

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal.

3. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Farrelly, promulgated on 24 September 2019, which allowed the Appellant's appeal on asylum grounds and on article 2 & 3 ECHR grounds.

Background

4. The Appellant was born in August 1978 and is a national of Iran. The appellant originally claimed asylum in 2008. His claim was refused, and he appealed that refusal unsuccessfully.

5. On 29 October 2012 the appellant was convicted of assault at Glasgow Sheriff Court and sentenced to 18 months imprisonment. A deportation order was made on 19 February 2013. He appealed against that order, and, in April 2013, his appeal was dismissed.

6. The appellant then made a sequence of further representations, each of which the respondent rejected. The appellant pursued judicial review procedure, which led to the respondent's decision (dated 21 March 2019) to refuse the appellant's claim for asylum on the basis of his religious conversion.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Farrelly ("the Judge") allowed the appeal against the Respondent's decision on asylum grounds and on article 2 & 3 ECHR grounds.

8. Grounds of appeal were lodged and on 1 November 2019 Designated Judge Woodcraft gave permission to appeal stating

The appellant is a citizen of Iran who claimed to have converted to Christianity. The judge did not accept this noting that the appellant had previously been found not to be a credible witness in relation to this claim. The appeal was nevertheless allowed because of the appellant's claimed sur place activities and what the judge believed would be the difficulties the appellant might face upon return.

It is arguable that in doing so the judge: (1) insufficiently reasoned the conclusion that the appellant's tattoos would place the appellant at risk; (ii) failed to explain why the appellant could not simply delete his Facebook page (given that he only appears to have set the page up to bolster his claim) and (iii) overlooked the ratio in SSH [2016] UKUT 308 a country guidance authority on individuals who like the appellant are of no adverse interest to the Iranian regime

The Hearing

9. Mr Diwyncz formally moved the grounds of appeal but told us that the grounds of appeal were drafted in 2019. The author of the grounds did not

have the benefit of seeing the extensive tattooing on the appellant's arms, which extends across the backs of his hands to his knuckles.

10. Mindful of his duty to the tribunal, Mr Diwnycz (who had, by now, seen the appellant's tattooed arms) told us that the appellant would be able to wander around the streets of Tehran covered in the Tattoos he has chosen to decorate his limbs with, but there is a pinch-point at the airport, where his Tattoos will inevitably be seen.

Analysis

11. This appeal concerns the appellant's sur place activities. The Judge found that the appellant is not a Christian convert and would not be at risk on return to Iran because of his claimed Christianity. The Judge allowed the appeal because the appellant has covered his arms in tattoos dominated by Christian imagery.

12. In Danian v SSHD (2002) IMM AR 96 the Court of Appeal said that there is no express limitation in the Convention in relation to persons acting in bad faith, despite Counsel's attempt in Danian to have one implied. In YB (Eritrea) v SSHD 2008 EWCA Civ 360 the Court of Appeal sounded a note of caution in relation to the argument that, if an appellant was found to have been opportunistic in his sur place activities, his credibility was in consequence low. If he had already been believed ex hypothesi about his sur place activity, his motives might be disbelieved, but the consequent risk on return from his activity sur place was essentially an objective question.

13. The fourth headnote to PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC) says

In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival:

(i) All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum;

(ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;

(iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;

(iv) If there are any reasons why the detention becomes prolonged, the risk of ill-treatment will correspondingly rise. Factors that could result in prolonged detention must be determined on a case by case basis. They could include but are not limited to:

- (a) Previous adverse contact with the Iranian security services;
- (b) Connection to persons of interest to the Iranian authorities;
- (c) Attendance at a church with perceived connection to Iranian house churches;
- (d) Overt social media content indicating that the individual concerned has actively promoted Christianity.

14. Mr Diwnycz told us that the appellant will be required to remove his jacket, roll up his sleeves, and bare his arms at the point of arrival in Iran. The background information and case law tell us that any explanation the appellant offers for images with a Christian theme emblazoned on his arms will not be enough to prevent detention and further questioning.

15. The appellant's tattoos are extensive. All of the surface of each arm is covered in tattoo ink. The tattoos extend across the backs of his hands and to his knuckles. Perhaps the appellant cynically had Christian iconography tattooed on his arms. The reason he had his arms tattooed does not matter. It is the existence of the tattoos which raises a real risk of persecution because of the treatment the appellant will receive at the airport in Tehran.

16. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

17. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 24 September 2019, stands.

signed **Paul Doyle**
Deputy Upper Tribunal Judge Doyle

Date 18 March 2022