



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

Appeal Number: PA/12477/2018

THE IMMIGRATION ACTS

**Heard at UT (IAC) Edinburgh Decision & Reasons Promulgated
George House On 19 March 2020 On 27 July 2020**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MR M R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Winter, Counsel instructed by Latta & Co Solicitors
For the Respondent: Mr Clark, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge C McManus promulgated on 9 January 2019. Permission to appeal was refused by First-tier Tribunal Judge Murray on 5 February 2019 and by Upper Tribunal Judge Hanson on 3 April 2019. Thereafter an application was made to the Court of Session to challenge the decision by way of judicial review. On 7 January 2020, Lady Wise granted the petition in terms of the Joint Minute for the parties. The decision of the Upper Tribunal dated 3 April 2019 was reduced and the matter was remitted to the Upper Tribunal for reconsideration of the appellant's application for permission to

appeal. In a decision dated 22 January 2020, Vice President of the Upper Tribunal C M G Ockelton granted permission to appeal in the light of the interlocutor and the joint minute in this case.

Anonymity

2. I am mindful of Guidance Note 2013, No 1. concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the 2008 Procedure rules I make an anonymity direction.

Background

3. The appellant is a national of Iran who entered the United Kingdom on 7 April 2011. He initially claimed asylum based on his conversion to Christianity as well as the fact that he had left Iran illegally without undertaking military service. Those claims were refused and an appeal against the refusal was dismissed in a decision promulgated on 9 September 2011. Thereafter, the appellant lodged submissions in 2016 providing further evidence of his Christian conversion. The respondent refused to accept these as a fresh claim. A second set of further submissions was lodged on 31 July 2018. These reiterated the appellant's claim that he was a Christian convert. On 8 October 2018 the respondent accepted that the further submissions amounted to a fresh claim but decided to refuse the claim for protection. This is the decision under appeal.
4. The basis of the appellant's most recent protection claim was that he is a genuine Christian convert who is at risk of serious harm by virtue of his 'sur place' activities in the United Kingdom.

The Decision of the First-tier Tribunal

5. The judge found that the appellant was not a genuine Christian convert who was at real risk of persecution on return to Iran. The judge accepted that the appellant had previously attended a Catholic Church and more recently attended Victory Christian Centre and that he had been baptised in the United Kingdom. The judge was not satisfied that the appellant had been engaged in evangelical outreach activities and found, having considered all of the evidence, that the appellant would not come to the attention of the authorities in Iran having regard to SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 0082. The judge found in the alternative that the appellant could live discreetly in Iran if he were a genuine Christian convert. In this respect he relied on HJ (Iran) [2010] UKSC 3. Additionally, there would be no risk to him of returning as a failed

asylum seeker further to SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC).

The Grounds of Appeal

6. The main ground of appeal is that the judge failed to make findings on a material issue; namely whether the appellant would be at risk of serious harm on arrival at the airport in Iran. It is submitted that the judge accepted that the Iranian authorities would question the appellant about his activities in the United Kingdom at the airport and that the judge also accepted that he has been attending church and been baptised in the UK. This would mean that the Iranian authorities would, at the very least, perceive the appellant as having converted to Christianity and potentially place the appellant at risk. It is said that the First-tier Tribunal had failed to carry out a proper assessment of whether there was a real risk to the appellant.
7. The respondent did not submit a Rule 24 response.

Decision on Error of Law

8. At the outset of the hearing, Mr Clark for the respondent conceded that there was an error of law in that the judge had failed to consider whether there would be any risk to the appellant at the airport on his arrival in Iran, given that it is accepted that all returnees are questioned at that stage and he has attended church in the UK. It was conceded that this ground of appeal had been made out and was material to the outcome of the appeal.
9. I had had regard to the latest country guidance case on Iran, PS (Christianity – risk) Iran [2020] UKUT 00046 (IAC) promulgated on 20 February 2020 deals with this issue at some length. At [113] it is said:

“We are satisfied that a returnee who had made a false claim for conversion would be reasonably be likely to excite sufficient interest to warrant further questioning. His is an asylum claim that is likely to have depended on *sur place* activities, including baptism and attending church, *prima facie* evidence of a crime under Iranian law. The evidence overall indicates that the security services follow a specified procedure when it comes to Christians: they are taken in and required to sign the undertaking. It does not seem likely to us that this procedure will be followed standing at an arrivals desk, even if the subject was protesting that it was all false and that he was perfectly willing to sign. A returnee is not someone who has been picked up on an Iranian street. He is someone who has just come back from the United Kingdom, possibly having spent a considerable amount of time here; the Iranian security services perceive there to be a clear link between Christianity and attempts by the West to undermine the Iranian state. These factors cumulatively give rise, in our view, to a “particular concern” that such a transfer to second-line questioning would be likely”.

10. In PS it was recognised that this would potentially be a short ‘disruptive detention’ but when assessing the risk to an appellant of there being a longer detention increasing the risk of ill-treatment, the risk assessment

must be fact sensitive, looking to the particular characteristics and behaviours of the appellant.

11. I am in agreement that the judge's analysis of risk to the appellant does not recognise at [37] to [43] that he would be detained and taken for second-line questioning at the airport. It is said at [43]:

"the appellant has not shown that returning him to Iran would expose him to a real risk of an act of persecution because he would be returning as a failed asylum seeker. SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) is applied. There is nothing before me to indicate that the appellant could not be returned to Iran on a *laissez passer*. The appellant is an Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian state. He does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time for questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is no real risk of prosecution leading to imprisonment."

12. At [43] there was no acknowledgement that during his questioning the appellant would be expected to admit that he had claimed asylum in the United Kingdom and provide the basis of that claim. It is manifest from various authorities that the appellant, even though he was a failed asylum seeker and his claim to be a genuine Christian convert had not been made out, could not be expected to lie to the Iranian authorities and that he would therefore reveal that he had claimed to have been a Christian convert to the authorities in the United Kingdom and that he had attended church and been baptised.
13. There is no assessment by the judge of what risk, if any, would entail to the appellant during this detention. I am satisfied that there was an error of law in that the judge failed to make findings on a material issue and that this error, as conceded by the respondent, renders the decision of the First-tier Tribunal unsafe and was material to the outcome of the appeal because it was the task of the judge to assess the risk to the appellant on return.
14. I therefore set aside that decision, preserving the factual findings made by First-tier Tribunal Judge McManus which are not challenged.
15. It was agreed by both parties that the most appropriate way to proceed with the appeal, given that the findings are not challenged, would be to re-make the decision in the Upper Tribunal on the basis of the preserved findings of fact.

Remaking

Preserved facts

16. The preserved facts are as follows:

- a) The appellant claimed asylum in 2011 on the basis of his conversion to Christianity.
- b) The appellant attended a catholic church on a few occasions in 2011.
- c) He made further submissions asserting that he was a Christian in 2013, 2016 and 2018.
- d) The appellant attended the Victory Christian Centre which is an Assemblies of God Church from June 2017 until December 2018 (up to the date of the appeal hearing at the First-tier Tribunal) on a weekly basis and in addition attended bible classes.
- e) The appellant was baptised at the Victory Christian Centre in August 2017.
- f) The appellant is not a genuine Christian convert. His attendance at church and baptism were not in good faith but undertaken to substantiate his manufactured claim for asylum.
- g) The appellant has been absent from Iran for a period of 9 years.
- h) The appellant left Iran illegally.
- i) The appellant would not proselytise on return to Iran.

Submissions

17. Mr Winter addressed me on the recent country guidance case of PS (Christian – risk) Iran CG [2020] UKUT 00046. He submits that despite the fact that the appellant has been found not to be a genuine Christian convert and that his asylum claim has been manufactured in order to remain in the United Kingdom, the appellant nevertheless is at real risk of serious harm in accordance with headnote 4(iv)(c) of PS because he has been attending a church in the UK with a perceived connection to Iranian house churches.

18. Headnote 4 states:

“In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution ‘in-country’. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the ‘pinch point’ of arrival:

- (i) All returning failed asylum seekers are subject to questioning on arrival and this will include questions about why they claimed asylum;
- (ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;
- (iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;
- (iv) If there are any reasons why the detention becomes prolonged, the risk of ill- treatment will correspondingly rise. Factors that could result in

prolonged detention must be determined on a case by case basis. They could include but are not limited to:

- c) Attendance at a church with a perceived connection to Iranian house churches”

19. Mr Winter took me to the evidence in the bundle which demonstrates that Victory Christian Centre is an ‘Assemblies of God Church UK’ including letters from the Reverend Charlotte Gillies and Reverend Alex Gillies. Mr Winter also pointed to the fact that the judge had accepted in his decision at [14] that the Victory Christian Centre is an Assemblies of God church.
20. Mr Winter then took me to evidence which was before the judge that demonstrated that the Assemblies of God Church have links with the house church movement in Iran. He pointed to evidence produced in earlier Country Guidance cases including FS and Others (Iran -Christian Converts) Iran CG [2004] UKAIT 00303 and SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082. Mr Winter acknowledged that these authorities have been replaced by the recent country guidance of PS but nevertheless submitted that this did not undermine the evidence adduced in those country guidance cases. In particular evidence in SZ was provided by Ms Enayat, an expert witness on Iran who produced a lengthy report for the latest country guidance case of PS. Mr Winter submitted that Ms Enayat is said a highly qualified expert in her field and that she has for many years been paying close attention to the situation of Christians in Iran. He also referred me to page 42 of the Danish Immigration Services Report dated 2018 which emphasises the level of scrutiny by the authorities of house churches. The evidence mentions Assemblies of the Lord Churches in this context.
21. In summary, Mr Winter’s submission is that the Assemblies of God Church is a particularly evangelical church whose activities are abhorrent to the Iranian regime and that the Assemblies of God Church is linked with ‘house churches’ movement in Iran. This is an increased risk factor for the appellant in line with PS. The real question is whether there is a real risk of serious harm on return. As a result of the appellant’s association with the Victory Christian Centre, which is an Assemblies of God church linked to the house movement in Iran, there is a real risk that the appellant would be subject to a prolonged detention increasing the likelihood of him being submitted to serious harm.
22. Mr Clark then made his submissions. He pointed to the fact that the judge had made clear findings that this individual was not a genuine Christian convert albeit he had attended church and had been baptised. The period of his attendance in church was a short period. The judge accepted that he had attended church between June 2017 and the end of 2018. His submission was that the facts of this appellant are very similar to those of the appellant in PS who was found not to be at risk of persecution. PS had attended a church in Manchester, the Coverdale Christian Church and had been baptised in May 2015. In summary PS’s situation is similar to that of

this appellant. He drew my attention to the fact that the appellant did not meet any of the other risk categories including previous adverse contact with the Iranian social security services, connection to persons of interest to the Iranian authorities or overt social media content indicating that he had actively promoted Christianity. He emphasised there was no suggestion that any of these factors would lead to this appellant being of any particular interest.

23. In reference to PS headnote 4(iv)(c) he said that the evidence produced by Mr Winter is thin. There was little evidence to show that the Assemblies of God Church in the United Kingdom has connections with house churches in Iran. The evidence referred to by Mr Winter in the previous country guidance cases was dated back to 2004 and 2008. Mr Clark's submission is that this appellant would be treated in the same way as PS as found by the Upper Tribunal at [140] where it is stated,

"Our conclusion in respect of disingenuous Christian claimants is set out under the heading risk on return. While we accept that such returnees will likely be subject to further questioning on arrival, we do not find that it will, in general, take very long or entail ill-treatment. It is the widespread practice of the Iranian authorities to detain a suspected Christian for a short period and require him to sign an undertaking which amongst other things will require him to renounce Christianity and formally accept Islam. There being no reason of conscious for the disingenuous claimant to refuse to do so he will be released quickly. He may be subject to surveillance but will not absent any other relevant factors be exposed to a real risk of persecution thereafter. Where there are aggravating factors such that a real risk of harm may arise at port will depend on the individual case."

24. The appellant will be subject to further questioning but he submits that the appellant has failed to demonstrate that this would entail any ill-treatment. He referred me to [150] and [151] of PS.

Conclusions

25. My starting point in this appeal is that the appellant is not a genuine Christian convert and this has been overwhelmingly found to be the case since 2011. This appellant is somebody who been attending church and been baptised in order to bolster a fabricated claim for asylum.
26. Nevertheless, the issue before me is whether there is a real risk of persecution to the appellant on his return to Iran regardless of whether he is genuine convert or not. I have considered very carefully the situation of this appellant. On the face of it, this appellant's situation is similar to that of PS. Like PS the appellant attended church in the United Kingdom and has been baptised. He has been found not to be a genuine Christian convert. Like PS, there are no further risk factors in respect of him in that he has had no contact with the authorities prior to leaving Iran, no known connection with any persons of interest nor has he produced any overt social media content.

27. It is agreed that this appellant is a failed asylum seeker who left Iran illegally and that he will be questioned by the Iranian authorities at the “pinch point” of his arrival in Iran. It is also accepted that like PS, he will not be expected to lie and it will come to light that he claimed asylum on the basis that he has converted to Christianity and been baptised and will be transferred to second line questioning. It is also agreed that this appellant like PS will inform the Iranian authorities that his claim to a Christian convert was fabricated and that he is prepared to sign the necessary undertaking.
28. However, on deeper inspection, I find that this appellant’s situation is somewhat different to that of PS. Firstly, this appellant claimed asylum in 2011, nine years ago. The basis of his initial claim at that time was that he was a Christian convert who has attended house churches in Iran. He then made further submissions in 2016 claiming that he was at that time attending a Catholic church. It has been accepted that in 2016 he did for a short period attend a Catholic church although he was not baptised at that point. It is accepted that more latterly, for a period of approximately eighteen months that he attended the Victory Christian Centre on a weekly basis, as well as attending additional Bible classes and that he had been going to the church for approximately one month before he was baptised in July 2016. I find that these facts are likely to come to light during questioning by the Iranian authorities. I find that in the case of this appellant there is a much longer history of association with Christian movements than is the case with PS.
29. I consider next whether the Victory Christian Centre is an Assemblies of God Church. I have had regard to the letter from the Reverend Charlotte Gillies dated 23 November 2018 which reads:

“I can confirm that Mr M R has been attending Victory Christian Centre (an Assemblies of God UK Church) since 2017”.
30. The Reverend Alexander Gillies who also wrote a letter on the same date, also refers to the Victory Christian Centre being an Assemblies of God UK Church.
31. I also note and take into account First-tier Tribunal Judge McManus acknowledged that the Victory Christian Centre is an ‘Assembly of God UK Church’ at [14] of his determination and that this finding has not been challenged by the respondent.
32. I therefore find to the lower standard that the Victory Christian Centre which is the church that the appellant was attending for 18 months is an ‘Assemblies of God UK Church’.
33. I now turn to Mr Winter’s submissions in relation to the evidence linking the Assemblies of God Churches to the house church movement in Iran. He pointed to evidence at [38] of FS and Others (Iran -Christian Converts) Iran CG [2004] UKAIT 00303 which states as follows;

“It said that few churches in Iran proselytised; the most active in that respect were the two Assembly of God Churches and the Episcopal Church of Iran, the Anglican Church.”

34. He also pointed to evidence from Miss Enayat which was before the Tribunal in SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082.

35. At [20] it is said:

“Under a heading ‘house churches and television evangelism’ in the report at paragraph 2.3.7, Miss Enayat dealt with house churches and the related topic of television evangelism. She said that Assembly of God members have been meeting in house churches since the early 1990s, and on a limited scale so have Anglicans”.

36. At [21] it continues:

“She said the programmes are varied. Some are said to preach a straightforward Iranianised version of the US Born Again Christianity. Others, made by the Assembly of God and Presbyterian Christians, have an indigenous flavour and produce evangelical and educational material which is culturally appealing to Iranians. Sat Seven have counsellors who can be telephoned from inside Iran. These channels claim a high success rate and a very large following”.

37. Further at [29] of SZ it is said:

“[Miss Enayat’s] best estimate for the membership of Assembly of God Churches was 1,500 to 2,500 now whereas, from two or three sources it seems that there were 2,000 to 3,000 in the early 2000s. She said that her figures exclude the newer house churches. Her Assembly of God figure included house churches that were a consequence of the closures of the Assembly of God Churches probably amounting to a maximum of 1,000”

38. I take into consideration Mr Clark’s submission that this evidence is somewhat old in that it was produced in respect of Country Guidance cases in 2004 and 2008. Nevertheless, that evidence was given by Ms Enayat who is also an expert witness in the current country guidance of PS. Ms Enayat’s qualifications and experience are set out at [12] of PS where it is said.

“Whilst it is not accepted every conclusion that Miss Enayat has reached we have no hesitation in accepting that she is a highly qualified expert in her field”.

39. Ms Enayat produced a substantial report for PS. The report was listed in the index to the decision and not all of the contents of the report was replicated or summarised in the decision. At [43] it is said:

“House churches have existed as a phenomenon in Iran since the early 2000s. Landinfo explain that these small private congregations initially consisted of ethnic Iranians who had been converted by friends or relatives, or by an evangelist message brought directly into their homes by satellite television or the internet. As the protestant denominations such as the Assembly of God faced

church closure and restriction, their members were forced underground to join those already worshipping in private homes. In her written report Mrs Enayat gives a detailed survey of this process but for our purposes she and Landinfo are in agreement that the different waves of converts and different denominations of Farsi-speaking Christians are now all compelled to worship in the same covert manner”.

40. The 2018 Danish fact-finding report at page 42 is more authority for the proposition that there continues to be a connection between the Assemblies of God churches with house churches in Iran. I note that their reference is to ‘Assemblies of the Lord’ churches but I accept Mr Winter’s submission that in reality this is a reference to the Assemblies of God churches.
41. I am satisfied from all of the evidence before me including the evidence in FS, SZ and PS that Assemblies of God church is not only an evangelising church which broadcasts material to Iran from abroad, but that it is also has a long-standing association with the house church movement in Iran. I am also satisfied that the Iranian authorities are aware of this through the high level of surveillance that is carried out and that this is why the congregations of these churches have been forced underground. I am satisfied that this evidence is more than tenuous.
42. I also find that the church which the appellant attended, the Victory Christian Centre, is an Assemblies of God Church because this is stated explicitly by the Reverends of that church and it is also accepted by the judge at [14] of his decision.
43. I find that in these circumstances the situation for this appellant diverges significantly from that of PS.
44. At [151] in **PS** it is explicitly stated:

“PS has no other enhanced risk factor because he has no known connection with any organisation which could be connected by the Iranian government to the house church movement”.
45. From the evidence before me, I have found that Victory Christian Centre is an Assemblies of God church which is an evangelising church which has connections with the Iranian house church movement and that it is accepted that by the date of the appeal hearing, the appellant had been attending this church for a period of eighteen months on a weekly basis. I do not agree with Mr Clark that this is a ‘trivial’ or ‘short’ period. It is also accepted that he has been baptised by that same evangelising church.
46. I find, that although the appellant will inform the Iranian authorities that his claim was for asylum was fabricated and that he will have no hesitation in signing a renunciation of his Christian religion, the appellant will be expected to provide information about what religious activities he undertook which will involve him telling the authorities that he attended an Assemblies of God church for 18 months on a weekly basis.

47. I note and take into account that PS stresses the current level of paranoia with respect to evangelising Christian churches from abroad who are seen by the authorities in Iran as being associated with western and Zionist interests. Organised Christian activity and contact with Christian organisation abroad is seen as a threat against the country's Islamic identity and national security. It is accepted in PS that there has been a worsening political climate for Christians in Iran and that the Iranian government is currently particularly sensitive to the house church movement viewing members of this movement to be enemies of the Iranian state. There is considerable surveillance of these churches and even ordinary members are at risk of serious harm.
48. I find that the Iranian authorities will be aware of the links between the Assemblies of God churches and house churches because this is long-standing and well-known.
49. At 116 of PS it is said
- “We accept the Secretary of State's general rule of thumb that the longer this detention the greater risk of torture. Decision makers must therefore assess whether there are any reasons why interrogation would be prolonged. We do not propose to offer an exhaustive list of the kind of facts that might be relevant here since the evidence does not permit us to do so. We would however note that one aggravating fact identified in the sources is very outspoken social media activity. This would have to project the personal commitment of the individual rather than for instance simply liking post by others. Past adverse interest by the Iranian authorities would also increase risk as also would connections to other individuals with a profile. We have found that the primary focus of the Iranian state is the perceived threat of *organised* religion and for that reason we are satisfied that association in the United Kingdom with a church with known links to Iranian house churches would certainly be a risk factor”.
50. I find that the appellant falls within the PS headnote 4(iv)(c). I am satisfied that because of the appellant's individual circumstances including the length of time he has been in the UK, the fact that he has, from the outset of his arrival in the United Kingdom in 2011 claimed to be a Christian, the fact that he attended an Assemblies of God Church which has a specific profile of evangelism and conversion from abroad and which is associated with the house church movement, regularly for a significant period of 18 months as well as being baptised that church that there is a real risk that should this appellant be returned to Iran that he will despite revealing that his claim for asylum was fabricated and offer to sign the renunciation that his circumstances will arise the suspicion of the authorities and that he will be subject to a prolonged detention and questioning. In these circumstances I find that there is a real risk that he will be subject to ill-treatment and serious harm.

Notice of Decision

51. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

52. The appeal is remade and allowed on asylum and Article 3 ECHR grounds.

Direction Regarding Anonymity - 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 both to the appellant and to the respondent. Failure to comply with this direction could lead to a contempt of court proceedings.

Signed	R J Owens	Date	15 July 2020
Upper Tribunal Judge Owens			