



IAC-AH-DN-V1

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

Appeal Number: HU/12274/2019 (V)

**THE IMMIGRATION ACTS**

**Heard remotely at Field House  
On 6 October 2020**

**Decision & Reasons Promulgated  
On 07 December 2020**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

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

**Appellant**

**and**

**ARASH KHANIPARASHKOOH  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent**

**Representation:**

For Secretary of State: Mr M Diwnycz, Senior Presenting Officer

For Mr KhaniparashkooH: Miss Longhurst-Woods, Counsel instructed by way of Direct Access

For the sake of clarity, I will refer to the appellant as the Secretary of State and I will refer to the respondent in this appeal as Mr KahniparashkooH.

**DECISION AND REASONS**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Beg ("the judge") sent on 4 December 2019, allowing Mr KahniparashkooH's appeal

against the refusal of his human rights claim. Permission to appeal was granted by First-tier Tribunal Judge Grant on 23 April 2020.

2. The hearing was held remotely. Neither party objected to the hearing being held by video link. Both parties participated by UK court Skype. I am satisfied that a face-to-face hearing could not be held because it was not practicable due to the current COVID-19 situation and that all of the issues could be determined fairly by way of a remote hearing. Both parties confirmed at the end of the hearing that it had been conducted fairly.

### Background

3. Mr Kahniparashkooch is a national of Iran born on 23 July 1982. He entered the UK on 27 April 2007 on a student visa. He was granted further periods of leave as a student and then as a Tier 1 Highly Skilled Post-study Migrant until 14 November 2013. He claimed asylum on 18 December 2012. His claim for asylum was refused and his appeal against that decision was dismissed ("the 2014 decision"). He subsequently submitted an application for leave to remain in the United Kingdom based on his family and private life. That application was refused on 15 December 2015 and the appeal against that decision was dismissed ("the 2017 decision"). Permission to appeal was refused. Mr Kahniparashkooch then made a further application for leave to remain in the United Kingdom on the basis of his family life with his partner Xu Yang on 25 September 2017. On 3 July 2019 the Secretary of State took a decision to refuse Mr Kahniparashkooch's human rights claim which was the decision before First-tier Tribunal Judge Beg.

### Mr Kahniparashkooch's case

4. Mr Kahniparashkooch asserts that it would be a disproportionate breach of Article 8 ECHR to remove him from the UK. He asserts that he satisfies the provisions of Appendix FM because he is in a long-standing, genuine and subsisting relationship with Miss Yang who has indefinite leave to remain in the United Kingdom and there are insurmountable obstacles to family life continuing outside the United Kingdom in accordance with EX.2 of Appendix FM. This is because he is in fear of being persecuted as a Christian convert, his partner is a Buddhist, and the couple would be unable to marry or practise their religion in Iran. Further, his partner has a business in the UK and is unfamiliar with the language and culture in Iran. Mr Kahniparashkooch additionally has a private life with his brother in the United Kingdom. His brother has mental health problems and requires support. There are very significant obstacles to his integration to Iran and it would be unduly harsh to remove him there.

### The decision on the human rights claim

5. Although it is accepted by the Secretary of State that Mr Kahniparashkooch's partner, Miss Yang, might not wish to uproot and relocate to Iran because she has indefinite leave to remain in the UK where she has established a business, and that it might be difficult for her to do so; it is considered that the degree of hardship or inconvenience faced by her does not amount to "insurmountable obstacles". There are no very

significant obstacles to Mr Kahniparashkooch returning to Iran because he lived there until he was 24 years old, speaks Farsi and English and has family members in Iran. Mr Kahniparashkooch previously claimed asylum based on his fear of mistreatment for political reasons. His claim was refused, and his appeal dismissed because he lacked credibility. Mr Kahniparashkooch has not made any further submissions in respect of his claim for asylum. Further, he has failed to provide evidence that his relationship with his brother extends beyond that between adult siblings. There are no exceptional circumstances to warrant a grant of leave outside of the immigration rules.

#### The Decision of the First-tier Tribunal

6. The judge heard evidence from both Mr Kahniparashkooch and his partner. A third witness attended the appeal to give evidence on behalf of Mr Kahniparashkooch and adopted his witness statement.
7. The judge's starting point was the 2017 decision in accordance with Devaseelan [2002] UKIAT 00702. The judge noted that in the 2017 decision it was not accepted that Mr Kahniparashkooch and his partner were in a genuine and subsisting relationship. It has now been accepted by the Secretary of State that this is the case.
8. The judge considered that the situation had moved on since 2017 and turned to the issue of whether there were insurmountable obstacles to Mr Kahniparashkooch and his partner continuing their family life together in Iran. The judge found that Miss Yang has never been to Iran and does not speak Farsi. She accepted that Miss Yang is a Buddhist.
9. The judge took into account that Mr Kahniparashkooch's previous asylum claim was based on his political activities and that the issue of his Christian conversion was not considered in the 2014 decision because his conversion post-dated the appeal. She took into account that the previous judge in 2014 found that Mr Kahniparashkooch was not a truthful witness.
10. Mr Kahniparashkooch adduced evidence of his conversion to Christianity in the appeal bundle and was not cross-examined in relation to this issue by the Secretary of State. The judge found that Mr Kahniparashkooch is a Christian convert and that there would be insurmountable obstacles to him living in Iran on this basis. Mr Kahniparashkooch would not be able to marry Miss Yang in Iran and neither of the couple would be able practise their faith there. The judge took into account that Miss Yang has set up a beauty business in the United Kingdom which she has been running for several years and that if she moved to Iran, she would need to start up again in a new country where she does not speak the language. She took into account that Mr Kahniparashkooch's brother who suffers from schizophrenia lives in the United Kingdom and that Mr Kahniparashkooch would lose contact with his brother if he is removed to Iran. The judge accepted Mr Kahniparashkooch's evidence that the fact that his brother knows he is in the UK and comes to see him from time to time is a form of healing and support. Taking the evidence as a whole, the judge found that there were insurmountable obstacles to the couple continuing family life in Iran.

11. The judge then turned to consider Article 8 ECHR outside of the Rules taking into account s117B of the Nationality, Immigration and Asylum Act 2002 in respect of the public interest considerations. The judge noted that the couple entered into a relationship in the full knowledge that Mr Kahniparashkoooh's immigration status was precarious and that both Mr Kahniparashkoooh and his partner were aware that Mr Karniparashkoooh could be removed from the UK. The judge repeated her findings that there would be significant difficulties for the couple to establish family life in Iran for the reasons set out already. Taking the evidence in the round, she found on the balance of probabilities that the interference in Mr Kahniparashkoooh's Article 8 ECHR rights is disproportionate and would result in unjustifiably harsh consequences for Mr Kahniparashkoooh and his partner. The judge allowed the appeal.

### Grounds

12. The grounds of challenge are muddled and apart from the assertion that there has been a "material misdirection of law", do not particularise any other specific errors of law. As conceded by Mr Diwnycz at the outset of the hearing, this may well be because the Secretary of State did not have the papers before her when the grounds were pleaded. I extract the following from the grounds. Mr Diwnycz clarified that Ground 1 is a 'reasons challenge'.

### **Ground 1 - Inadequate reasons**

13. The judge gave inadequate reasons for her findings in relation to Mr Kahniparashkoooh's inability to marry his partner and practice his faith. There was no evidence before the judge of the difficulties Mr Kahniparashkoooh's partner would face in Iran as a Buddhist nor was there any evidence before the judge of Mr Kahniparashkoooh's Christian conversion. There was no evidence that they would not be able to marry in Iran. The judge did not adequately explain why she accepted that Mr Kahniparashkoooh is a Christian convert when he had previously been found to be lacking in credibility.

### **Ground 2 -Material misdirection of law**

14. The judge failed to give sufficient weight to the precariousness of Mr Kahniparashkoooh's immigration status in accordance with Ruppiah v Secretary of State for the Home Department [2016] EWCA Civ 803. The fact that Mr Kahniparashkoooh's partner has a business in the UK and cannot speak Farsi are not sufficiently compelling factors on their own to amount to insurmountable obstacles. The partner as a Chinese national has previously moved to a new and unfamiliar country and built a business and there is no suggestion that she could not do so again.

### Grant of permission

15. First-tier Tribunal Judge Grant granted permission on the basis that the judge arguably erred in law by not taking into account Ruppiah where the Court of Appeal found it is not unreasonable to expect a person who obtains leave to remain in the

United Kingdom as a student to be prepared to leave at the end of their period of study and to organise their life accordingly, and that it was also arguable that the judge had not given adequate reasons for finding Mr Kahniparashkooch to be credible.

16. At the outset of his submissions, Mr Diwnycz informed me that the grounds of challenge had been prepared by the Secretary of State without having sight of the original appeal bundle or documents. Miss Longhurst-Woods pointed to the fact that Mr Kahniparashkooch had not been aware that the Secretary of State had sought permission to appeal against the decision allowing his appeal, until five months after the event. Mr Kahniparashkooch ultimately received the grant of permission from the Tribunal on 28 May 2020 at the same time as receiving the grounds of challenge.

#### The Respondent's Rule 24 Response

17. The Rule 24 response submits that the grounds are misleading and contain significant errors. It is asserted that there was a plethora of evidence in Mr Kahniparashkooch's bundle relating to his conversion to Christianity including his baptism certificate. A church official was called as a witness at the appeal to attest to his conversion and regular church attendance. Since 2016, the fact of religious persecution of Christians in Iran is the subject of a Home Office country guidance report which is in the public domain. The judge was entitled to take judicial notice of this material. Further the judge took into consideration that Mr Kahniparashkooch's previous claim was not accepted because it was not believed that he was politically active. The judge was entitled to find that that previous asylum appeal was not based on Mr Kahniparashkooch's conversion to Christianity. The Presenting Officer failed to cross-examine Mr Kahniparashkooch or his witness on this issue and it is not appropriate to raise objections at this stage. The judge was plainly entitled to find that there were insurmountable obstacles and very significant obstacles to integration taking into account in the round taking into account Mr Kahniparashkooch's religious conversion, his partner's faith as a Buddhist, their inability to practise their respective faith and to marry each other and Mr Kahniparashkooch's close relationship with his brother who has paranoid schizophrenia and who had been granted asylum in the UK. The judge gave proper consideration to the factors of the public interest consideration in Section 117B where it is said in Rupphiah that Section 117B may be overridden in an exceptional case by particularly strong features of private life in question.

#### Analysis and Discussion

18. At the outset of the appeal Mr Diwnycz attempted to argue that Mr Kahniparashkooch had not claimed asylum on the basis of his Christian conversion and that the issue was not therefore live before the judge. He confirmed that he had not had sight of either Mr Kahniparashkooch's bundle or the original respondent's bundle prior to attending the hearing.
19. I took him to the original Secretary of State's bundle which enclosed a copy of Mr Kahniparashkooch's human rights application. At page 28 of 61 of the application it is said:

“My partner Xu Yang’s life and career and her relationship with me is established in the United Kingdom. She has been working in the UK for more than ten years as a registered beauty therapist in London Westminster. She has been running her own business since 2014 and received her settlement in 2017. I have studied in the UK and graduated with a first-class degree and worked for the same university. My payslips attached. I was promoted to head chef of Yo Sushi in 2013. I joined Wagamama and established my career as a corporate hospitality manager in 2013. I have been responsible to train people and run different branches and receive two promotions and became head chef again in 2017. This is what I have been doing and what I know for living. I have my job secured in the UK, it is subject to my work permit status. My partner Xu is a Buddhist and I am a Christian. We have no prospect of life living outside the UK considering the issues I will face back home and its consequences for our relationship and the rest of my family. The issues will arise from my internet blog which is known by Fata and my religious conversion. We Xu and I both speak and communicate in English. Xu cannot speak Farsi. I cannot speak Chinese. We have lots of friends and people who know us in the UK through the years we have lived together as a couple. We have no prospect of life as a couple outside the UK.”

20. Later in the application, Mr Kahniparashkooch points out that his brother was granted asylum in the United Kingdom on the same factual basis as Mr Karniparashkooch’s original claim for asylum. He also states:

“I wish I would be able to live freely and practise my religion. I have to hide my faith and live the rest of my life in fear of execution as a converted Christian if I am to return. My relationship with Xu also would diminish since we are both non-Muslims and there is no prospect of life for us in a Muslim country who does not recognise the rights of other religions and belief. We would not even be able to get married as we will not be allowed by Sharia law.”

21. At section 11 Mr Kahniparashkooch states:

“I am a converted Christian. I am a member of my church which is Kensington Temple in Notting Hill Gate. I am also a member of a cell group in my church. Christianity is not just a religion to me. It is the way I will live for the rest of my life. I will practise my religion openly and freely in the UK and it is a blessing for me.”

22. In support of his application Mr Kahniparashkooch also provided a signed statement in which he referred to his Christian conversion, a letter from his partner referring to Mr Kahniparashkooch’s religion, a letter from Kensington Temple dated 18 September 2017 and a letter from Stephen David who is the leader of a cell group based at Kensington Temple dated 24 September 2017.

23. Having now had sight of these documents, Mr Diwyncz conceded that there was evidence of Mr Kahniparashkooch’s Christian conversion in the original application and that the assertion that there was no evidence of his Christian conversion falls away.

24. When the Secretary of State came to address the ‘Christianity aspect’ in the decision refusing the human right’s claim dated 3 July 2019 it is said:

“It is noted that on 18 December 2012 you made an asylum claim on the basis that if you return to Iran you would face mistreatment due to your political opinions. You claim you would face a real risk of unlawful killing and torture or degrading treatment

or punishment. However, your asylum claim was refused on 22 May 2013 with the right of appeal. This First-tier hearing was then dismissed on 24 November 2014.”

25. It is then said:

“While you claim this fear of return to your country of origin it is noted that no further submissions have been made in terms of your failed asylum claim of which you have the right to make. As such it is not accepted that a protection claim has been made in this application. This decision relates to the application you have made on the basis of your private life and exceptional circumstances in the United Kingdom only.”

26. Mr Diwyncz accepted that the Secretary of State did not address in the decision letter why Mr Kahniparashkoooh’s claimed conversion to Christianity did not constitute an insurmountable obstacle to he and his wife living together in Iran or a very significant obstacle to him living in Iran, apart from the assertion that he had been found to be lacking in credibility in an earlier appeal.

27. Mr Kahniparashkoooh produced a bundle of evidence in support of the appeal before the First-tier Tribunal which included witness statements from himself, his partner and the church witness Mr Stephen David. He also produced a certificate of baptism, a welcome letter from the Kensington Temple dated 15 June 2016, a letter dated 8 September 2017 and various further letters.

28. It is agreed by all parties in this appeal that in determining the original human rights appeal, that the issue of whether there were insurmountable obstacles to Mr Kahniparashkoooh and his partner living together in Iran was a live issue in the appeal.

29. I am satisfied that it would have manifestly been an error of law for the judge not to have made findings in relation to Mr Kahniparashkoooh’s assertion raised in the original application and his grounds of appeal that there were obstacles to continuing life in Iran with his wife because of his conversion to Christianity and because of her religion.

30. In the decision, the judge records that Mr Kahniparashkoooh was not cross-examined in relation to his Christian conversion nor was Mr Kahniparashkoooh’s partner. A church witness, who attended the appeal, adopted his witness statement in which he explained Mr Kahniparashkoooh’s involvement in his church and confirmed his regular attendance in his church cell. The witness was also not cross-examined.

31. Mr Diwyncz then stated that he was in difficulty arguing that the judge should not have dealt with the issue of the Christian conversion and further that he was in difficulty arguing that the judge’s acceptance of the evidence in relation to the Christian conversion was flawed or irrational given that the Secretary of State did not cross-examine Mr Kahniparashkoooh or any of the witnesses in relation to this issue at the hearing.

32. Mr Diwyncz did not seek to further persuade me that the judge had given inadequate reasons for finding that Mr Karniparashkoooh is a Christian convert or that his findings in respect of this issue were irrational.

33. I am satisfied that that there was evidence before the judge of Mr Kahniparashkoooh's baptism, his attendance at Kensington Temple and his involvement and commitment to the church cell in the form of his own evidence and that of his partner as well as the witness evidence and documentary evidence. I am satisfied that the judge despite giving brief reasons was entitled to find on the balance of probabilities on the evidence before her that Mr Kahniparashkoooh was a Christian convert. Her reasons are tolerably clear. I am also satisfied that the judge was fully aware and took into account the fact that Mr Kahniparashkoooh had not been found to be credible in his previous asylum appeal which she explicitly refers to at [20]. The judge correctly noted at [21] that the previous appeal related to a different basis for the claim for asylum and that Mr Kahniparashkoooh's conversion to Christianity had not been an issue in that appeal.
34. The judge was entitled to give weight to the evidence before her and chose to accept the evidence of Mr Kahniparashkoooh and his partner. There was no indication that the Secretary of State submitted that Mr Kahniparashkoooh and his partner were not credible or that their account was not to be believed. The judge's reasons may be succinct, but they are adequate, particularly in circumstances where the Secretary of State chose not to test the evidence or attack Mr Kahniparashkoooh's account.
35. Having found that Mr Kahniparashkoooh is a Christian and that his partner is a Buddhist the judge was then entitled to take into account as a matter of judicial note the current country guidance case on Christian converts in which it is accepted that a genuine Christian convert would face difficulties in Iran and would be unable to practice his faith openly.
36. Although the judge does not specifically set out the test in respect of 'insurmountable obstacles' in the decision, it is not asserted in the grounds that the judge erred in applying the incorrect test.
37. The case of R (Agyarko) v Secretary of State for the Home Department [2017] UKSC 11 indicates that insurmountable obstacles are to be understood in a practical and realistic sense and the test is a stringent one. In CL v Secretary of State for the Home Department [2019] EWCA Civ 1925 it is said that the judge must first decide whether there is an alleged obstacle to family life continuing outside the United Kingdom and whether this amounts to a very significant difficulty. If the threshold is met the question is whether the difficulty is one which would make it impossible for an applicant and their partner to continue family life together outside of the United Kingdom. If not, the decision maker has to consider taking any account of any steps which could be reasonably be taken to avoid or mitigate the difficulty but nevertheless entail very serious hardship for the applicant or their partner or both. It is relevant and necessary to have regard to the particular characteristics of the individuals concerned.
38. At [24] the judge makes a clear finding that the insurmountable obstacles test has been met. She states:
- "However, in taking the evidence as a whole on the balance of probabilities, I find that there is credible evidence before me that there are insurmountable



obstacles to the couple continuing family life in Iran. Consequently, the appellant meets the requirements of EX.2 of Appendix FM of the Immigration Rules”.

39. I am satisfied that the judge did not err in finding that Mr Kahniparashkoooh’s status as a Christian convert, his partner’s status as a Buddhist together with the difficulties Mr Kahniparashkoooh’s partner would face in respect of language and culture in Iran and the care that Mr Kahniparashkoooh gives to his mentally ill brother in total, cumulatively amounted to insurmountable obstacles. I am satisfied that the reasons challenge is not made out. The judge gave adequate reasons for her findings and was entitled to make those findings on the evidence before her. The judge’s findings are not irrational.

#### Misapplication of the law

40. I am satisfied that in carrying out the balancing exercise, the judge did take into account section 117B factors. She took into account at [27] that the couple entered their relationship in the full knowledge that the appellant’s immigration status was precarious and at [30] that little weight should be attached to his private life. She nevertheless concluded that having taken into account the difficulties that the couple would face in Iran in conjunction with the appellant’s relationship with his brother that the interference in his family and private life would have unduly harsh consequences for the appellant and his partner. Rhuppiah is not support the proposition that no appeal can succeed where a private and family life has been established when an individual has a precarious immigration status. The judge was manifestly entitled to give weight to the strength and quality of Mr Karniparashkoooh’s family and private life. The judge noted that the appellant was in the UK lawfully for 6 years as a student and highly skilled migrant and had an impressive work and study history including completing a BA in accounting from Middlesex University. He has been in a long-term relationship with his partner who has a business in the UK, has a supportive relationship with his brother and is a genuine Christian convert who would face problems in Iran. I am satisfied, given these factual findings, that the judge’s decision that the public interest in removal was outweighed by Mr Kahniparashkoooh’s family and private life was manifestly rational and lawful.
41. Even had I been satisfied that there was an error in the approach to section 117B because the judge did not give sufficient weight to the precarious nature of Mr Kahniparashkoooh’s immigration status, I would have found that this was immaterial. The Secretary of State has accepted that there are no suitability objections, and that Mr Kahniparashkoooh is in a genuine and subsisting relationship with his partner. The judge lawfully found that there were insurmountable obstacles to Mr Kahniparashkoooh’s family life taking place in Iran. These cumulative findings have the effect that Mr Karniparashkoooh meets the requirements of EX.2 of Appendix FM. Mr Dymwytz conceded that the effect of this is that Mr Kahniparashkoooh was able to demonstrate that he met the requirements of E-LTRP 2.1. Mr Karniparashkoooh was therefore able to satisfy Appendix FM of the Immigration Rules.
42. In TZ (Pakistan) [2018] EWCA Civ 1109, at [34] it is said:

“That leaves the question of whether the tribunal is required to make a decision on article 8 requirements within the Rules i.e. whether there are insurmountable obstacles, before or in order to make a decision about article 8 outside the Rules. The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules. An evaluation of the question whether there are insurmountable obstacles is a relevant factor because considerable weight is to be placed on the Secretary of State's policy as reflected in the Rules of the circumstances in which a foreign national partner should be granted leave to remain. Accordingly, the tribunal should undertake an evaluation of the insurmountable obstacles test within the Rules in order to inform an evaluation outside the Rules because that formulates the strength of the public policy in immigration control 'in the case before it', which is what the Supreme Court in Hesham Ali (at [50]) held was to be taken into account. That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed”.

43. I am satisfied that the fact that Mr Kahniparashkoor could satisfy Appendix FM of the immigration rules should have informed the outcome of the proportionality exercise. It was not necessary for the judge to go on to consider Article 8 ECHR outside the Immigration Rules in any event. Therefore, any error in the approach to Section 117B was not material to the outcome of the appeal.

#### Conclusion

44. It follows that none of the grounds of appeal are made out and the Secretary of State's appeal is dismissed. I am not satisfied that there was a material error of law in the judge's decision.

#### **Notice of Decision**

**The decision of the First-tier Tribunal did not involve the making of an error of law.**

**The decision is upheld.**

No anonymity direction is made.

Signed *R J Owens*  
Upper Tribunal Judge Owens

Date 27 November 2020