Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00633/2013
DA/00634/2013
DA/00635/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9 October 2013	**On 4th November 2013**

Before

UPPER TRIBUNAL JUDGE TAYLOR
UPPER TRIBUNAL JUDGE POOLE

Between

RASOUL GHOLAMPOUR
FATEMAH HAGHNEGAT
ARIANA GHOLAMPOUR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Shibli of Counsel, instructed by Irving & Co Solicitors
For the Respondent: Mr S Walker Home Office Presenting Officer

DETERMINATION AND REASONS

Appeal History

1. The appellants are all citizens of Iran. They were born 16/9/79, 18/3/86 and 1/6/2010 respectively. They are husband and wife and infant daughter. The respondent made deportation orders on 15 March 2013 together with decisions to refuse to grant asylum, humanitarian protection and leave to remain under Articles 2, 3 and 8 of the ECHR. The first and second appellants had arrived in the United Kingdom in June 2005. The first appellant claimed asylum upon arrival with the

second appellant as his dependent. The claims were refused in 2007 and all appeal rights exhausted by October 2007. Neither the first nor second appellant returned to Iran. The third appellant was born in the United Kingdom in 2010. During the course of 2010 the first appellant was convicted of possession of extreme pornographic images and with regard to conspiracy to traffic persons within the United Kingdom for sexual exploitation. In the same year the second appellant was convicted of conspiracy to traffic persons within the United Kingdom for sexual exploitation. They were sentenced to twenty seven months and fifteen months respectively. As a result the first and second appellants were liable to automatic deportation and in December 2011 the second appellant claimed asylum for a second time.

2. All three appellants jointly appealed the respondent's decisions of March 2013 upon the grounds that the decision was not in accordance with the Immigration Rules and was unlawful under Art 3 of the Human Rights Act (sic) and the Refugee Convention. Their appeals came before Judge of the first-tier Tribunal Jackson sitting with Mr D Bremmer (Non Legal Member)(the Panel) on 18 June 2013. They were represented by Counsel. In a determination promulgated on 8 July 2013 the Panel dismissed all aspects of the appeals namely asylum, humanitarian protection, human rights and an appeal against a decision under the Immigration Rules.

3. Leave to appeal was sought alleging error of law in the way that the Panel dealt with the second appellant's claim for asylum based upon her conversion to Christianity. The relevant parts of the "grounds for permission" are as follows:

> "2. The panel accepted that the second applicant was a genuine convert to Christianity [95]. As set out by the panel at [93] as per HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC31, the correct approach is assessing whether a person would be at risk, or whether they would modify their behaviour in order to avoid risk, was formulated by Lord Rogers at Paragraph 82:
>
> *"82. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.*
>
> *If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.*
>
> *If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution – even if he could avoid the risk by living "discreetly".*
>
> *If on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so.*
>
> *If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, eg, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for the reasons that*

> *have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.*
>
> *If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the application a surrogate for the protection from persecution which his country of nationality should have afforded him."*

3. The panel having accepted that the second applicant was genuine Christian convert; then went on to find that she would be unable to express her Christianity as openly as she currently does in the UK [98].

4. The panel have then misdirected themselves regarding HJ (Iran), in that they considered whether the second applicant would be able to tolerate living in a way where she is unable to actively proselytise [98]. The test is whether she would, as a consequence of a genuine fear of being persecuted, modify her behaviour. The panel have found that the applicant would have to behave less openly as a Christian in Iran, but have then failed to consider the steps next steps as set out in Paragraph 82 of HJ (Iran)."

4. Leave to appeal was granted by a Judge of the First-tier Tribunal in a decision dated 26 July 2013. It was noted in that decision that it was "…contended that, if the second were to ultimately succeed, this would have a knock-on effect on the position of the two other appellants with respect to Article 8 of the ECHR".

5. The Judge, in granting leave, noted as follows:

> "It is arguable the Panel erred in, having accepted the second appellant is a Christian convert, failing to apply the correct test as set out in HJ (Iran) 2010 UK SC 31 when considering, at paragraph 98 of the determination, how the second appellant might behave upon return to Iran and why

The Hearing

6. Each representative made a submission. A note of those submissions is contained within the record of proceedings. In summary we noted as follows.

7. Mr Shibli indicated that the Panel has misapplied the decision of HJ. They had set out the correct test but had applied it in an incorrect way. Mr Shibli referred us to paragraph 95 of the determination wherein the Panel accepted that the second

appellant had converted to Christianity. That paragraph records that the second appellant spoke passionately about her faith. There were witnesses in support. At paragraph 98 the Panel recorded what the second appellant would be giving up with regard to her faith should she be returned. The Panel, in the submission of Mr Shibli, had adopted what he described as the "old HJ test". There would be a marked change in the way that a Christian could exercise his/her faith in going to Iran. She would need to be discreet and proceed with caution. The concept of house churches would replace the normal structure of a church. Mr Shibli also referred to the case of SZ and JM (Christians FS Confirmed) Iran CG 2008 (UKAIT 00082 and in particular paragraph 140 of that decision. It should be asked of the second appellant whether or not she could be reasonably expected to tolerate the way she would have to live her life as a Christian in Iran.

8. Mr Shibli referred us to the original bundle of documents to enable us to consider whether the second appellant would need to be changing the way she proclaimed her faith. He referred us to letters of support and the changes that she would have to adopt. In essence she would need to "keep a low profile". One example was that she is currently used to taking visiting friends to her church. She would not be able to do that in Iran.

9. Mr Walker referred us to paragraph 98 of the Panel's determination. Her current church does not require her to proselytise. There was no material error and the appeal should be dismissed.

10. After retiring to consider the matter we returned to announce that we found no error of law within the Panel's determination and their decisions would be confirmed.

Findings

11. The Panel had before them an extremely complicated set of circumstances with regard to the three appellants. The determination that was produced is a well reasoned document dealing with all aspects of the various issues that were before the Panel. The matter now before us is far more concise and relates only to the manner in which the Panel dealt with the second appellant's conversion to Christianity. However despite the concise nature of the issue it would have a "knock-on" effect in respect of the other two appellants as it would be a case of the three of them remaining together as a family in the United Kingdom or being deported together as a family to Iran.

12. The determination of the Panel noted the evidence placed before it. Dealing specifically with the second appellant and her conversion to Christianity it was noted (paragraph 28) that she had converted to Christianity in 2010 being baptised a year later. She attended church. Whilst in prison she had a dream that was interpreted for her as a message from God (para 34). She participated in bible study classes twice a week and participated in voluntary activities for the church. At paragraph 37 she had informed her friends, colleagues and neighbours and her parents. She shared her story to assist other vulnerable people. She chose Christianity as it was the only way to stay safe and live life correctly (para 40) and that as a Christian she felt that she could do anything and would be protected. If

returned to Iran she would not give up her Christian beliefs and would continue to pray and tell other people about it including sharing the gospel.

13. In summary Mr Shibli directs us to the findings of the Panel with regard to the genuineness of the second appellant's conversion to Christianity but he seeks to challenge the conclusions of the Panel in the way that they dealt with HJ Iran. Mr Shibli contends that they directed themselves under the "old" HJ as set out in the Court of Appeal rather than the subsequent Supreme Court version. We disagree. Mr Shibli properly directs us to paragraph 82 of the Supreme Court decision (reproduced above). It is very clear that the Panel from paragraph 93-99 considered very carefully the second appellant's position in Iran given her accepted conversion to Christianity. They made clear findings as to the way the second appellant lives (and would live in Iran) at paras 95 to 97. They decided (for reasons given) that the appellant's current Christian practices did not include proselytising or a requirement to do so. Any modification of her behaviour as a Christian would not be of any significant effect. In essence she would be able to behave in very similar way to the way she does now. There was certainly no evidence before the Panel that as a Baptist she would be required to publically "spread the word". They made a clear finding that she would not be required unreasonably to suppress her basic religious identity. Certainly there was no evidence before the Panel that the second appellant currently did anything other than live discreetly with her religion and the consideration given by the Panel does accord with the "test" set out by Lord Rogers in paragraph 82 of the Supreme Court decision.

Decision

14. There was no error of law.

15. The appeals are dismissed.

16. No anonymity order has been made by the First-tier Tribunal. No application was made to us and we therefore make no anonymity direction.

Signed

N Poole
Judge of the Upper Tribunal

Date: 4th November 2013