



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/00322/2018

Appeal Number:

THE IMMIGRATION ACTS

**Heard at North Shields
On 8 February 2019**

**Decision & Reasons
Promulgated
On 14 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**M. H.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Halliday
Reeves Law Firm

For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iran, entered the UK illegally and then claimed asylum on 10 July 2017. His protection claim was refused on 19 December 2017. His appeal against the decision to refuse him protection status was heard and refused by

decision of First tier Tribunal Judge TR Smith, promulgated on 4 May 2018.

2. The Appellant was granted permission to appeal to the Upper Tribunal by decision of Upper Tribunal Judge Plimmer of 25 September 2018, on the ground that it was arguable that having found the Appellant to be a genuine convert to Christianity the Judge had failed to assess properly the prospects of a risk of harm upon return to Iran. All the grounds of appeal advanced to the First tier Tribunal, and to the Upper Tribunal, were said to be arguable.
3. Neither party applied in writing under Rule 15(2A) for further evidence to be admitted in the remaking of the decision, should the decision of the First tier Tribunal be set aside.
4. Thus the matter comes before me.

Error of law?

5. Although this was a matter of considerable dispute before the First tier Tribunal, the Judge was satisfied that the Appellant had indeed undertaken a genuine conversion from Islam to Christianity [110], even though elements of his evidence about his experiences in Iran were considered to be untrue. The Judge gave adequate reasons for that conclusion, which relied heavily upon the assessments and opinion evidence of Ms Ingram, Ms Martins, Pastor Waugh and Rev Bunce. In any event there is no cross appeal from the Respondent, and that finding must therefore be the focus of the assessment of the risk the Appellant would be likely to face upon return to Iran.
6. The Judge was also satisfied that the Appellant had a genuine desire to continue his education in the Christian faith [94]. Again there is no challenge from the Respondent to this finding, and it too must therefore form part of the focus of the assessment of risk. The Judge gave no consideration however to how the Appellant would be able to undertake this further education within Iran without attracting adverse attention from either the authorities, or, the general population. Nor did he consider this finding in the context of the assessment required by HJ (Iran) [2010] UKSC 3. Thus there was no evaluation of whether the Appellant would be dissuaded from pursuing this further education in Christianity out of fear of the consequences of doing so, or, how he would be able to access it without drawing adverse attention to his apostasy.
7. To the extent that it is relevant, pursuant to the guidance in SZ and JM (Christians, FS confirmed) Iran CG [2008] UKAIT 82, the Judge accepted that the Appellant had joined the congregations of sacrament based denominations; Wakefield Cathedral and Stockton Baptist Church. He had been required to change congregations because he had been moved from Wakefield to Stockton by the Respondent. It is of course a

tenet of the Baptist Church that individuals should be brought to baptism.

8. As the renewed grounds of the application for permission to appeal set out (a document with which Ms Cleghorn had not been supplied by those instructing her) the relevant CPIN for consideration in the light of the favourable findings of primary fact was CPIN; Christians & Christian Converts, March 2018 v4. The parties are agreed that neither representative at the hearing below had placed that document in evidence before the Judge. Nor had they drawn its existence to his attention. Neither could offer an explanation for that failure by their predecessors. No doubt that is, in part, an explanation for the Judge's own lack of reference to it.
9. Had the Judge given consideration to the CPIN he would have noted that a distinction appears to be drawn by the Iranian authorities between those who are ethnically Christian, and those who are apostates from Islam. The former may, or may not, be largely tolerated, but on the Judge's findings the Appellant is not one of them. Nor would he be perceived as one of them, given his Islamic name. The CPIN content clearly records a pattern of arbitrary arrest and detention and abuse of apostates. The Appellant as an apostate joining a house church would plainly face a real risk of arrest, with the continuing pattern of suppression of the house churches by the authorities. Nor would he find it easy as an apostate to join the congregation of an established Church; they are required to report the details of anyone joining, and as a result new members are discouraged.
10. In more general terms the Judge would have recognised in the CPIN clear evidence of a continuing deterioration in attitudes within Iran towards apostates. The pattern identified in SZ and JM of a deterioration since FS [#149] has continued subsequently.
11. Having determined that the Appellant was indeed a genuine convert to Christianity, in my judgement what the Judge then failed to do was take heed of the fact that it was implicit within his finding that the Appellant genuinely wished to continue to worship in that faith, as part of a Christian congregation; SZ and JM. There was certainly no finding to the effect that the Appellant would not wish to do so. Indeed, had the Judge reached such a conclusion it would no doubt have been challenged as inconsistent and perverse.
12. At no stage did the Judge go on to ask himself the questions; what would happen if the Appellant did seek to worship within a Christian congregation, or seek to further his Christian education, upon return to Iran? Accordingly, Mr Bates accepted on behalf of the Respondent that the Judge had erred in law in his approach to the issue of risk upon return to

- Iran, and, that his error was sufficiently material to require the Judge's decision to be set aside and remade.
13. Whilst I was at the hearing persuaded that in order to remake that decision the Upper Tribunal would need to hear further evidence, I am upon further reflection satisfied for two reasons that this course is inappropriate, and that the decision can, and should, be remade upon the basis of the Judge's own core findings. First, neither party has applied under Rule 15(2A) for the Upper Tribunal to consider new evidence. There is no good reason offered as to why the Upper Tribunal should waive that requirement. Second, the key positive findings of primary fact by the Judge are unchallenged by the Respondent and in my judgement they are sufficient to permit the decision to be remade.
 14. The Upper Tribunal accepted in SZ and JM that a genuine convert to a sacramental faith such as the Roman Catholic Church, who was unable upon return to Iran to join a congregation to worship, was entitled to succeed in his appeal because in reality he would be unable to practice his new faith [#167], applying the two stage test of HJ. That is in my judgement the position the Appellant faces. He will be unable to pursue his acknowledged and genuine desire to educate himself in the Christian faith without attracting adverse attention, and the fear of that is likely to dissuade him from doing so. The same applies to attempts to join an established congregation.
 15. In the circumstances I allow the appeal on asylum and Article 3 grounds.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 4 May 2018 did involve the making of an error of law that requires the decision to be set aside and remade.

The appeal is allowed on asylum and Article 3 grounds

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 8 February 2019