Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09561/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 14 March 2016	**On 4 April 2016**

Before

Upper Tribunal Judge Southern

Between

[S T]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Masons, of Broudie Jckson Canter, solicitors
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Iran, has been granted permission to appeal against the decision of First-tier Tribunal Judge Walters who dismissed his appeal against the immigration decision that accompanied refusal of his asylum and human rights claim. The position now is an unusual one. It is common ground and agreed between the parties that

the decision of the judge to dismiss the appeal cannot stand, but for different reasons, and so there is a discussion to be had as to the appropriate disposal of the appeal to the Upper Tribunal.

2. The appellant's claim is based upon his account of having converted to Christianity in Iran and being baptised as a Christian, as a result of which his home was raided by the authorities as they sought to detain him for apostasy. He was not at home but was informed of the raid by neighbours. With the assistance of an agent he left Iran, crossing into Turkey on a donkey, and then flew to the United Kingdom, claiming asylum on arrival at Heathrow airport. Since his arrival in the United Kingdom the appellant has attended regularly at a Christian church and the Judge received oral evidence from two ministers of that church, both of whom said they were confident of the genuineness of his faith. They confirmed also that he has been "reaffirmed in his baptism" and has become "a regular member of their church community".

3. In dismissing the appeal the Judge did not accept to be true any part of the appellant's account of his experiences in Iran. There is no challenge to that finding. And nor could there be, as the judge has given clear and legally sufficient reasons for arriving at that finding of fact. The appeal to the Upper Tribunal is pursued on the basis that the appellant is at risk of return because of his illegal exit from Iran and because, regardless of the findings of the judge in respect of events in Iran, the evidence now clearly established that the appellant has become a practice Christian in the United Kingdom.

4. The judge did not accept to be true any part of the appellant's account of his experiences in Iran. The respondent's position is that it is less clear what the judge made of his evidence concerning his activities since his arrival in the United Kingdom. On the other hand, on behalf of the appellant, Ms Mason submits that it is clear from the decision of the judge that he did accept that the appellant is now a practicing Christian. In her submission, on the basis of that finding of fact, the appeal should have been allowed. Although Mr McVeety did not dissent from that view, this is something I address further below.

5. In granting permission to appeal. Deputy Upper Tribunal Judge Chamberlain said this:

> "It is arguable that the judge has failed to consider properly the respondent's own country guidance and the relevant case law, in particular in relation to illegal exit from Iran, given that he accepted that the appellant's passport is with his parents in Iran, and therefore that the appellant left Iran without his passport. It is also arguable that he failed properly to consider the respondent's country guidance in relation to ordinary Christian activities, when considering the risk of future persecution."

6. In the response to the grant of permission to appeal, made by the respondent pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent said:

> "In relation to the appellant's sur place activities and illegal exit from Iran, it is accepted that the IJ has not adequately considered risk on return to Iran in the light of the respondent's country guidance policy and as such this element of the grounds are not opposed."

7. The respondent's own country guidance policy is to be found in a document published in December 2014: "Country Information and Guidance- Iran: Christians and Christian Converts".

8. The first question to be addressed, therefore, is whether, as Ms Mason submits, there can be drawn from the determination a clear and unambiguous finding or acceptance that the appellant is now a practicing Christian or whether, as Mr McVeety submits, the judge made no finding of fact at all, but simply considered the issue of risk on return, albeit erroneously, on the *assumption* that the appellant was a Christian Convert, whether that be in fact the case or not.

9. I am satisfied, so that I am entirely sure, that Ms Mason is correct to say that the judge has made a finding of fact that the appellant is now actively practicing Christian. I reach that firm conclusion for the following reasons.

10. Having address the appellant's evidence concerning events on Iran, the judge said, at paragraph 114:

> "In conclusion, I did not find the Appellant's evidence as to the events that he says occurred in Iran to be credible. I did not believe his evidence about his conversion to Christianity there."

From which it can be seen that this is a rejection only of the claim to have converted to Christianity while still in Iran.

11. Addressing next the appellant's evidence of his church activities in the United Kingdom, the judge said at paragraph 117:

> "As I have disbelieved the Appellant's account of events in Iran, I do not find that it is reasonably likely that he will be considered as a person who wishes to overthrow the regime based on his activities at the Parish of St. Thomas' and St Lukes in Ashton-in-Makerfield…"

However that was not because the judge was making any adverse finding in respect of the appellant's association with the church but because, although the judge accepted that the appellant's photograph appeared on the parish's social media publications and he had met the Bishop of Liverpool:

> "… I did not accept that the Iranians would know anything about it."

12. Further, at paragraph 121 of his decision, the judge said this:

> "I have considered the issue of risk on return on the basis that the appellant's conversion to Christianity is genuine and took place once he had joined St. Thomas' and St Luke's Church."

Although one view may be that here the judge is testing his assessment of risk on return by taking the appellant's claim of his presently held religious beliefs and activity at its highest, nowhere in the decision is to be found anything indicating a finding by the judge to the contrary, which is in stark contrast to his clear and unambiguous rejection of the conversion said to have taken place in Iran. I am reinforced in that conclusion by what the judge said at paragraph 126 if his decision:

> "I therefore do not find that there is a real risk that the appellant will be identified on return as being an apostate by reason of his conversion to Christianity. Considering his character and general circumstances, I did not find it reasonably likely that he will proselytise on behalf of any Christian church, nor wear a visible crucifix."

That was not said, therefore, because his religious conversion was being doubted or rejected but because of the way in which the judge believed the appellant would conduct himself. Indeed, the judge had accepted earlier, at paragraph 122, that: "…It may well be that on return the appellant seeks to join another Christian church…", although not an evangelical one, seen as a threat to the regime.

13. Finally, at paragraph 129 the judge said:

> "Having considered all these matters, and in particular the findings I have made as to the personality, character and background of the appellant, I do not find that there is a real risk to him if returned by reason of his conversion to Christianity."

14. This leaves us in a somewhat complicated position. Subject to any further argument suggesting the contrary, I do not accept that the effect of the Home Office Country Information and Guidance concerning Christians and Christian Converts published in December 2014 is that any Iranian citizen, regardless of his profile before leaving Iran or the nature of his religious beliefs and practices within the United Kingdom and regardless of the way in which it is considered he will conduct himself on return to Iran, is necessarily in need of international protection if he becomes a Christian after his arrival in the United Kingdom. On the other hand, the country guidance in place is now of some vintage and needs to be considered in the light of the country evidence subsequently available and in the light of clear findings of fact relating to the individual concerned. The respondent concedes that the appellant's claim must be further examined in respect of the illegal exit issue. If it were to succeed

on that basis alone then there may be no need to look further at the other aspects of his claim. If it does not, though, then although the fact that the appellant left Iran without his passport may not prevent his return, that may be relevant to the consequence of his conversion, given the enhanced risk of coming to attention on return.

15. For these reasons it is clear that further consideration of these matters will be required before thus appeal can be finally determined. Therefore, the appeal to the upper Tribunal is allowed to the extent that the decision of the judge to dismiss the appeal is set aside. The appeal will be remitted to the First-tier Tribunal to be determined afresh. The starting point for that reconsideration of the appellant's claim will be that the following findings are preserved:

    a. The appellant's account of events in Iran before his departure is rejected as untrue, save that he left Iran irregularly, without presenting a passport at an appropriate or official point of departure from the country;
    b. It is to be accepted that as at the date of this decision the appellant has established that he is a practicing Christian.

Summary of Decision:

16. The First-tier Tribunal made an error of law and the decision to dismiss the appeal is set aside.

17. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

18. Signed 

Date: 16 March 2016

Upper Tribunal Judge Southern