier Tribunal is **set aside**, apart from its conclusions on the credibility of claimed events in Iran and on those aspects of the case resolved at paragraph 24. None of the conclusions regarding religious conversion are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the First-tier Tribunal chosen to reconsider the case are not to include Judge Kempton.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman

29 February 2016