



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

Appeal Number: AA/07944/2014

THE IMMIGRATION ACTS

Heard at Stoke

**On 10 May 2016
Prepared 10 May 2016**

**Decision & Reasons
Promulgated
On 29 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR AKBAR RAFIEE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown

For the Respondent: Miss Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iran, appealed against the Secretary of State's decision, dated 23 September 2014, to make removal directions. A Reasons for Refusal Letter of 11 September 2014 having previously been

served. The appeal against the Secretary of State's decision came before First-tier Tribunal Judge Devlin (the judge). His decision [D] on 7 March 2015 dismissed the appeal on the Refugee Convention, Humanitarian Protection and Articles 2 and 3 ECHR grounds as well as with reference to Article 8 ECHR.

2. The grounds of appeal make no challenge to the decision made by the judge in relation to the Article 8 ECHR claim nor in relation to the claim to be in need of Humanitarian Protection.
3. The substance of the claim before the judge particularly related to whether or not the Appellant had converted to a branch of the Christian faith known as the Dorodians, an evangelical and proselytising faith, and if so what were the risks he faced on return to Iran. A somewhat confused element of the claim was whether or not this was a refugee sur place claim or the consequence, if the Appellant had converted, or the risks he was likely to face on return: Repeated in numerous paragraphs in the decision was that the judge had a range of documentary and oral evidence, the former coming from a Pastor Harding, and from a Mr Salem. The position was that Mr Salem was not an ordained minister of the Dorodian Church: although he plainly had experience and could speak a variety of matters. The judge did not regard Mr Salem position in the church as equivalent to an ordained minister in terms of giving weight to the assessment of whether the Appellant had genuinely converted and/or his assessment of the extent to which the Appellant had progressed towards a point where he could be baptised as a Christian convert. The matter therefore was, amongst others, referred to at the following paragraphs: [d] 242, 243-247, 266, 270-279 and 287 of the decision.
4. There were other references that are essentially in the same vein. Of itself that would have been an assessment the judge was entitled to make. The particular problem was, and I accept what Mr Brown, who appeared before the judge, says of the matter. Whilst there was a discussion early in the

hearing, before the hearing had really started, as to the standing of Mr Salem; whether or not he could be regarded as of equivalent authority to an ordained minister. It was said that the judge indicated that he did not see that the evidence of conversion strictly needed to come from a church minister. Accordingly Mr Brown he had no reason to seek an adjournment to call an ordained minister of the church. The significance of the status of Mr Salem simply was not at that stage disclosed as a basis on which the judge was subsequently to dismiss or diminish the evidence given by Mr Salem.

5. Miss Johnstone argued that as a matter of fact, the judge being entitled to reach the view he did, had a range of evidence not simply that from Mr Salem which would have entitled the judge to have similarly taken the view that the evidence had not established the Appellant was a genuine convert to Christianity.
6. Whilst that may in fact be a fair point, the repetitive nature of the judge's decision makes quite plain that it is the standing of Mr Salem which wholly diminished the weight that was given to what would have been preferred evidence from an ordained minister. It was not said that Mr Salem's evidence or its weight had been diminished by its presentation or cross-examination. Thus it was said there was procedural unfairness at the hearing which tainted the judge's assessment of the issue of risk on return.
7. It is clear from the decision [D 281 and 282 through to 288] that it is the rejection of the nature of the Appellant's conversion and its genuineness that forms the sole consideration of risk on return on that issue. I was satisfied that the judge did not raise with the parties, before the conclusion of the case, the significance he did attach to the status of Mr Salem and weight that could be given to his evidence. If it had been raised at the hearing then no-one has noted it and it seemed to me unlikely the judge did so. Accordingly I do not need to resolve the issue of

whether the judge made sufficient and appropriate findings in connection with whether or not there was authorisation leave to leave Iran or the risks now posed on return to Iran by the means of departure. There was procedural unfairness, an error of law, in the judge not raising the issue or giving the parties any notice of his approach to the assessment of evidence.

8. I find the Original Tribunal's decision cannot stand and the matter will have to be remade in the First-tier Tribunal. No findings of fact to stand.

Directions

- (1) Relist in Manchester.
 - (2) Time estimate: three hours.
 - (3) Not before First-tier Tribunal Judge Devlin.
 - (4) Further documents relating to the issues, including any update on the case law relevant to the issues of return or return as a failed asylum seeker from the United Kingdom, to be provided.
 - (5) A skeleton argument addressing the issues of risk on return to be provided by both parties.
 - (6) Any updated country information to be provided.
 - (7) Such additional documentation as required to be provided to be served not later than ten working days before the matter is remade.
9. No anonymity direction is made.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation caused by the file being misplaced.