Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02639/2017

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 16 January 2018	**On 15 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FV
(anonymity direction made)

Respondent

Representation:

For the Appellant: Mr McVeety Senior Home Office Presenting Officer
For the Respondent: Mr Dixon instructed by IAS (Manchester)

ERROR OF LAW FINDING AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Davis who, in a decision promulgated on 18 October 2017, allowed the appellant's appeal on protection (Refugee Convention) grounds.

Background

2. FV is an Iranian national who was arrested by the police on 3 October 2015 having walked through the Channel Tunnel and entered the United Kingdom illegally. FV claimed asylum and was convicted at the Canterbury Crown Court on 4 April 2016 of an offence relating to his unlawful entry into the Channel Tunnel for which he was sentenced to 14 months imprisonment. As a result, FV is the subject of an automatic deportation decision.
3. The basis of the asylum claim is a real risk on return as a result of his conversion to Christianity which FV asserts entitles him to the benefit of an exception to his deportation provided for in the UK Borders Act 2007.
4. The Judge found FV to be a credible witness and his supporting witness Pastor Morton to be "an entirely convincing witness". The Judge sets out the finding in the following terms:

> 'The Respondent's decision to make a deportation order was not in accordance with the law because there is a serious possibility or reasonable likelihood that if the Appellant is returned to Iran he will or may be persecuted for a Convention reason. That Convention reason is on the basis of his religion as a convert to Christianity. This appeal is allowed on asylum grounds.'

5. The Judge also allow the appeal on human rights grounds on the same basis.
6. The Secretary State sought permission to appeal asserting the Judge should have considered, in accordance with *HJ (Iran) [2010] UKSC 31* whether the appellant would live discreetly in Iran and failed to consider whether FV would proselytise of return to Iran or continue to practice his religion discreetly. The Secretary of States grounds place reliance on *AS (Iran) [2017] EWCA Civ 1539*.
7. FV opposes the appeal in his Rule 24 response dated 27 December 2017.

The law

8. The February 2017 country policy and information note on Christians and Christian converts can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594899/CPIN_-_Iran_-_Christians_-_v3_0.pdf
9. Apostasy, the conversion of Muslims to another religion, is not acceptable in Islamic law.
10. It is also noted that for practical purposes the respondent is now, in some cases at least, conceding cases of Christians from Iran, if found to be genuine converts under the *HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31* principle.
11. In the case of *AS (Iran) v SSHD [2017] EWCA Civ 1539* the appellant had converted to Christianity and lived in Iran as a Christian "privately" for 3 years without evangelizing or proselytizing or experiencing difficulties. The judge found that she could move from her home and live as a Christian in an area where she was not known to be a convert (she would be relocating for reasons other than her religion). It was argued by the appellant that her history as a convert was an intrinsic part of her religious identity and she should not have to conceal that through fear. The Court of Appeal found that her personal history of conversion was not a part of her religious belief or identity as a Christian although it might be otherwise if she was a member of a Christian denomination which taught that active evangelizing was a duty. This case may be relied upon to suggest that the earlier country guidance cases which say that an ordinary convert is not at risk of persecution is still good law. Care is needed however. This appellant had lived without any problems in Iran in the past as a Christian convert. The judge's findings that the appellant would be able to live in a place where she was unknown were not challenged. The argument was about whether the fact she would be unable to reveal that she was a convert meant she should be entitled to asylum.
12. In *FG v Sweden (App No 43611/11 ECtHR Grand Chamber (2016*)) the Court noted that both the Swedish government accepted that Christian converts were at risk in Iran.
13. The decision in *FS and others (Iran- Christian Converts) Iran CG 2004 UKIAT 00303* promulgated on 17 November 2004 was intended to provide the definitive approach to Iranian Christian cases and reconcile the inconsistencies in earlier case law on the subject. In *FS* the Tribunal made the following findings.

> (i) At paragraph 153 the Tribunal indicated that Christians, who were not converts, were at risk of discrimination but not a real risk persecution. ("The evidence shows that those Christians who are not converts from Islam and who are members of ethnic minority churches are not persecuted, at least as a general rule." The Tribunal accepted that they suffered societal discrimination but did not accept that this amounted to persecution.)

(ii) At paragraph 186 the Tribunal acknowledged the extent of the discrimination faced by Christians in Iran generally. ("All Christians suffer from significant legal, social and economical discrimination. All known converts live in a society where these forms of discrimination are reinforced. The legal regime, in theory, can be very harsh; they can be seen as enemies of the theocratic state and their lives and well being can be threatened by the apparatus of the state and the violent attentions of covertly sanctioned religious zealots. There is no state protection. There would be a pervasive climate of fear, varying in degree, from time to time, and place to place.")

(iii) At paragraph 187 the Tribunal found that the ordinary convert would not be at a real risk of persecution. ("For the ordinary convert, who is neither a leader, lay or ordained, nor a pastor, nor a proselytiser or evangelist, 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 practiced, if necessary, cautiously at times, by church attendance, association with Christians and bible study. There may well be monitoring of services and identity checks. They would be able to practice, however, as most Iranian converts do. It is realistic to expect that they may sometimes be questioning, disruption, orders not to attend church, which may require the convert to stay away for a while. But there is no evidence of a real risk of ill treatment during such questioning or of anything more than a short period of detention at worst. There is evidence of random or sporadic violence by the likes of the Basiji, but at too infrequent a level to constitute a real risk to the ordinary convert. The longer official questioning, detentions and the greater risk of charges trumped up or menacingly vague or simply threatened are not a real risk for the ordinary convert.")

(iv) At paragraph 189 the Tribunal found that proselytisers, evangelists and church leaders would be at a real risk of persecution with the risk increasing the higher the profile and role. ("We would regard the more active convert, pastor, church leader, proselytiser or evangelist as being at a real risk. Their higher profile and role would be more likely to attract the malevolence of the licensed zealots and the serious attention of the theocratic state when it sought, as it will do on occasions, to repress conversions from Islam which it sees as a menace and an affront to the state of God.")

(v) At paragraph 190 the Tribunal found that an ordinary convert with additional risk factors may be at a real risk of persecution, particularly women. ("Where an ordinary individual convert has additional risk factors, they too may be at a real risk. We have already said that we accept that the conversions would become known to the authorities, but that is not of itself an additional factor because it is the very assumption upon which we are assessing risk. These risk factors may not relate to religious views at all. It is the combination which may provoke persecutory attention where, by itself, the individual conversion would have been allowed to pass without undue hindrance. A woman faces additional serious discrimination in Iran, although it falls short of being persecutory merely on the grounds of gender. But for a single woman, lacking such economical social protection which a husband or other immediate family or friends might provide, the difficulties she faces as a convert are significantly compounded. Her legal status in any prosecution is much weaker; the risk of ill treatment in any questioning is increased. This factor tips the overall nature of the treatment and risk into a real risk of persecution.") By way of further example, at paragraph 191 the Tribunal noted that FS had a past adverse political profile. That profile was not one which, of itself, would cause any significant difficulties. However, coupled with his conversion, the Tribunal concluded that it would lead the authorities to target FS for questioning and a higher level of harassment, more akin to that which might be experienced by a proselytiser or evangelist, generating a real risk of persecution or treatment breaching Article 3.

(vi) At paragraph 192 the Tribunal said that fact finders would have to decide how a convert was likely to behave if returned - cautiously and in a quiet way or otherwise. ("The issue which primary fact finders will need to consider carefully is the likely way in which a genuine convert would practice if returned. It does not follow at all that the particular practices adopted in the United Kingdom would be those followed in Iran." The Tribunal took the view that primary fact finders should decide whether, in practice, a convert would behave cautiously on return or not. Those who behave cautiously and went about their Christianity in a quiet way were unlikely to draw the adverse attention of the authorities")

> (vii) At paragraph 161 the Tribunal noted that there were those who, although not strictly proselytising, would be impelled to share or expound their beliefs with those who had not yet received the Gospel. The Tribunal considered arguments on the difference between proselytisation and "bearing witness in ones daily life" for want of a better expression. The latter was covered by the Adjudicator's reference to evangelising. The Tribunal said "In any event, the distinction between proselytising and bearing witness… is one which is likely to be lost on … any suspicious or zealous Muslim. Both would be likely to be perceived by those in authority, the religious zealots, and those Muslims unaware of the distinction …as people who are trying to persuade the hearer of the theological correctness of Christianity and the joy of adhering to it. It is but a short step from proclaiming the advantages and joy it has brought and suggesting that others should likewise benefit. Neither proselytising or bearing witness or evangelising could be regarded as cautious approaches in Iran."

14. In *SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082* the Tribunal held that conditions for Christians in Iran had not deteriorated sufficiently to necessitate a change in the guidance in *FS and others (Iran- Christian Converts) Iran CG* [2004] UKIAT 00303. For some converts to sacrament-based churches the conditions may be such that they could not reasonably be expected to return and their cases must be considered on *HJ (homosexuality: reasonably tolerating living discreetly) Iran* [2008] UKAIT 00044 (not a CG case) grounds (now HJ (Iran above). It remains to be seen whether the proposed inclusion of apostasy in the amended criminal code will make a material difference. The amendments to the code are part of a wholesale change in the criminal law and not solely aimed at converts. The proposals are still before Parliament. 'Proselytising' and 'evangelising' are not terms of art and distinctions should not be drawn between them. Note however the Supreme Court's comments in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 (07 July 2010). This puts a very different take on this case.

Discussion

15. The Judge considered the evidence provided in support of the appeal and found the appellant to be a credible witness.
16. The appellant was found to be a Christian convert who had attended an underground house church in Iran which had been raided by the authorities. The Judge finds that Christians in Iran are not allowed to openly worship and practice their faith and that they are persecuted and at risk of serious harm.
17. Having found the appellant is a convert from Islam to Christianity, which is an offence in Iran, the appellant will be at risk on return in any case regardless of whether or not he proselytised. This is not a case of a person born into a Christian family in Iran.

18. The Judge also refers to social media activities of which there is evidence in the appeal bundle which does not support a contention that the appellant regards his religion as a private matter.
19. The findings of the Judge are in accordance with the country material. The decision is within the range of those available to the Judge on the evidence. Whilst the respondent may disagree with the outcome that is not the relevant test.
20. It has not been made out the First-tier Tribunal Judge has erred in law in a manner material to the decision to allow the appeal to the extent this Tribunal can interfere with the decision.

Decision

21. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

22. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated the 14 March 2018