Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03371/2017

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20 March 2018	**On 22 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

A K
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Brown instructed by Broudie Jackson & Canter.
For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Herwald promulgated on 20 May 2017 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

Background

2. The appellant is a national of Iran born on 21 September 1983. The appellant claimed a fear on return to Iran as a convert to Christianity. The Judge notes in [9(a)] of the determination "*It was common ground that the Appellant is Iranian and was a Muslim. The dispute before me was whether or not he had genuinely converted to Christianity and, had he done so, then it was acknowledged by both sides that an asylum claim should succeed".*

3. The Judge having considered the evidence from both sides with the required degree of anxious scrutiny sets out his findings from [13] of the decision under challenge. The Judge was not persuaded the appellant was telling the truth for the reasons set out in the decision. It was not found the appellant is a credible witness in relation to his earlier account although the Judge noted at [13(l)] that the appellant's claim now had a different cast to it as the claim was now predicated to a great extent not only on his rejection of Islam but his adoption of Christianity.

4. The Judge noted there was no suggestion from the appellant that he had ever followed up an interest in Christianity in Iran and expresses concern about the evidence of the churchwarden who attended to support the appellant's case. It was found aspects of the appellant's evidence could not be reconciled with the evidence of the churchwarden which was found to damage the appellant's credibility. The Judge had no reason to doubt the genuineness of the churchwarden, who is a churchgoer who happens to be a churchwarden, and who attended as there is no incumbent at this Church of England parish.

5. At [13(q)] the Judge writes when referring to the evidence of the churchwarden, Mrs Jones:

> "I was anxious to know whether or not Mrs Jones spoke Farsi. She confirmed that she does not. Any discussion with people like the Appellant must be done through interpreters. Sadly, the church does not engage professional interpreters, but simply uses other Iranians (almost exclusively asylum seekers) to interpret. Furthermore, she made clear that there was no evidence that the Appellant had an interest in Christianity, until he was placed in a house in Wigan, with another asylum seeker who was anxious to prove that he too had converted to Christianity. If the witness made such an error in respect of the Appellants having attended church in Iran, then I can place little reliance, I am afraid, on the way in which his acceptance of Christianity may have been interpreted to her, by other asylum seekers who, for all I know, are particularly eager to help the Appellant, and to help their own cases."

6. When considering the evidence given by the appellant in response to questions regarding Christianity the Judge noted further discrepancies. At [13(u)] the Judge writes:

> "I made a very careful note of the Appellants evidence. He was asked on a number of occasions what Christianity meant to him, and why he had chosen to subscribe to it. It is, I find, noteworthy, that nowhere in his evidence did he mention God. Nowhere in his evidence did he mention Jesus."

7. The Judge accepts that whilst individual matters may not be determinative the evidence was not sufficient to establish the appellant was a genuine convert to Christianity.

8. The Judge, accordingly, found that the appellant had not discharged the burden of proof upon him to show he had a well-founded fear of persecution for a Convention reason and rejected his asylum claim. The Judge found there were no substantial grounds for believing that if the appellant returned home he would face a real risk of suffering serious harm; resulting in a rejection of the claim for Humanitarian Protection.

9. The Judge found the claims pursuant to articles 2 and 3 ECHR fell in light of the protection findings above.

10. The Judge found the appellant unable to succeed pursuant to article 8 ECHR.

11. The appellant sought permission to appeal which was initially refused by a Designated Judge of the First-tier Tribunal on 20 June 2017. The application was renewed to the Upper Tribunal where permission was granted on 9 August 2017 in the following terms:

    1. The grounds of appeal assert the comments of the Judge in the First-tier indicated that he showed bias or prejudice against the appellant: they are supported by a statement from the supporting witness.

    2. Given the allegation made I will grant permission to appeal.

12. The application is opposed by the Secretary of State in her Rule 24 response.

Error of law

13. The appellant relied upon to grounds of challenge being:

    (a) Ground 1 - that the Judge erred in his conduct of the hearing, and

(b) Ground 2 - that the Judge erred in failing to properly assess the risk to the appellant on return at the airport.

Ground 1

14. The Court of Appeal have recently reminded us that it should be obvious that in their handling of cases judges need to be scrupulous not merely to refrain from conduct which will result in their recusal but to avoid creating a situation in which concerns about their impartiality can reasonably be raised at all. They need to bear in mind not just the hypothetical fair-minded observer who has ascertained all the relevant facts but actual litigants who cannot be blamed for lacking objectivity and who will only know the relevant facts if the judge behaves in a transparent way – see *Bubbles & Wine Ltd v Lusha [2018] EWCA Civ 468* at paragraph 23, a judgment handed down on 14 March 2018.

15. The Court of Appeal in the above civil case also set out a reminder of the law on apparent bias in the following terms:

> "**The law on apparent bias**
>
> 17. The legal test for apparent bias is very well established. Mr Faure reminded us of the famous statements of Lord Hewart CJ in *R v Sussex Justices ex parte McCarthy* [1924] 1 KB 256 at 259 that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" and that "[n]othing is to be done which creates even a suspicion that there has been an improper interference with the course of justice." These principles remain as salutary and important as ever, but the way in which they are to be applied has been made more precise by the modern authorities. These establish that the test for apparent bias involves a two stage process. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased: see *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357, paras 102-103. Bias means a prejudice against one party or its case for reasons unconnected with the legal or factual merits of the case: see *Flaherty v National Greyhound Racing Club Ltd* [2005] EWCA Civ 1117, para 28; *Secretary of State for the Home Department v AF (No2)* [2008] EWCA Civ 117; [2008] 1 WLR 2528, para 53.
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> 18. Further points distilled from the case law by Sir Terence Etherton in *Resolution Chemicals Ltd v H Lundbeck A/S*

[2013] EWCA Civ 1515; [2014] 1 WLR 1943, at para 35, are the following:

(1) The fair-minded and informed observer is not unduly sensitive or suspicious, but neither is he or she complacent: *Lawal v Northern Spirit Ltd* [2003] UKHL 35; [2003] ICR 856, para 14 (Lord Steyn).

(2) The facts and context are critical, with each case turning on "an intense focus on the essential facts of the case": *Helow v Secretary of State for the Home Department* [2008] UKHL 62; [2008] 1 WLR 2416, para 2 (Lord Hope).

(3) If the test of apparent bias is satisfied, the judge is automatically disqualified from hearing the case and considerations of inconvenience, cost and delay are irrelevant: *Man O' War Station Ltd v Auckland City Council (formerly Waiheke County Council)* [2002] UKPC 28, para 11 (Lord Steyn).

19. In *Helow v Secretary of State for the Home Department* Lord Hope observed that the fair-minded and informed observer is not to be confused with the person raising the complaint of apparent bias and that the test ensures that there is this measure of detachment: [2008] UKHL 62; [2008] 1 WLR 2416, para 2; and see also *Almazeedi v Penner* [2018] UKPC 3, para 20. In the *Resolution Chemicals* case Sir Terence Etherton also pointed out that, if the legal test is not satisfied, then the objection to the judge must fail, even if that leaves the applicant dissatisfied and bearing a sense that justice will not or may not be done: [2013] EWCA Civ 1515; [2014] 1 WLR 1943, para 40."

16. Of critical importance when an allegation of bias is made against a judge is that all the relevant facts are ascertained.

17. Following the hearing before the First-tier Tribunal an email was sent by the churchwarden to a Caroline Clark, the solicitor with conduct of the appeal, written in the following terms:

'Dear Caroline,

I was present at the beginning of the hearing for AK as we came into the hearing room to hear the judge's opening remarks.

Judge Herwald began his comments with an audible aside, in the presence of both Council, the appellant and the interpreter.

I noted down his remarks: "this is a conversion case, isn't it? Ah well, all Iranians are either gay, Christians or adulterers."

He then went on to look at specific aspects of the case, at which point I left to sit elsewhere, as I was to appear later as a witness.

He could have been facetious, but to me this seemed a totally inappropriate comment to make in court, in the presence of a terrified appellant. I don't know if the interpreter translated it for him.

I have made a note of the judge's questions to me, one of which Ms Khan challenged at the time - he asked me about a particular Islamic theological point. This is not my area of specialism. He also asked me to sum up baptism in one word - something which I thought was quite aggressive in its tone. It transpired that the appellant had used one particular word, and I didn't use the same one. There are many words that can be used to describe the process, origins and theology of baptism.

I made a note of the summing up, including the HOPO's comments which did not accurately reflect what I had said.

I hope that this information is of use. If you need anything further please let me know.

Hilary

Mrs N H Jones

Church Warden

Parish of Birch with Fallowfield'

This resulted in the application for permission to appeal.

18. The Resident Judge of the Upper Tribunal wrote to the Judge on 17 January 2018 requesting a response to the grounds of appeal and email from Mrs Jones in accordance with established practice where an allegation of this nature is made. The Judge responded resulting in a memorandum been sent to the parties, dated 26 January 2018, in the following terms:

'1. By way of a letter dated 17 January 2018, First-tier Tribunal Judge Herwald was invited to comment on the grounds of appeal and email from Ms Jones. He has done so in the following terms:

"...

2. In opening, may I please point out that I have been serving as a tribunal chairman/judge since 1999, and have never before faced any sort allegation of bias, apparent or otherwise. Thus I take the allegations very seriously, but reject them.

3. To the extent that comment from me is appropriate I respond as follows – Ms Jones has I fear not heard in full my discussions with both advocates in open court at the outset of the hearing, to establish the issues I must resolve. There were no "asides" as she asserts. Firstly the Appellant and interpreter were present and I'd already established that they understood each other. Secondly, having read the papers in detail I wished to check that the Appellant was relying only on his claimed conversion and not other potential avenues revealed in his interview, e.g. persecution on political grounds. I also establish at that time that the Appellant did not seek to rely on Art 8.

4. It seems possible that Ms Jones misheard and/or misunderstood the conversation I had with the representatives at the outset of the hearing, in order to clarify the issues in the appeal.

5. In any event, it is simply incorrect to suggest that I said that "all Iranians are either gay, Christians or adulterers" as asserted in the Grounds.

6. I turn now to the allegation that somehow the question about baptism to the witness was "aggressive". The witness writes that "he asked me to sum up baptism in one word - something which I thought was quite aggressive in its tone". If she's suggesting that my tone was aggressive I reject that in terms. My notes do not suggest that I was aggressive and indeed I believe the witness was treated with the respect she deserved. If she means that being asked to sum up baptism in one word was of its nature somehow aggressive then I similarly reject that. In the context of the hearing and having heard the Appellant it was not an inappropriate question in my view.

…"

2. The matter will now be listed for hearing.'

19. The appeal was listed for hearing before a Deputy Judge of the Upper Tribunal, Mr V L Mandalia, at Liverpool on 18 December 2017. On that occasion Ms Khan who represented the appellant at the First-tier Tribunal attended. An adjournment was sought as Mrs Jones was unable to attend the hearing as a result of an injury to her left arm that prevented her driving from Manchester to Liverpool on the day.

20. Deputy Upper Tribunal Judge Mandalia, in his record of proceedings, refers to the adjournment request and makes the following entries in relation to the submissions of the Presenting Officer, Mr Bates, and Ms Khan:

> 'Mr Bates
>
> - The observ has come as a surprise.
> - The allegation is made by the witness herself
> - The Presenting Officers post hearing minutes do not make reference to any comment made by the Judge.
>
> Ms Khan
>
> - The remark was an "off-the-cuff" remark made by the Judge at the outset of the hearing.
> - Did not raise it in correspondence in or at the hearing
> - Did not record the comment in my notebook
> - The Judge is known to make remarks such as this.'

21. There is no further witness statement from Ms Khan who did not attend the hearing before me either.

22. Mr Brown submitted the Judge's comments denied a fair opportunity for the appellant and the witness and that the Judge 'set up an atmosphere that prevented the witness been able to give her evidence'. It was accepted the appellant and Mrs Jones cannot communicate as they do not share a common language and it was therefore not known how the witness was able to assess the appellant as being "terrified". Mr Brown submitted 'a bystander must be satisfied the appellant is able to give evidence in an atmosphere that is fair and that in light of the Judges comment a bystander is likely to go away feeling the appellant and witness would not been treated in a way that was unfair which creates the danger of the integrity of the procedure being impacted'. When asked whether there was any evidence of the appellant or witness being denied the opportunity give their evidence Mr Brown confirmed he was not aware of any or the way in which the appellant and witness were not treated fairly at the hearing.

23. Mr Brown accepted that no application had been made by Ms Khan to the Judge for him to recuse himself at any time during the proceedings and no objection had been raised on the day to the Judge continuing to deal with the appeal. There was also no evidence that submissions were made at the hearing by Ms Khan in relation to an issue of fairness or the Judge's comments and/or conduct.

24. The email from Mrs Jones is the first indication/confirmation of the conversation that occurred with the Judge although Mr Brown submitted that Mrs Jones mentioned immediately after the hearing to Ms Khan her concerns which led to the email being sent to the appellant's solicitors.

25. Mr Brown confirmed, when asked, that no witness statement had been prepared by or received from Ms Khan although she had accepted orally to Deputy Judge Mandalia that the words referred to in the email were said.

26. Mr Brown sought to rely on the decision of the Upper Tribunal in *Elay [2016] UKUT 508* and specifically the head note in which it was recorded "Justice must not only be done but must manifestly be seen to be done".

27. Mr Brown submitted the comments might possibly have an impact upon the sensitivity of others and that the witness should never have been in a position to hear such words. It was submitted the hearing created an atmosphere of unfair comment and he questioned whether the comments were capable of creating an inference of bias.

28. Mr Brown submitted the comments could not be taken in isolation as it was necessary to consider what the witness said about the manner of her questioning. The Judge's questions related to the taghiegh, referred to in the decision under challenge at [13(x)], and the baptism.

29. In response to a question from the bench Mr Brown accepted that the manner of questioning did not fall outside what may be seen as a robust approach adopted by the Judge. As such, no arguable bias is made out or inappropriate conduct in the manner of the questioning. It has been said elsewhere that Judges are not social workers and are entitled to take a firm line with case management and ascertaining the facts, through questions or otherwise. Whilst those not familiar with litigious proceedings may think such approach at times aggressive, this is a subjective judgment in this case which has not been objectively made out. No arguable unfairness such as bullying of the witness has been made out and it is clear the witness had the protection of Ms Khan when the questions were considered to be outside her scope of expertise or required a fuller answer. It has not been made out the witness was unable to provide a relevant answer following such intervention.

30. Mr Brown accepted that if the finding of this Tribunal is that the comments did not create apparent bias and that the case was fair, then the appellant could not succeed on this ground.

31. Mr Bates, in his response, observed that the Home Office representative made no note of any adverse or other comment, such as that alleged, and that although he had been able to speak to the Presenting Officer; due to the passage of time he had no recollection of any such comments.

32. Mr Bates submitted there is no record of Ms Khan raising any issues at the hearing and in response to a question by Deputy Judge Mandalia Ms Khan confirmed that she had not recorded the same but did recall that something similar to that recorded in the email had been said although did not make any application to the Judge for him to recuse himself.

33. Mr Bates submitted the issue had not been taken on the day and the appellant had not raise the issue himself, only the witness Mrs Jones.

34. Mr Bates submitted this indicated that the comments were not perceived as amounting to bias at the hearing as they had not been raised by Ms Khan.

35. Having considered the evidence and submissions made I find as follows: The Judge denies making the comments recorded by Mrs Jones who, it was noted, was also taking a record of what was said during the proceedings before the Upper Tribunal today. Although the Home Office Presenting Officer made no record of any such comment on the day, and nor did Ms Khan, Ms Khan did advise the Deputy Judge that something similar to that wording had been used; but also commented upon the fact the Judge was known to make remarks such as this.

36. Whilst it may be wholly inappropriate for a Judge to make a specific comment during the course of a hearing, or at any other time in his or her professional capacity, making comment per se does not automatically show that the required test of bias is satisfied. Stupidity or lack of forethought is not the same as bias.

37. Whilst Mrs Jones may have taken a particular view of what she heard the Judge say it is not the view of this single witness that is the determinative issue. The Judge also notes that the wording recorded by Mrs Jones has been taken out of context and, even if said, would have formed part of a larger discussion with the advocates. No transcript of the hearing is available as First-tier IAC proceedings in Manchester are not recorded at this time. This is important for had the text of the discussion as a whole been made available it may have shed light on the purpose of the discussion and any view an informed bystander hearing the same may have formed.

38. It is also relevant to observe that the alleged comment made by the Judge was made in open court with both advocates, the appellant, and an interpreter present. It is also the case that having heard the comments allegedly made the Presenting Officer did not consider they warranted minuting and Ms Khan made no note of the same in her counsel's notebook and did not consider it appropriate to make any submissions on the point or to seek the Judge's recusal. This is strongly indicative of the fact that neither advocate thought the comments gave rise to any risk of bias or any procedural irregularity that prevented the Judge from hearing the case. The fact the observations were made in open court in the presence of both advocates strengthens the argument that no fair-minded observer would have drawn any inference that the Judge would decide the case other than impartially and on the basis of his assessment of the merits.

39. Although there appears to be a material uncertainty about relevant facts, as the Judge does not accept the alleged comments were made in isolation (if at all) as recorded by Mrs Jones, I have looked at Mr Brown's submissions from the perspective of taking the appellant's case at its highest. Those comments must, however, be taken in context in that it is unlikely this Judge would have come into open court and made the comment recorded by Mrs Jones in isolation. The Judge in his response refers to the nature of prehearing discussions with the advocates to identify relevant issues which is in accordance with good judge craft.

40. The next point is that the Judge was not expressing a preliminary view about the strength or weakness of the appellant's case although if he had done so no criticism could reasonably have been made of him if such comments were made in open court. The alleged comment, at its highest, is more by way of a general observation relating to the grounds for claiming international protection relied upon by Iranian asylum seekers. In this respect, it was noted by a Designated Judge of the First-tier Tribunal in refusing permission on 20 June 2017 that:

> "The grounds have no merit. The Judge's alleged remarks on their face were a reference to the categories of asylum claim most frequently seen in the First-tier Tribunal and to that extent were accurate. The Appellant was represented yet, there was no application to the Judge to recuse himself then and there as would have been expected had bias been genuinely feared. No complaint is made in the grounds about the substantive conduct of the hearing. Weight was a matter for the experienced judge, who gave detailed and secure reasons for his adverse credibility findings, having analysed the evidence meticulously. The Judge took a broad approach and applied demonstrable anxious scrutiny, notwithstanding

> the unpromising nature of much of the evidence. Risk on return was irrelevant given that the judge found squarely against the Appellant on the conversion issue. The grounds fail to identify any arguable material error of law".

41. The expression of the views allegedly stated by the Judge could only be thought to indicate bias if they are stated in terms which suggest that the Judge had already reached a final decision before hearing all the evidence and arguments. This is not made out to be the case in this appeal. The Judge clearly examined the evidence with the required degree of anxious scrutiny and has made factual findings supported by adequate reasoning, based upon that evidence.

42. A very important factor to consider is that reflected on a number of occasions above, that following the alleged statement by the Judge Ms Khan made no submissions to the Judge about the future conduct of the case and whether it was appropriate for the Judge to continue to hear the appeal. It appears from her observations to Deputy Judge Mandalia that Ms Khan's view was that the comments were typical of those made by this judge but did not warrant an application for him to recuse himself as they did not indicate actual or inferred bias.

43. Notwithstanding Mrs Jones personal reaction to the comments that she heard I am satisfied that a fair-minded and informed observer, being appraised of all the relevant facts and issues being considered in the appeal, would not conclude that the conduct of the judge in this case, as concerning as it may have been to Mrs Jones, indicated a real possibility that the Judge was bias. I therefore find that the appellant fails to make out any arguable legal error on Ground 1 and I dismiss that aspect of the appeal.

Ground 2

44. Ground 2 relates to an assertion by the appellant that the Judge failed to properly assess the risk to the appellant on return at the airport.

45. The appellant suggests that his claim to have attended church regularly in the United Kingdom was supported by the evidence of Mrs Jones. The appellant claimed he will be at risk because he is a genuine Christian convert but had argued in the alternative that he will be returned to Iran on a lassiez passer travel document and as such will face questioning on return. The appellant referred to the evidence of the country expert in *SHH and HR (legal exit: failed asylum seeker) CG [2016] UKUT 308* where it was made clear that an undocumented person would face the same sort of treatment as someone who left illegally and that a person who returns to Iran on a laissez passer will be

questioned. The tribunal in that case did not find that a failed asylum seeker who had left Iran illegally will be subject on return to a period of detention or questioning such there was a real risk of article 3 ill treatment as the evidence showed no more than they will be questioned and that if there are any particular concerns arising from the previous activities either in Iran or in the United Kingdom they will be at risk of further questioning, detention and potential ill-treatment. Such treatment would depend on their individual case for if they cooperated and accepted they left Iran illegally and claimed asylum abroad there will be no reason for ill-treatment, and questioning would be for a fairly brief period. It was found by the Tribunal that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport.

46. It was submitted on the appellant's behalf that the appellant is undocumented and will face questioning and that the Judge failed to consider whether all these factors, undocumented and church attendance, taken together was sufficient to place the appellant at risk of persecution at the airport.

47. In relation to this aspect the Judge records at 9(n) of the decision under challenge:

> "Finally, Ms Khan asserted that if the Appellant were to arrive back in Iran with a laisser-passer, he may face questioning on his return to determine his profile (see the recent decision of **Rs SSH and HR (Iran)** etc). He may therefore be perceived as an apostate on return if he said he had been to church in this country."

48. The Judge makes a specific finding in relation to this aspect at [13(x)] where it is written:

> "In making this decision, I have accorded anxious scrutiny, among other things, to paragraph 24 of the decision in **SA** (referred to above), kindly brought to my attention once again by Ms Khan. Ms Khan asserted that the appeal must succeed, if the Appellant felt constrained to tell the authorities in Iran that he had attended church here. I'm not persuaded that this would place the Appellant at risk, bearing in mind the well-known concept of taghiegh, referred to the case above of **FS** etc.

49. The grounds assert that the decision in *FS* was decided in 2004; but it remains a country guidance case to be followed by the Judge unless there was sufficient evidence to warrant the Judge departing from the findings, of which none were arguably made out. Passage of time is not sufficient to support a challenge to the judge relying on country guidance especially as in *SZ and JM*

(Christians – FS confirmed) Iran CG [2008] UKAIT 00082 the earlier decision was reconfirmed by the Upper Tribunal.

50. The reference to 'Taghiegh' is to the acceptable practice of some in Iran to lie to protect the individual or gain an advantage. The issue in relation to lying or acting discreetly to avoid persecution has being considered by the UK courts in cases such as *HJ (Iran).*

51. In *HJ (Iran) & HT (Cameroon) [2010] UKSC 31* the Supreme Court effectively said that if a person will not act in a way which invites persecution, preferring to avoid persecution by concealing fundamental parts of his identity and personality, then he is equally entitled to asylum. There is a logical extension of this principle into other areas. Whereas in the past the focus would have been on whether the claimant would actually do those things on return that would put him at risk, it no longer matters that he will not in fact do them, provided that his inactivity stems from fear of persecution. A strong version of the consequence is that such a claim may only be defeasible if it can be shown that the claimant does not genuinely hold those religious beliefs or political opinions, and is only pretending to do so in order to obtain asylum.

52. The appellant is a Muslim. His claim to have renounced Islam and to have converted to Christianity was rejected as not being a credible claim. The claim to be at risk as a convert was not made out as the act of conversion was not found to represent a genuinely held belief or view, but a means to secure a grant of international protection, and no more, by the Judge. Those findings have not been shown to be infected by arguable legal error. The claim to be a Christian was not found to represent a fundamental part of his identity and personality.

53. Mr Bates also submitted that the appellant cannot claim that he will have to tell the authorities in Iran he attended church and/or claimed asylum without telling them he failed and was not found to be a genuine convert, if he was to tell the truth.

54. Even though the Judge does not deal with this issue in any detail the core finding is that the appellant had not made out he is entitled to a grant of international protection. The submission of risk on return was not accepted by the Judge indicating this matter was dealt with. Considering the *HJ(Iran)* principles and the fact the appellant will be able to lawfully conceal his UK based activities, as they do not represent a genuinely held view or fundamental part of his identity or personality that he will have to conceal to avoid persecution, no material error is made out.

55. No arguable error material to the decision to dismiss the appeal is made out. The decision shall stand.

Decision

56. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

57. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 21 March 2018