



IAC-CH- CK-V1

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

Appeal Number: DA/00428/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

On 24th October 2014

Determination

Promulgated

On 11th November 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**HAMID REZA BAGHBANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Tuburu

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Hamid Reza Baghbani a male citizen of Iran, born 30 June 1973. The appellant had appealed against the respondent's decision of February 2014 to make a deportation order under Section 3(5)(a) of the Immigration Act 1971. The decision was made because deportation was deemed to be conducive to the public good following the appellant's conviction at Luton Crown Court in March 2006 of an offence of possession and/or use of a false instrument. The appellant had been

sentenced to a term of 15 months in prison. He did not appeal that sentence.

2. The appellant appealed against the respondent's decision asserting that the decision was not in accordance with the Immigration Rules or the law; it caused a breach under the Refugee Convention and the Human Rights Act 1998. In essence the appellant's appeal was based upon his fear of return to Iran because of his conversion to Christianity.
3. The appellant's appeal came before Judge's of the First-Tier Tribunal Harries and Mr P Bompas sitting at Columbus House on 9 June 2014. An oral hearing was held. The appellant was again represented by Mr Tuburu and the respondent was represented by a Home Office Presenting Officer. In a decision dated 13 June 2014 the panel dismissed the appellant's appeal both under the Immigration Rules and Article 8 ECHR.
4. The appellant sought leave to appeal that decision alleging that the panel erred in having accepted that the appellant was probably now a genuine, practising Christian had found that he would not be at risk as an actively evangelical Christian which was contrary to the evidence. Error is alleged on the part of the panel in failing to properly assess the appellants risk as a convert who would practice evangelical or proselytising activities. The Tribunal had failed to follow the case of **HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31**. In general the panel were criticised for failing to take into consideration at the "socio religious climate" in Iran and in failing to properly take into account the evidence of the appellant's Pastor.
5. In granting leave to appeal a Designated Judge of the First-Tier Tribunal said this:

"1. First-Tier Tribunal Judge Harries sitting in a panel with a lay member dismissed the Iranian appellant's appeal against the decision of the respondent to make a deportation order, having regard to Section 3(5)(a) of the Immigration Act 1971.

*2. The grounds include the submission that the panel failed to have any or any sufficient regard to the guidance in **HJ (Iran) v SSHD [2010] UKSC**. Given what appears at paragraph 38 of the determinate, the ground is arguable.*

3. For the avoidance of doubt, all grounds may be argued".

6. Hence the matter came before me in the Upper Tribunal.
7. Mr Richards confirmed that no Rule 24 response had been prepared by the respondent.
8. Mr Tuburu relied upon the grounds for appeal. The key issue was the appellant's conversion to Christianity. If he were deported to Iran he would suffer breaches of Articles 2 and 3 of the Convention. By reference

to the case of **HJ (Iran)** the appellant would not practice quietly. The panel had heard from the appellant's Pastor (Mr Ian Parry). The appellant would go out telling people of his Christian faith. The panel should have followed **HJ**. The appellant's credibility was not at issue as he had been found credible in his evidence.

9. Mr Richards submitted that the panel had made clear findings at paragraph 37. The appellant is regarded as an ordinary convert. He is neither a leader nor a lay preacher. He is not ordained and he is not an Evangelist. These were the clear findings of the Tribunal panel. Upon this basis **HJ (Iran)** did not come into play and there is no reason why the appellant would not be able to continue in his Christian practice. There was no suggestion that the appellant would openly preach. He would not come to the adverse attention of the authorities in Iran. The findings were properly open to the panel and there was no material error of law.
10. Mr Tuburu responded by reference to paragraphs 32 and 33 of the determination of the panel who had found him a genuine practising Christian. He would be "sharing the word".
11. Having considered the documentation before me and having listened to the submissions made, I announced my decision that I found no material error of law in the determination and the appeal will be dismissed. I indicated my reasons would be provided in writing which I now give.
12. In reaching my conclusion I did take into account the letter of Mr Parry written from the Bay Church Cardiff on 20 June 2014. I will refer to that again later.
13. As part of the appellant's evidence before the panel he alleged that he had suffered persecution for his political opinion whilst in Iran.
14. At paragraph 31 of the determination the panel rejected that aspect of the appellant's appeal (findings which had not been challenged before me). In paragraph 31 the panel said this:

"We reject the appellant's claim to have come to the adverse attention of the authorities for the reasons claimed or for any other reason. We do not accept that he was detained, tortured or required to attend court in Iran. We find that the appellant is not a person in need of genuine international protection or at risk on return to Iran; we do not accept that he left Iran for the reasons claimed. The appeal cannot succeed on political asylum grounds".

15. At paragraph 32 of the determination the panel said this:

"In the light of our adverse credibility findings we have reason to doubt that the appellant's conversion to Christianity was genuinely motivated. His conversion and baptism in 2007 were at a time when he was making continuing efforts to remain in the United Kingdom.

However, we take account of the possibility that a person turning to religion for ulterior motives may well acquire genuine faith and having taken account of the totality of the evidence we are satisfied that the appellant is probably now a genuine, practising, Christian”.

16. Mr Tuburu had referred to paragraph 33 of the panel’s determination which is set out as follows:

“In particular, we have no reason to doubt the evidence of Pastor Ian Parry which was tested in cross examination before us. We accept that he believes the appellant to be a genuine Christian contributing to the congregation, although he accepted that in the light of the language barrier between them he has to speak slowly and with short words to the appellant and there have often been misunderstandings. The Pastor’s evidence is that the Christianity in question is an evangelical faith, but not practised from a “soap box”; they purposely adopt methods to avoid such an approach. He supported the appellant’s evidence that he attends the Pastor’s church, as well as prayer meetings and at Cardiff market in Splott where the appellant and his church colleagues have a stall to promote their Christianity; they display Christian books on the stall”.

17. The panel then went on to set out in detail the jurisprudence available to them before reaching their conclusions at paragraphs 37 and 38.

18. At paragraph 37 the panel found:

*“Taking account of the above case law we find the appellant is not at risk as a returning, failed, asylum seeker on return to Iran; nor does he claim to be. We find that on his own evidence and that of Pastor Parry he comes within the category set out in paragraph 187 of **[FS & others Iran - Christian converts (Iran CG) [2004] UKIAT 00303]**, namely an ordinary convert, who has converted outside Iran and is neither a leader, lay or ordained, nor a Pastor, nor a proselytiser or evangelist. He is not in our view actively evangelical; he has quietly spread his faith in the United Kingdom, mostly with people known to him and by allowing others to come to him. The appellant’s evidence is that he has already exercised caution about his faith in Iran by avoiding its discussion in telephone calls to his family members there”.*

19. At paragraph 38 the panel said:

*“We have found that the appellant has not achieved any adverse profile with the authorities prior to his departure from Iran for political or any other reason. It is primarily his family that the appellant wishes to share his faith with if returned to Iran. In these circumstances, in accordance with **FS**, we find that the actual degree of risk of persecution or treatment breaching Article 3 is not sufficient to warrant the protection of either Convention. The reality is that a social and economic life can be maintained; Christianity can be practised, if necessary, cautiously at times, by church attendance, association with Christians and Bible study. The appeal fails on religious asylum grounds”.*

20. Returning now to Pastor Parry's letter of June 2014. Such a document is something that I would not normally take into account at this stage of the appeal process. However I have read it and noted the contents. In essence the letter indicates that the panel misunderstood the Pastor's evidence and misinterpreted the appellant's evidence. I do find that the criticism contained within that letter is ill-founded. The Tribunal panel found that the appellant probably was a genuine convert to Christianity. In essence the issue was how he practices that faith. The letter contends an "active and effective evangelist".
21. I find no material error of law contained within the panel's determination. Whilst they questioned the appellant's credibility as to, inter alia, his conversion they did accept that he is "probably now a genuine, practising, Christian". The question before the Tribunal and the only issue before me is whether they then properly considered the risk upon return. They clearly properly directed themselves as to the law and with regard to country guidance. Having taken into account the appellant's evidence (and the evidence of Pastor Parry) they came to the view that the appellant was "not actively evangelical" paragraph 37 explains that view when read with paragraph 38. In short the panel found that the appellant was not evangelical, nor did he practice proselytising. He would not need to change or suppress his religious views and accordingly would not come to the adverse attention of the authorities.
22. No anonymity direction has previously been given and there was no application made before me. Accordingly I make no such direction.

Decision

23. No material error of law exists in the panel's determination and the appellant's appeal is accordingly dismissed.

Signed

Date

Upper Tribunal Judge Poole

10th November 2014