



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

Appeal Number: PA/13289/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 7th December 2017

**Decision &
Promulgated**

On 5th January 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**M J F
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
Respondent

Representation:

For the Appellant: Mr R Worthington, Solicitor

For the Respondent: Mr Diwyncz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by M J F against the decision of Judge Batiste, promulgated on the 24th March 2017, to dismiss his appeal against refusal of his Protection Claim. I extend the anonymity direction made in the First-tier Tribunal.
2. M J F is an Iranian national who was born on the 22nd December 1993. He sought asylum on the basis that he had converted from Islam to Christianity and would thus be persecuted as an apostate upon return to Iran. Judge Batiste found that the appellant was not a genuine convert and

there is no challenge to that finding in the present appeal. It is however submitted that the Tribunal erred in its approach to the fact that, as at the date of the hearing, the appellant had an Instagram account containing overtly Christian material and a visible Cross on his finger. It was argued before Judge Batiste that these matters were likely to lead to the Iranian authorities questioning the appellant on return, thereby placing him at risk of persecution by reason of his imputed (if not actual) religious faith.

3. In dealing with the above submission, Judge Batiste said as follows:

[41] On the evidence that was placed before me I do accept that he has placed such images on Instagram and they are publicly accessible. Equally as I am not an expert on tattoos, it may be that he has created a genuine tattoo on his finger (I looked at the finger close up and was unable to ascertain whether it was a genuine or transferred tattoo). I am, on all the evidence, satisfied that these are not genuine outpourings of his newfound faith, as was suggested by the Appellant. I find on the evidence that these were blatant attempts to engineer a sur place claim as an insurance policy for his asylum claim. [42] I do accept that if the authorities on return did see the tattoo of a cross or examined his Instagram account, it would cause suspicions that might lead to significant problems for the Appellant. However I am not satisfied on the evidence that the Appellant would allow that to occur. The Appellant could easily remove his Instagram account and delete the images that linked him to the Christian faith. He could also alter his privacy settings. In the absence of other factors I am satisfied that the authorities would not therefore be aware of the images that previously appeared on his Instagram page. Equally with regard to the tattoo, I am aware that Tattoos can be removed or indeed covered up with other body art. As such if the Appellant is aware that he is likely to be returning to Iran, I am satisfied that he will remove or cover up the tattoo in a manner that will mean that this does not cause him to be at risk on return.

4. Before turning to the main thrust of Mr Worthington's submission, it is first necessary to deal with his suggestion, made in the renewed application for permission to appeal, that the judge had impliedly accepted (to the lower standard of proof) that the mark on the appellant's finger was a "genuine" tattoo. It is however clear from the judge's remarks that he was in fact unable to make any finding at all on this point. The appellant had thus failed to discharge the burden of proving that the mark on his finger was indelible.
5. At the risk of oversimplifying it, the essence of Mr Worthington's argument was that Judge Batiste had erred in making findings that the Instagram account and/or mark on the appellant's finger would have ceased to exist at the point of return to Iran. He should instead have based his assessment of the risk on return upon the fact that these things existed at the date of the hearing. He based this submission upon the decision in Ravichandran v Secretary of State for the Home Department [1996] Imm AR 97 which, he argued, was authority for the proposition that the risk on return to the country of origin in asylum cases should be judged exclusively upon the facts and circumstances as at the date of hearing. I reject that argument for the following reasons.

6. Firstly, the very essence of a grant of asylum is that the refugee will be at risk of persecution on return to his country of origin. This necessarily involves looking forward to the future. It would therefore be surprising if the person making the assessment was confined to the facts and circumstances as they existed at the date of the hearing of the appeal, and I am satisfied this is not an accurate characterisation of the principle in Ravichandran. Rather, it was held in that case that asylum appeals should be determined by reference to the position at the time of the appellate decision *rather than by reference to the factual situation at the time of the original decision against which the appeal was brought*. Secondly, if Mr Worthington's restatement of the principle were to be applied literally, it would follow that the appellant would be entitled to succeed in circumstances where he had simply inked the symbol of a cross on his finger notwithstanding that this would inevitably disappear on the very next occasion that he washed his hands. That would plainly be absurd. Thirdly, the appellant's state of mind at the date of the hearing was just as much a current state of affairs as was the existence (permanent or temporary) of the appellant's Instagram page and the mark upon his finger. The judge was thus entitled to conclude that it was the appellant's *present* intention (as at the date of hearing) to remove both of these things prior to returning to Iran.
7. I therefore conclude that Judge Batiste did not make any error of law, whether material to the decision to dismiss the appeal against refusal of the Protection Claim or otherwise.

Notice of Decision

8. The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Judge Kelly

Date: 26th December 2017

Deputy Judge of the Upper Tribunal