



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

Appeal Number: PA/08249/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 6 August 2018**

**Decision & Reasons  
Promulgated  
On 2 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**SAMAN [H]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ahmed, instructed by All Nations Legal Services

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Saman [H], is a male citizen of Iran. By a decision dated 18 June 2018, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for reaching that decision were as follows:

1. The appellant, Saman [H], was born on 23 January 1987, and is a male citizen of Iran. He appealed to the First-tier Tribunal (Judge Saffer) against a decision of the Secretary of State to deport him pursuant to Section 32(5) of the UK Borders Act 2007 and Sections 5(1) and 3(5)(a) of the Immigration Act 1971. The First-tier Tribunal in a

decision promulgated on 1 February 2018 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant claims to fear returning to Iran on account of having converted to Christianity. Before the First-tier Tribunal, the Presenting Officer (Mr Hunt-Jackson) had conceded that, “if I found the appellant has converted Christianity he would be at real risk of persecution in Iran and the appeal must succeed.” [decision, 6]. The judge found that the appellant was a genuine convert to Christianity. He therefore allowed his appeal.

3. Judge Saffer was aware [14] that a previous appeal had been dismissed by Judge Hindson in proceedings PA/02618/2015. Summarising that appeal, Judge Saffer wrote [14]:

“He did not attend the hearing. He had failed to establish he was in a relationship with a girl whose brother was a member of the PJAK he had become involved by transporting goods on their behalf, they attempted to recruit him, they shot at him whilst he tried to escape or that Ettela’at officers attended his home looking for him and arrested his father.”

4. Under the heading “Determination of Evidence” Judge Saffer does not refer again to the findings of Judge Hindson. At [39], Judge Saffer wrote:

“I agree [the appellant] could have approached the Church when he found himself in difficulties following his previous refusal but that does not mean he is a genuine Christian convert, merely that he made an error.”

5. The Secretary of State relies on the familiar authority of *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 \*. The Secretary of State refers to the fact that Judge Hindson had found that, “I do not accept the appellant has given a truthful account of events in Iran or that he would be at risk of harm on return.” Ms Chaudry, who appeared for the appellant, submitted that Judge Hindson’s findings carried less force because he had not heard oral evidence from the appellant. Moreover, the appeal before Judge Hindson had been brought on a different basis.

6. I do not consider it prudent to reject the previous findings of a Tribunal for the reasons proposed by Ms Chaudry. First, it appears to have been the appellant’s choice not to attend the hearing before Judge Hindson. Secondly, Judge Hindson considered the evidence before him and concluded that the appellant had given an untruthful account. Judge Saffer should, at the very least, have considered the appellant’s lack of candour in his previous appeal, as clearly found by Judge Hindson. Just because the appellant was bringing an appeal on a new basis did not mean, so far as the second Tribunal was concerned, that there existed a “clean sheet” as regards the appellant’s credibility as a witness. Whatever the circumstances at the hearing before Judge Hindson, that judge had concluded that the appellant had given untruthful evidence. Judge Saffer has completely ignored that fact. In consequence, I find that he has erred in law.

7. The decision of Judge Saffer is set aside. The Upper Tribunal can re-make the decision following a resumed hearing which will be in

Bradford on a date to be fixed. I do not preserve any of the findings of Judge Saffer. I shall, however, preserve the concession made by Mr Hunt-Jackson which is referred to in Judge Saffer's decision at [6] as regard the risk to a Christian convert returning to Iran. If the Secretary of State now seeks to resile from that concession, then he will have to make an application at the resumed hearing to do so. Any additional evidence at the resumed hearing upon which either party may seek to rely must be sent to the other party and to the Upper Tribunal no less than 10 days before the date fixed for the resumed hearing.

#### Notice of Decision

8. The decision of Judge Saffer promulgated on 1 February 2018 is set aside. None of the findings of fact shall stand. The decision will be re-made by the Upper Tribunal (Upper Tribunal Judge Lane) following a resumed hearing at Bradford on a date to be fixed (two hours allowed).

2. At the resumed hearing at Bradford on 6 August 2018, I heard evidence from the appellant and also [MB], the pastor of Legacy Church, Doncaster. I heard submissions on behalf of both parties and then reserved my decision.
3. The burden of proof is on the appellant. The standard of proof is whether there are substantial grounds for believing that there is a real risk that the appellant will be persecuted or ill-treated on return to Iran.

#### **The Decision of First-Tier Tribunal Judge Hindson**

4. By a decision dated 23 August 2016, First-tier Tribunal Judge Hindson had (in proceedings under reference PA/02618/2015) dismissed the appellant's asylum and human rights appeal. At that time, the appellant's claim was based upon a relationship with a girl whose brother was a member of PJAK, the appellant had become involved in transporting goods on their behalf. The appellant claimed that Ettela'at officers had attended his home and had arrested his father. The appellant did not attend that hearing before Judge Hindson. Judge Hindson did not believe the appellant's account and dismissed the appeal. There was no successful onward appeal by the appellant. I found that Judge Saffer had erred in law by failing to take any account of the findings of Judge Hindson.
5. At the hearing before me, the appellant sought to explain his reasons for not attending the hearing before Judge Hindson. He told me that he had been waiting for rail tickets to enable him to make the journey to the First-tier Tribunal but these had not materialised in time. I have considered that explanation but reject it. The appellant was well-aware of the date of the hearing and he should have made every possible attempt to attend, whether or not he had a rail warrant. He could have applied even at short notice for an adjournment of the hearing if he was literally unable to attend at the given time. He took no steps to notify the Tribunal that he would not attend nor did he raise this issue with the Tribunal following the dismissal of his appeal.

6. I fully accept that a hearing at which an appellant gives oral evidence which is testified in cross-examination may lead to findings in respect of credibility which are more significant than those made where the appellant has been absent from the hearing. However, I find it was the appellant's choice not to attend the hearing and submit cross-examination. He has little cause for complaint if, in those circumstances, the judge finds that his account is not credible. Further, there was no suggestion that Judge Hindson had made that finding simply and only because the appellant did not attend; I am satisfied that he considered the evidence carefully. I am aware also that the basis upon which the appellant now appeals (Christian conversion) differs entirely from that put before Judge Hindson. Judge Hindson has not made findings on the particular issues before the Tribunal now. However, I consider that I should (following the principles of *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 \*) proceed on the basis that the appellant has previously been found to be an unreliable witness. In that regard, I take into account also that the appellant had been convicted of a criminal offence (fifteen months' imprisonment for the production of cannabis).
7. The appellant claimed before the Upper Tribunal that he is a genuine convert to Christianity. So far as the appellant's own claim is concerned, I do not believe him. I accept that he attends church but, examined against the background of all the evidence in this appeal and in particular previous findings as to the appellant's credibility, I find it likely that the appellant's attendance is solely for the purpose of seeking to remain in the United Kingdom. I make that finding having had regard for all the evidence including that of [MB] (see below).

### **The Evidence of Pastor [MB]**

8. Pastor [B] adopted his witness statement as his evidence-in-chief. He was cross-examined by Mrs Pettersen. He told me that he was aware that some asylum seekers would seek to "pull the wool over my eyes." However, the appellant had been submitted in the past for baptism. Mr [B] said that the church did not just "baptise anybody." They waited until it was possible to see that the level of commitment to Christianity before baptism was authorised. Mr [B] said that he had been "gutted" when he found out about the appellant's criminal conviction. He was sad that the appellant had not approached the church for help. He confirmed that his church did not actively engage in proselytising Christianity.
9. The appellant had given evidence (not challenged by the respondent) that his own brother (who had also been convicted of cannabis production) had returned voluntarily to Iran via Germany. The appellant's brother had also been baptised by Mr [B]'s church. Mr [B] confirmed to me that the brother had been baptised at the church but he did not recall whether he (like the appellant) had attended on a "Alpha" course prior to baptism. The brother had not attended church with the same regularity as the appellant.

However, Mr [B] said that someone at the church would have “made sure that he was ready” before baptism was authorities.

10. I was grateful to Mr [B] for coming to church. I fully accept that Mr [B] has an close knowledge of the appellant as an attendee at his Christian Church. I am aware also, however, that the appellant is a practised liar (see above) and would, in my opinion, be willing to deceive Mr [B] and his colleagues if he believed that it would result in his remaining in the United Kingdom. In my opinion, the appellant has sought to deceive Mr [B]. Further, I attach little weight to the fact that Mr [B]’s church has a procedure to check the genuineness of those converting to Christianity before they are baptised. I say that because the appellant’s brother was baptised by the church and it is agreed evidence that he has returned to Iran voluntarily where it appears he has not encountered any difficulties. The appellant confirmed that he had spoken with his brother after the latter had returned to his home area of Iran. It was clear from what Mr [B] said to me that, in retrospect, the brother’s conversion to Christianity was not as genuine as members of the church believed before he was baptised. I consider that to be evidence that the procedures prior to baptism adopted by the church are plainly fallible.

### **Risks to the Appellant on Return to Iran**

11. It is particularly difficult in cases such as these to determine risk on return because no evidence appears to exist as to the interrogation which is like to occur of a failed returned asylum seeker returning to Tehran. However, this is an unusual case in which an individual who has been baptised into a Christian Church has returned voluntarily to Iran apparently without any repercussions. It follows from the brother’s experience of having returned and having suffered no adverse consequences that he was either not asked whether had had converted to Christianity or he did not volunteer that information to anyone who questioned him on return. Having rejected Mr [B]’s evidence that the appellant is a more genuine convert to Christianity than his brother, I cannot see any reason why the appellant would experience a different level of interrogation upon return. I do not accept that, if the appellant were forcibly returned as a failed asylum seeker, there is a real risk that he would face a more rigorous or hostile interrogation than an individual, such as his brother, who returns voluntarily. Like the appellant, the brother had claimed asylum in the United Kingdom and had undergone baptism.
12. Given the particular facts in this case and having regard to the experience of the appellant’s brother, I find the appellant has failed to establish that he does face a real risk of persecution or ill-treatment upon return to Iran. The parties agree that the “pinch point” of risk, if any, will occur at the airport; it has not been argued that the appellant would face any difficulties thereafter in his home area simply on account of having been a failed asylum seeker. I find it likely that the appellant’s experience at that “pinch point” would be the same as that of his brother. The brother has

passed through the airport and is now living apparently without difficulty in Iran. The appellant, who I find is not a genuine convert to Christianity, is likely to fare no worse.

13. In the circumstances, the appeal is dismissed.

**Notice of Decision**

14. The appellant's appeal against the decision of the Secretary of State dated 14<sup>th</sup> August 2017 is dismissed on asylum and human rights grounds. The appellant is not entitled to a grant of humanitarian protection.

15. No anonymity direction is made.

Signed

Date 29 November 2018

Upper Tribunal Judge Lane

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 29 November 2018

Upper Tribunal Judge Lane