



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09166/2014

**THE IMMIGRATION ACTS**

Heard at Centre City Tower, Birmingham  
On 5<sup>th</sup> July 2016

Decision & Reasons Promulgated  
On 14<sup>th</sup> July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

HJ  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Lane of Counsel, instructed by TRP Solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appealed against a decision of Judge Wedderspoon of the First-tier Tribunal (the FtT) promulgated on 10<sup>th</sup> June 2015.

2. The Appellant is a female Iranian citizen who claimed asylum on 20<sup>th</sup> May 2014. The basis of the claim was the Appellant's fear that if she returned to Iran she would face mistreatment due to her political opinion and her religion. She had converted from Islam to Christianity.
3. On 16<sup>th</sup> October 2014 the Respondent decided that the Appellant was not entitled to a grant of asylum or humanitarian protection, and that to remove her from the United Kingdom would not breach any of her human rights protected by the 1950 European Convention on Human Rights (the 1950 Convention).
4. The Appellant appealed pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and her appeal was heard by the FtT on 18<sup>th</sup> May 2015.
5. The FtT did not accept the Appellant's account as to her political activity in Iran. It was accepted that she had set up a blog website but it was not accepted that this would be of any interest to the Iranian authorities. It was not accepted that a summons had been issued requiring the Appellant to attend at The Islamic Revolutionary Court of Tehran.
6. The FtT accepted, as did the Respondent, that the Appellant had converted to the Christian faith. The FtT did not however accept that the Appellant would practise her Christian faith in Iran, or practise to such an extent to be of interest to the Iranian authorities. The FtT dismissed the appeal on all grounds.
7. The Appellant applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Judge Osborne of the FtT in the following terms;
  - “3. In a relatively concise decision and reasons it is at least arguable that the judge whilst accepting that the Appellant has converted to the Christian faith, and whilst not accepting that the Appellant would practise the faith in Iran or practise to such an extent to be of interest to the authorities, it is at least arguable that the judge failed to correctly apply the guidance provided by HJ (Iran). That case is pertinent to the Appellant's appeal and is included in the Appellant's bundle. It is arguably an error for the judge to have failed to properly consider the HJ (Iran) principles in a case where the Appellant is agreed to be a Christian convert and whose evidence is that she will practise her Christian faith upon return to Iran. It is arguable that the judge's finding that as the Appellant has not told her family in Iran of her conversion that she would not practise her faith in Iran or would not do so as to raise the interest of the authorities is inadequately reasoned.
  4. As this arguable error of law has been identified, all the issues raised in the grounds are arguable.”

## Error of Law

8. On 7<sup>th</sup> March 2016 I heard submissions from both parties in relation to error of law. It was conceded on behalf of the Respondent that the FtT had materially erred in law as contended by the Appellant, in relation to consideration of the risk that the Appellant would face if returned to Iran as a convert from Islam to Christianity. It was accepted that the FtT decision must be set aside in relation to this aspect of the appeal, and re-made.
9. It was not accepted that the FtT had erred in making findings upon the summons relied upon by the Appellant.
10. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 7<sup>th</sup> March 2016, promulgated on 18<sup>th</sup> March 2016. I set out below paragraphs 18-28 which contain my conclusions and reasons for setting aside the FtT decision;
  - “18. As conceded by the Respondent, I find that the FtT erred materially in considering the risk on return to the Appellant as a convert from Islam to Christianity.
  19. The Appellant’s evidence to the FtT was that she had joined an Evangelical Church, and the church leader, A Martin, confirmed the evangelical nature of the church. It was also the Appellant’s case that she had encouraged other Iranian citizens in the United Kingdom to attend church and adopt the Christian faith, and therefore she had proselytised. This evidence was supported by a witness, J Baillie.
  20. It was accepted by the Respondent that the Appellant had genuinely converted to Christianity. In the light of that evidence, the FtT did not adequately explain in paragraph 28, why it was found that the Appellant would not practise her Christian faith in Iran, or not practise to such an extent to be of interest to the authorities.
  21. There appears to have been evidence of the Appellant’s activities both within and on behalf of her church in the United Kingdom, which appeared not to have been taken into account by the FtT, who based its entire reasoning upon the fact that the Appellant had not yet told her family in Iran of her conversion. The fact that the Appellant had given evidence that she did not wish to worry her family at this stage, does not feature in the FtT findings, although this evidence was given to the FtT, as confirmed in paragraph 12 of the decision.
  22. The FtT does not give any adequate reasons for concluding that the Appellant would not practise her faith in Iran, and fails to consider or refer to the guidelines in HJ (Iran) [2010] UKSC 3, which confirms that if it is found that an individual would in fact live discreetly and so avoid persecution, the Tribunal must go on to ask itself why this would be the case. If it was that the Appellant would not practise her Christian faith because of a fear of persecution, then this should have been assessed and considered. The FtT decision on this aspect of the appeal is set aside.

23. However, I find no error of law in the consideration of the FtT of the summons that was produced on behalf of the Appellant.
  24. As contended in Mr Lane's skeleton argument, if the Respondent alleges that a document is a forgery then the burden falls on the Respondent to prove this. However I set out below paragraph 38 of Tanveer Ahmed, referred to both by the Tribunal and Mr Lane;
    38. In summary the principles set out in this determination are:
      1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.
      2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
      3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2.
  25. The FtT was aware of the Tanveer Ahmed principles which are summarised in paragraph 23, and in my view correctly applied them. The FtT considered the evidence in the round and did not consider the summons in isolation. I do not accept the Appellant's submission that no clear finding has been made in relation to the genuineness of the summons. The FtT made a clear finding in paragraph 27 that it was not accepted that the summons had been issued by the Etalaat against the Appellant.
  26. The FtT, in giving reasons, referred to the vague wording in the document and was entitled to consider that. The document gives as a reason for having to attend court;

'To provide an explanation of some issues, if you do not attend a verdict will be issued in your absence.'
  27. The FtT noted, and was entitled to place reliance upon the Appellant's evidence that despite the warning in the document that a verdict may be issued in her absence if she did not attend, she had made no attempt to find out if such a verdict had been pronounced. The FtT was also entitled to note that the Appellant's family had made no effort to contact her to let her know whether a verdict had been pronounced in her absence.
  28. The Appellant's grounds on this point display a disagreement with the conclusion reached by the FtT, but do not disclose an error of law, and the FtT finding that the summons cannot be relied upon is preserved".
11. The error of law hearing was adjourned so that the decision could be re-made by the Upper Tribunal after hearing further evidence. It was confirmed, that the findings

made that the Appellant operated a weblog, that she had genuinely converted to Christianity, and joined an Evangelical Church, were preserved.

### **Re-Making the Decision**

12. At the hearing on 5<sup>th</sup> July 2016, Mr Mills on behalf of the Respondent indicated that it was conceded that the appeal should be allowed. Mr Mills accepted that the Appellant was entitled to asylum because she is a genuine convert from Islam to Christianity, and she had joined an Evangelical Church, and would seek to undertake evangelical activities.
13. I therefore did not need to hear any further evidence, and in view of the concession, Mr Lane had no submissions to make.
14. In my view the concession was rightly made in accordance with the Respondent's own guidance on Iranian converts to Christianity, and members of Evangelical Churches.
15. I have taken into account the Respondent's guidance which is contained in the Country Information and Guidance on Iran on Christians and Christian Converts December 2015. I set out below some relevant extracts from that guidance;

2.2.2 Christians who have converted from Islam are at risk of harm from the state authorities, as they are considered apostates – a criminal offence in Iran. Sharia law does not allow for conversion from Islam to another religion, and it is not possible for an individual person to change their religious affiliation on personal documentation. Christian converts face physical attacks, harassment, surveillance, arrest, detention, as well as torture and ill-treatment in detention. The country guidance case of SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082 found that conditions for converts to sacrament-based churches may be such that they could not reasonably be expected to return to Iran. This remains the case.

2.2.3 Members of evangelical/house churches are subject to harassment, arrest, close surveillance and imprisonment by the Iranian authorities. Christians who can demonstrate that in Iran or in the UK they have and will continue to practise evangelical or proselytising activities because of their affiliation to Evangelical Churches or who would wear in public outward manifestations of their faith such as a visible crucifix, will attract the adverse notice of the authorities on return to Iran and will be at risk of persecution.

3.1.3 Members of evangelical and house churches, and those who actively seek to evangelise others and engage in proselytising activities are at real risk of persecution in Iran and a grant of asylum is likely to be appropriate.

3.1.4 The right of Muslims to change their religion is not recognised under Sharia law. The religious conversion of Muslims is illegal in Iran. Christians who have converted from Islam are at real risk of persecution in Iran, and a grant of asylum is likely to be appropriate.

16. Therefore, because of the concession made, and the guidance referred to above, I find it is appropriate to allow the appeal because the Appellant is a genuine convert from Islam to Christianity, and is an evangelical Christian.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I allow the appeal on human rights grounds in relation to Article 3 of the 1950 Convention.

### **Anonymity**

I make an anonymity order pursuant to 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 her or any member of her 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.

Signed

Date 8<sup>th</sup> July 2016

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed

Date 8<sup>th</sup> July 2016

Deputy Upper Tribunal Judge M A Hall