



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07944/2014

THE IMMIGRATION ACTS

Heard at Manchester, Piccadilly  
On 12<sup>th</sup> October 2017

Decision & Reasons Promulgated  
On 17<sup>th</sup> October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

MR A.R.

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel (Counsel)

For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Chambers promulgated on the 17<sup>th</sup> February 2017, in which he dismissed the Appellant's asylum appeal.

2. It was the Appellant's case before the First-tier Tribunal that the Appellant is a citizen of Iran who was born in 1976. It is his case that whilst still in Iran, he had converted from Islam to Christianity, at a time when his young son was unwell and suffering nose bleeds and that a friend of his had introduced him to Christianity telling him that God would cure his son and that the Appellant had prayed to Jesus that night and that the Appellant stated that within a week his son was cured. It was the Appellant's case that whilst in Iran he had been to house churches, but on the 15<sup>th</sup> July 2015, his friend's father-in-law telephoned the Appellant to warn him that his friend and other church members had been arrested in connection with their Christian worship and that Etella'ed officers had raided the Appellant's home and arrested his wife, having received information the Appellant believes from his friend. The Appellant's case is that he had fled to the UK and continued attending church in the UK.

The reasons of the First-tier Judge

3. The full reasons for Judge Chambers' findings are a matter of record and are set out within his decision and are therefore not repeated in their entirety here, but in summary, Judge Chambers found that there were discrepancies regarding the timetable that the Appellant had put forward regarding the length of time after his friend had talked to him about Christianity that it was that he ended up having to leave Iran, and discrepancies about the number of times that he was said to have attended at a house church in Iran. Judge Chambers further found that it was odd that the authorities were not seemingly interested in his wife to the same extent that the Appellant claimed that they were interested in him, given that on his account she was as much at risk as the Appellant and that if released and the wife was a trap to capture the Appellant the trap was seemingly never sprung and that after disappearing and becoming wanted and after his wife was sent home the Appellant visited the house without any repercussions. He further found that the Appellant's wife was not said to have experienced any problems with the authorities since in Iran and that there were no statements from other numerous members of the family affected by incidents the Appellant complained of. He further found there was no evidence concerning his son's health. He further found that the Appellant would not have returned home, after his home had been visited by the

authorities and searched and his wife arrested, as claimed, if in fact the Appellant was genuinely wanted by the Iranian authorities.

4. However, the Appellant did not simply rely upon his claimed conversion to Christianity in Iran, but also, as Judge Chambers found, he contended that by reason of events in the United Kingdom he was rendered a refugee, by his attendance initially at the Milnrow Evangelical Church and subsequently at the Longton Community's Church. Judge Chambers took account of the letters in support of the Appellant from the Reverend Ferguson, a letter from Mr Ron Farrington, a senior pastor at the Longton Community Church in Preston and a letter from the David Harding, a pastor at the Milnrow Evangelical Church and a letter from the Deacon of the Evangelical Church, Mr Paul Salem.
  
5. However, in line with the decision in the case of Ali Dorodian 01TH0153Z, from August 2001, and the guidelines given in that case, Judge Chambers noted that the Appellant through his solicitors had complied with the guidance in terms of providing the statements or letters from the Dorodian witnesses to the Home Office before the hearing of the appeal in order to give the Home Office time to make at least a basic check on the Minister's existence and standing, but that in circumstances where the evidence of the Minister was not accepted then Judge Chambers noted that Mr Richards on behalf of the Respondent had not accepted the evidence of the letter set out in the Appellant's bundle and wanted an opportunity to cross-examine the witnesses. Miss Patel who represented the Appellant in the First-tier Tribunal, had obtained specific instructions and stated that it was not intended and had never been intended to call live evidence at [38]. Judge Chambers noted that the explanation of the main witness not attending was not said to be a reluctance to attend, but an inability to find time to attend because of the pressing nature of his work and that the Appellant simply wanted to rely upon the letters and had not sought an adjournment, despite Miss Patel telling me that she had been invited by the Judge to consider whether or not an adjournment was sought, in order to secure attendance of a witness who would be able to act as a Dorodian witness and vouch for the Appellant's attendance at church.

6. Judge Chambers considered the letters that had been submitted and considered the weight that could be attached to them, and although it was accepted that the Appellant had made contact with churches and undertaken studies including studying English Judge Chambers found that it had not been shown that the Appellant had converted from Islam to Christianity. He bore in mind that the Appellant had not been baptised and there is no evidence to suggest that he was going to be baptised at [49]. He found that the Appellant had not been appropriately vouched for by the Minister of some established church in regard to having church membership.
7. Judge Chambers further noted that wider issues concerned whether or not the Appellant would be seen or perceived as a convert to Christianity if returned and noted that both sides had agreed that if he would be seen or perceived as a convert he would be at risk but found that given his findings in respect of the events in Iran and the United Kingdom it was not made out that the Appellant would be so seen or perceived, and he therefore dismissed the Appellant's asylum appeal.

#### The grounds of appeal

8. The Appellant has sought to appeal against that decision for the reasons set out within both the initial and renewed application for permission to appeal to the Upper Tribunal. I have fully taken account of those arguments and Grounds of Appeal in reaching my decision.
9. The Grounds of Appeal are a matter of record and are therefore not repeated in their entirety here, but in summary, it is argued by the Appellant that the Judge appeared to have worked from the premise that an individual had to be baptised to be considered a genuine convert. It was further argued that the Judge had taken it upon himself to purportedly look into the Appellant's soul contrary to the decision of the Ministry of Court in the case of SA Iran [2012] EWHC 2575 (Admin). It was further argued that the Judge had failed to take account of the evidence that the Appellant had been attending church from September 2014 within a month of his arrival in the UK and therefore had been attending church for over 2½ years by the date of the decision and the Judge had

not noted that the Reverend Ferguson continued to be a Minister of the Longton Community Church as well as being a chaplain for Cornerstone. It is next argued that in the circumstances of the Appellant's case that as the Appellant had converted to Christianity in Iran, Dorodian did not apply in this case. It is then argued that the Judge had not considered the risk upon return from someone who was professed to be a convert adequately and that within the case of SA (Iran) it was stated at [24] "*that there must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, in that profession, whether true or not, may be taken in Iran as evidence of apostasy*". It is further argued that the Judge misdirected himself regarding the legal exit as it is argued that the issue is not a legal exit but a risk on which there was an undocumented returnee and that he would be identified as an undocumented returnee and questioned upon return and he will not be expected to lie about his basis for claiming asylum.

#### Permission to appeal

10. Permission to appeal was initially refused by Designated Immigration Judge Shaerf on the 8<sup>th</sup> July 2017, but following consideration of the renewed Grounds of Appeal, permission was granted by Deputy Upper Tribunal Judge Mailer on the 7<sup>th</sup> August 2017 on the grounds that it was arguable that the Dorodian guidance did not apply in the case as the Appellant had contended that he converted to Christianity whilst in Iraq and it was also arguable that he may be perceived as a convert by the authorities on return having regard to the cases of RT Zimbabwe and SSH (Iran).

#### The Rule 24 reply

11. Within the Respondent's Rule 24 Reply dated the 22<sup>nd</sup> August 2017, it was argued that the First-tier Tribunal Judge had directed himself appropriately and the grounds merely amount to a disagreement with the findings and that the Judge had given sound, well-reasoned conclusions. It was argued that the consideration in Dorodian was appropriate in the case and remained a useful framework for the assessment of whether or not an Appellant has genuinely converted and that in a case where an Appellant is said to have attended house churches in Iran and churches in the UK the distinction between

conversion in Iran and the UK is an artificial one. It is said that there were serious credibility issues with the Appellant's account and the Judge was entitled to reject his claim.

12. It was on that basis that the case came before me in the Upper Tribunal.

The oral submissions

13. I am grateful for the oral submissions on both Miss Patel of Counsel and Mr Bates on behalf of the Respondent, which are fully recorded within the record of proceedings.

14. Miss Patel contended there were essentially 2 issues upon which permission to appeal had been granted, firstly, regarding whether or not the case of Dorodian applied and whether or not the absence of a Dorodian witness was a relevant issue in a circumstance where the appellants claim to have converted to Christianity whilst in Iran. She argued that Dorodian did not apply in the circumstances of this case, given that the conversion was in Iran, rather than in the UK.

15. In respect of the second ground, she argued that the Appellant would be at risk upon return as a professed convert to Christianity and that he would be questioned upon return and he would not be expected to lie, such that there was a potential risk of ill treatment for the purposes of Article 3 upon return. She referred me specifically to paragraph 24 of the decision in SA (Iran), referred to within her Grounds of Appeal, but did concede that that was an administrative court decision on judicial review, and was not a Country Guidance case. However she argued that the Appellant would be subject to questioning and that he would not be expected to lie about the basis upon which he claimed asylum, and that by that stage he had been attending church for 2½ years, and that his detention for further questioning would subject him to an Article 3 risk. However, Miss Patel conceded that there was no expert or other evidence before the First-tier Tribunal regarding the perception of the Iranian authorities to someone who had sought to claim asylum on the basis of a professed conversion to Christianity. She argued in that regard that there would have been no such evidence, as professed Christian converts were not in fact being returned to Iran, so there was no evidence from

returnees, as to their treatment. However he argued that the decision of First-tier Tribunal Judge Chambers should be set aside.

16. In his submissions in reply, Mr Bates argued that this was the second time that this case had come before the Upper Tribunal, the case being heard by Judge Chambers, following a previous First-tier Tribunal Judge's decision having been set aside by the Upper Tribunal and then the case remitted back to the First-tier Tribunal. He argued that Judge Chambers specifically asked whether or not an adjournment was sought on the basis of a lack of a Dorodian witness who was able to give live evidence and submitted that Dorodian was still highly relevant in the case where part of the Appellant's case was that he had been undertaking church attendance and Christian activities whilst in the UK, even if he claimed he had converted whilst in Iran and that the attendance at church in the UK was part and parcel of his claim, and that Dorodian should be applied to that UK church attendance, as part of the consideration of overall credibility. He noted that the Judge had found at [45] that the Home Office had not been given the opportunity to test the evidence of Reverend Ferguson in court and that the Judge had considered both the claim for conversion in Iran, and made findings in respect of that, and also considered the professed church attendance in the UK. He argued there was no material error in that regard.
17. In respect of the second argued ground of appeal, he argued that the appellant was simply attempting to relitigate the cases of SSH and HR, and that those cases were Country Guidance to the effect that illegal exit and being a failed asylum seeker did not in itself put someone at risk, irrespective of the basis upon which they claimed asylum. He noted how the panel in SSH at paragraph 30 had said that Judges should exercise a reasonable amount of sensibility regarding the approach of the Iranian authorities upon return, and that the examples given at paragraph 31 of the Judgment related to those that had been of pre-existing interest to the Iranian authorities, but this Appellant he argued had no profile and was simply an economic migrant. He argued that the Appellant, if telling the truth, would say upon return if asked, that he had simply pretended to be a Christian in order to claim asylum, and although a returnee, the Iranian authorities would have no particular reason for being interested in him, given

his lack of previous profile. He argued there was no material error in respect of the Judge's findings upon risk upon return.

18. I reserved my decision.

My Findings on Error of Law and Materiality

19. Miss Patel in her oral submissions confined herself to the 2 grounds upon which permission to appeal had been granted, and did not seek permission to argue the other points raised within the Grounds of Appeal and did not seek to argue such points before me. She limited her submissions, quite properly, to the grounds upon which permission had been granted.

20. In respect of the first ground of appeal, as to whether or not the case of Ali Dorodian 01TH01537 did apply in this case, although it is clear having read the evidence and having fully considered the Judgment of First-tier Tribunal Judge Chambers that the Appellant's case has always been that he converted to Christianity whilst still in Iran, having prayed to God following the illness of his child, who he said had been cured as a result, the Appellant's case was not limited to his conversion whilst in Iran. Part and parcel of the Appellant's case was that he had continued to attend church whilst in the UK, both at the Milnrow Evangelical Church and at the Longton Communities Church, and that such attendance at church in the UK was evidence of his conversion to Christianity, and would also heighten the risk that he faced upon return to Iran.

21. In a well-crafted and thorough decision, First-tier Tribunal Judge Chambers has not simply found that the lack of a Dorodian witness meant that the Appellant's appeal should fail, but has quite properly given full, clear, adequate and sufficient reasons for rejecting the Appellant's account regarding his claimed conversion to Christianity whilst in Iran between [23] and [30]. He has then gone on to consider the Appellant's claimed attendance at church in the UK, in order to determine whether or not the Appellant has attended at church in the UK, and whether or not this is evidence of Christian conversion, and whether that would put the Appellant at risk upon return. In considering the question of the Appellant's attendance at church in the UK and whether



or not the Appellant was a genuine convert, taking all of the evidence in the round, I find that Judge Chambers was quite correct in considering the decision in Ali Dorodian at 01/TH/01537, and the guidance given in that case. Between [36] and [41], the Judge has considered the case of Dorodian, and the guidance given therein, and out of fairness to the Appellant had quite properly noted that the statements of the witnesses had been sent to the Home Office, but that Mr Richardson on behalf of the Respondent wanted the opportunity to cross-examine the witnesses and that Miss Patel had obtained specific instructions and had stated that it was not intended to call live evidence, nor had it ever been intended to call live evidence and that the letters were all that the Appellant wanted to rely upon. Miss Patel before me confirmed that she had been given the opportunity specifically by Judge Chambers to consider whether or not she wanted an adjournment, but had not taken such an opportunity, as she said that Reverend Ferguson would have been unable to attend not because he was reluctant to attend but because of the pressing nature of his work.

22. Judge Chambers was quite entitled to consider the fact that there was no live witness whose evidence could be tested by means of cross-examination, but did between [42] and [49], fully consider the contents of the letters that had been given by the Reverend Ferguson, Pastor Farrington, Pastor Harding and Mr Salem, and has given clear, adequate and sufficient reasons for placing little weight upon that evidence. Indeed, he noted at [44] that Reverend Ferguson had not been accepted as an appropriate person to vouch for the Appellant, based that he was last a minister of a church in any real sense in April 2012 and that his chaplaincy at Cornerstone which was a community interests company, did not render him to be a minister of a church established in the country but that the fact that Reverend Ferguson had not attended, meant that the issue as to whether or not he was an appropriate Dorodian witness could not be tested. Although that is criticised in the Grounds of Appeal, and that it is said that Reverend Ferguson continues to undertake bible study classes for the church Longton Communities Church, the extent of his involvement with the church was not able to be tested, as Judge Chambers properly found, due to his lack of attendance at the appeal hearing.

23. Judge Chambers further noted that Reverend Ferguson in respect of Pastor Ron Farrington had said that Pastor Farrington would only know the Appellant by the briefest of welcomes/chat on a Sunday morning in Preston and the minister of a large church would find it hard if not impossible to answer questions put by the Tribunal and that Pastor Farrington himself had said that he would only provide “basic information” on the Appellant. Judge Chambers had noted that the letter from David Harding was dated the 8<sup>th</sup> December 2014 and that the Appellant was said to have expressed a desire to be baptised and the request had been considered, but there was said to be nothing from the date of that letter on that issue from the author, and there was nothing to say whether or not the Milnrow Evangelical Church had accepted that the Appellant had actually converted to Christianity or not and only referenced what the Appellant had told them. He further noted that the letter from Mr Salem was dated from the 20<sup>th</sup> October 2014 and was said to be relating simply to the Appellant’s attendance during the previous 4 weeks at Sunday worship and English language lessons but that little evidential weight could be attached to what he considered to be a somewhat stale letter.
24. In such circumstances, the Judge has more than properly considered the weight to be attached to the documentary evidence, but was entitled to bear in mind, the fact that those witnesses had not actually attended to give evidence, in support of the Appellant’s appeal, or to provide up-to-date evidence regarding the Appellant’s church attendance as evidence of the genuineness of his conversion to Christianity.
25. The way that Judge Chambers has approached the evidence both in respect of his findings regarding the alleged conversion to Christianity whilst in Iran, and in the Appellant’s claimed attendance at church whilst in the UK, has been dealt with properly by him, and that the Judge was quite entitled, where part of the Appellant’s case related to his attendance at church in the UK, to consider the guidance given in the case of Dorodian. There is no material error by Judge Chambers in that regard.
26. In respect of the second ground of appeal replied upon by Miss Patel, as to whether or not the Appellant would be perceived as being an apostate upon return having claimed asylum on the basis of his conversion to Christianity, the decision of His Honour Judge

Gilbart QC sitting as a Deputy High Court Judge in the case of R (on application of SA (Iran)) v Secretary of State for the Home Department [2012] EWHC 2575 (admin) was a judicial review against the decision of the Secretary of State to certify that the Appellant's claim for asylum in that case was clearly unfounded. It is not a Country Guidance case, as Miss Patel quite properly concedes. Although Miss Patel relied upon paragraph [24] of the Judgment of His Honour Judge Gilbart QC, that "*There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostacy*". However, as Judge Gilbart noted in that same paragraph "*On the basis of the Home Secretary's now stated position, amounts to a potentially different circumstance from that addressed by the Immigration Judge*". Indeed, it is clear having read the Judgment, that this was an issue which although Judge Gilbart considered required mentioning, did not actually form part of the ratio of the case, which finished at paragraph 20 of the decision, and that the subsequent matters were effectively orbiter comments, and therefore did not form part of the ratio. In any event, it appears Judge Gilbart, made that statement without any analysis of any background evidence as to whether or not a profession of Christianity and conducting oneself as a Christian, would in itself mean that someone would be viewed as an apostate upon return, and simply said that it "may" be taken in Iran as evidence of apostacy.

27. However, it was stated by the Upper Tribunal in the Country Guidance case of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 "*We can understand the sensitivity that the Iranian authorities may have towards perceived slights against their own state in the form of untruthful allegations about the conduct of the state, but equally one can expect a degree of reality on their part in relation to people who in the interests of advancing their economic circumstances would make up a story in order to secure economic betterment in a wealthier country*".

28. In this case, although the Appellant clearly would not be expected to lie upon return, if actually telling the truth, given the findings of Judge Chambers, if he were questioned upon the issue, he would have to say that, although he had claimed asylum in the UK, he had fabricated his claim of conversion to Christianity, in order to be able to claim

asylum, for what Judge Chambers found was economic betterment. However, as Judge Chambers found, this Appellant actually had no previous profile that would put him at risk upon return, which would lead to extensive questioning at the pinch point, other than the fact that he was a failed asylum seeker, but the Country Guidance cases are clear that simply being a failed asylum seeker, is insufficient to put him at risk upon return. In such circumstances, there is no binding authority for the proposition sought to be advanced by Miss Patel that simply having claimed asylum on the basis of being a Christian convert, would be sufficient to lead to further questioning by the Iranian authorities upon return and a breach of Article 3.

29. Although she sought to advance the argument that by that stage the Appellant had been attending church for 2½ years, and although Judge Chambers accepted that he had made contact with churches and had undertaken studies including the study of English, there had been insufficient evidence presented to show that he had converted from Islam to Christianity and to confirm the extent of his church attendance, and the genuineness of any conversion. These were findings open to him on the evidence before him.
30. Further, although Miss Patel says that there would be no evidence available in respect of how the Iranian authorities would perceive a returnee who was undocumented who was a failed asylum seeker who had claimed conversion to Christianity and as to whether that in itself would put him at risk, as no-one has actually been returned, the Country Guidance case I find, is not limited to any particular basis of a claim, but is authority for the proposition that illegal exit in and of itself and being a failed asylum seeker, does not place an Appellant at risk, in a circumstance where there is no adverse interest in him. Further, SSH and HR make clear that an Iranian male whom it is sought to return to Iran who does not possess a passport will return on a laissez-passer which he can obtain from the Iranian Embassy on proof of identity and nationality.
31. In the absence of any binding authority in support of the proposition advanced by Miss Patel, and in the absence of any specific evidence on the point, Judge Chambers was perfectly entitled to find that the Appellant, given his findings, would not be perceived

as a convert to Christianity by the Iranian authorities upon return, and that therefore he would not be at risk. The Judge has perfectly adequately dealt with and considered that issue and made findings which were open to him on the evidence before him. There is no error of law in that regard.

32. The decision of First-tier Tribunal Judge Chambers therefore does not contain any material error of law and is maintained.

### **Notice of Decision**

The decision of First-tier Tribunal Judge Chambers does not contain any material error of law and is maintained. The Appellant's appeal against that decision is dismissed;

I do make an anonymity direction in this case given that the case concerns a claim for protection, from the authorities in Iran. 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 him or any member of his family. This direction applies to amongst others, both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Handwritten signature in black ink, appearing to read 'RFM McGinty' with a stylized flourish at the end.

Deputy Upper Tribunal Judge McGinty

Dated 13<sup>th</sup> October 2017