



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

Appeal Number: AA/06209/2012

THE IMMIGRATION ACTS

**Heard at Sheldon Court, Birmingham
On 15th January 2014**

**Date Sent
On 5th February 2014**
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Before

UPPER TRIBUNAL JUDGE COKER

Between

**AA
(Anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, counsel, instructed by TRP Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal which dismissed his appeal against a decision of the respondent to remove him from the UK pursuant to s10 Immigration and Asylum Act 1999 subsequent to the refusal to recognise him as a refugee.
2. The Court of Appeal, by way of a consent order dated 16th August 2013, directed that the matter be remitted to the Upper Tribunal for

“reconsideration”, it having been found by Upper Tribunal Judge Juss that there was no arguable error of law in the determination of the First-tier Tribunal decision. Before me Mr Smart conceded that the First-tier Tribunal judge had failed to make a finding as to the impact on the appellant’s claim of his acknowledged illegal exit from Iran and that the First-tier Tribunal judge had failed to consider and take account of the totality of the oral evidence. It was not accepted by Mr Smart that having a brother as a refugee in Canada was material to the conclusions reached by the First-tier Tribunal but that overall he could not defend the determination.

3. Mr Vokes confirmed that the appellant had no free standing Article 8 claim, that his claim for protection on Article 3 grounds stood or fell with the asylum claim and that there was no claim that he should be granted protection under Article 15 (c) Qualification Directive.
4. It was accepted:
 - a. The appellant is a practising Christian, having converted from Islam, and has been baptised;
 - b. His brother was recognised as a refugee in Canada on political grounds; he is now a Canadian citizen
 - c. He left Iran illegally
 - d. He attends an evangelical church in the UK.
5. I heard oral evidence from the appellant and three witnesses and submissions from both representatives. I reserved my decision.
6. The burden of proof is upon the appellant to the lower standard namely that there is a reasonable degree of likelihood that if returned to Iran he will be at risk of being persecuted for a Convention reason.
7. Although it was accepted that the appellant had converted to Christianity, the respondent does not accept that he either evangelises or proselytises his faith or that he has converted others to his faith in the UK or that he would seek to do so if returned to Iran. The respondent does not accept that the appellant was arrested, as he claims, for drinking alcohol at a party in 2006 or 2007, or if he was that it would have an adverse impact upon him now. Nor does she accept that friends of the appellant with whom he worshiped in Iran have been arrested and remained detained at the time he left Iran.
8. The witnesses’ evidence was that in varying degrees they had been introduced to Christianity through the appellant. There was detailed cross examination in relation to the church attended by them and the appellant, routes to the church, contact between the appellant and the witnesses and the extent to which they have converted or still adhere to the Muslim faith. The respondent’s submission was, in essence, that their evidence was insufficient to show they attended

the same church: they didn't know the name of the road it was on or what area of Birmingham it was in; that the route taken by some to get there was so round about as not to be believable. In contrast Mr Vokes submitted that for individuals who did not know their way around and for whom English was not either fluent or their first language, the arrangements made to meet in the centre of Birmingham and the bus routes taken were credible and consistent. Having been introduced to Christianity they no longer regularly attended the appellant's church but attended other churches closer to where they lived or where there was not the same language barrier. There was no challenge to their asserted faith.

9. The appellant gave oral evidence as to the nature of his church and his Christianity. He described his faith as something from his heart and set in his heart. He said that his English was not good enough to preach in the street but that he has Iranian friends and he "evangelises through his friends" at his college, at his accommodation. He was asked whether his church has evangelising activities and he referred to the meetings on a Tuesday with the priest and that last year he attended celebrations in Wales which involved praying and leafleting about the activities to people in the streets. He did not personally speak to people there but if they were interested he introduced them to those who could speak English. He went to church once a week and to the meetings once a week on a Tuesday at the priest's house. In response to a question from me the appellant said there were no specific arrangements with his church about evangelising; it was something individuals chose to do.
10. The appellant's evidence was that if returned to Iran he would find a church and attend church and he would also talk to friends and family, people who were looking to find the truth. In response to a question whether he would "openly preach the gospel" he said he would. He said he would do more in his own country with his friends. Mr Smart submitted that the evidence the appellant would proselytise if returned to Iran was weak; he had not done so when he was previously in Iran and although he was now baptised he did not seek to proselytise now. Mr Vokes asserted that on the basis of the witnesses' evidence the appellant would indeed seek to convert others in Iran if returned and that this placed him at even greater risk than he was at if he were a mere convert.
11. The appellant claimed that in February 2012 (in Shiraz) the "house church" ("Reza's house") where he and others had met to worship had been raided. His evidence (set out in his witness statement, his SEF and oral evidence) was that he had been told about this on 12th February 2012 and that a summons had been delivered to his parents in connection with this a week after he arrived in the UK. He does not have a copy of the summons. His uncle, he said, had told him about it and had arranged to have it cancelled (by what means he did not

know) but that he didn't know whether his uncle had been able to influence events so that he was no longer liable to prosecution. He said he did not know whether there had been any court hearings but the last news he had was that some of those arrested remained in prison. The respondent challenged his evidence. Although accepting that a summons can be served upon family members, he submitted that the appellant would know whether he was still at risk because papers would have been delivered. He submitted that there were no indications that he was wanted for any offence in Iran and that this went to risk on return: if he were wanted then he would be more likely to be singled out on return. Mr Vokes accepted that there was no copy of the summons. He drew attention to the US Commission on International Religious Freedom Annual Report 2013 (p122 of the appellant's bundle) which states:

"Christian converts face severe restrictions on religious practise and association, arbitrary arrests and detentions for practising their faith, and violations of the right to life through state execution for apostasy and extrajudicial killings....Iranian authorities typically release prisoners but leave the charges against them or their convictions in place to threaten them wither-imprisonment at any future time. At the end of the reporting period at least a dozen Christians remain in prison.

.....

.....In February 2012, Iranian authorities raided a house church gathering in Shiraz, confiscated religious materials, and arrested 10 Christian converts. At the end of the reporting period, four remain in detention without charges - Mojtaba Hosseini, Homayoon Shokoohi, Vahid Hakkani and Mohammad-Reza Paroei."

Mr Vokes submitted that this report provides corroboration to the appellant's claim, it having been published *after* the appellant arrived in the UK, is consistent with the appellant's claim as to when and where it took place, included a name that was similar and the appellant could not have provided the detail he did without having had this knowledge prior to his arrival in the UK.

12. In so far as the claimed offence of possession of alcohol in 2006 or 2007, the appellant's account was inconsistent as to the punishment received. I note that the First-tier Tribunal judge has however made a finding (paragraph 14 of the First-tier Tribunal determination) that it is unlikely that the appellant was detained following the break up of the party. No attempt was made by either of the representatives to dislodge that finding and it therefore stands. It was not argued that this potential offence was an additional risk factor in any event.
13. In [141] of SZ and JM (Christians - FS confirmed) Iran CG [2008] UKAIT 00082 the Tribunal held

"There is no doubt that the general human rights situation in Iran is deteriorating rather than improving. All concerned, including the Foreign and

Commonwealth Office as expressed in letters in evidence, accept that the Iranian authorities act in an arbitrary and unpredictable manner.”

But nevertheless, on considering all the evidence before them held that the conditions for Christians in Iran had not deteriorated sufficiently to necessitate a change in the guidance in FS Iran CG [2004] UKAIT 00303 although there is a proviso to that namely that *“It remains to be seen whether the proposed inclusion of apostasy in the amended criminal code will make a material difference”*. FS held:

187. 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 practised, 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 practise, however, as most Iranian converts do. It is realistic to expect that there 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.
188. We would, on the present evidence, regard them as not at a real risk of persecution or treatment breaching Article 3. We allow in that assessment for some recent worsening in the current climate.
189. 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 zealot and the serious adverse attention of the theocratic state when it sought, as it will do on some occasions, to repress conversions from Islam which it sees as a menace and an affront to the state and God.
190. Where an ordinary individual convert has additional risk factors, they too may well 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 attentions where, by itself, the individual conversion would have been allowed to pass without undue hindrance.....The role of family as a source of protection should be examined carefully in individual cases. Similar support might also be provided by close friends or colleagues in employment.

14. The headnote SZ & JM states that *“‘proselytising’ and ‘evangelising’ are not terms of art and distinctions should not be drawn between them.”* SZ and JM consider the distinctions between an “ordinary convert” and who “proselytises”; the discussion with regard to this appears at [138 - 140]:

- “138. We start by looking at whether the Tribunal in FS and Others was justified in drawing a distinction (at paragraph 173) "between the ordinary convert and those who proselytise". We readily accept the points made by Canon Coulton that all Christians for whom he could speak are required to spread the word and to evangelise. He was speaking from the standpoint of the Anglican Church, across which there is a broad spectrum of adherence. Some members are more evangelical than others. Father Basdon also referred to the extent that Roman Catholics are required to spread the gospel. It is self evident that some are more enthusiastic or serious about their obligations than others, and the point has been made throughout the evidence that the Iranian authorities are particularly concerned with those who do proselytise or evangelise and attempt to convert Muslims. The Canon's view was essentially a theoretical, and aspirational, view of the way Christians behave and he acknowledged that not everybody lived up to the ideal. The empirical reality is that not all come anywhere near to the ideal. As Mr Desborough said "it is between an individual and God as to whether to risk martyrdom". The observations in FS and Others were, in our judgment, sound in that there are distinctions between the ordinary convert and the proselytiser. What needs to be looked at is not only the church to which an individual is an adherent, but the way in which that individual returnee is likely to behave. When assessing that, it is right that it should be borne in mind that the evidence of Canon Coulton was that a person who has come for himself, and by choice, to a new religion is more likely to want to spread the word than someone who is second or later generation and born into it. That is not a new concept, the zeal of the convert has been recognised in many different contexts over the years. But that is not true of all converts; references to generalisations of that kind are no substitute for case-by-case assessment of the particular facts.
139. We had hoped that we would be able to include in this determination clarification of the precise distinction between evangelising and proselytising.....On the basis of the evidence and submissions that we have heard, we are not able to do that. It is perhaps arguable that proselytising is a more robust form of evangelising but the terms should not be used as terms of art and no conclusion can be drawn by the use of one word in preference to the other. The Iranians are unlikely to draw any distinction - the word they use being *Tabligh*, the word for propaganda. Subject to our view that there are not only two distinct grades of convert, rather a spectrum of adherence, we have concluded that the more accurate description of the distinction is that between the ordinary convert and those who undertake 'active evangelising'. Canon Coulton counselled caution in distinguishing between evangelical and evangelistic as mistakes have been made in the past. evangelical is an adjective meaning "a calling to the teaching of the gospel or the Christian religion" whereas an evangelist is a person who seeks to convert others to the faith especially by public preaching (Concise Oxford Dictionary).
140. In conclusion, the question of whether someone is an "ordinary convert" in each case will depend on its own facts. There should not be findings based solely on the denomination of the church which a person has joined. They must also be based on the evidence as to his own conduct as it will manifest itself in Iran. When deciding whether a convert is genuine, it is important to take care because, as we set out earlier in this determination, one individual's view as to how another person may perceive, or practice, or understand Christianity may be very different from the reality in another denomination, country or community.....”

Discussion

15. Although it appears on its face unusual for individuals to travel into a city centre and away from the church in order to attend the church, the explanation offered by the witnesses as to why they did this was credible for individuals who wished to travel to a church together, in an area and a country with which they were unfamiliar and to which the initial suggestion had come from amongst their number. I have taken careful account of the challenges by Mr Smart to the credibility of the witnesses in their accounts of attending church and meetings with the appellant and particularly the arguments raised in connection with what could be called the geography of the areas concerned. Taking account of the whole of the evidence I am satisfied that these individuals did travel as claimed and that the appellant has encouraged discussion of his faith and initiated conversion amongst these friends.
16. The appellant's description of his church (in the UK) does not indicate that the church is actively spreading the word of God or that the members of the church are specifically called upon to do this as part of their obligations to this church. Nevertheless I am satisfied that within the church and within his faith he feels the need, and acts upon that, to encourage conversion to and adherence to his faith. In terms of the spectrum described in SZ and JM I am satisfied that he is more than a "mere convert" and that although he does not zealously seek to convert others, he is not a person who does not take advantage of opportunities to speak of his faith.
17. Although the appellant's claimed attendance at the house church was challenged in the reasons for refusal letter dated 14th June 2012, I am satisfied on the evidence before me which included a broadly consistent account of the means by which he found out about the arrest of Reza; the reporting of a raid in February 2012, the reporting of the raid *after* he came to the UK; his continued attendance at church whilst in the UK; his baptism and his knowledge of faith which has increased as time has gone by illustrating continued participation and involvement in his faith; that he did attend a house church in Iran prior to leaving, as claimed. I am satisfied that he will undertake similar activities in Iran as he has undertaken here in the UK if removed to Iran; the depth of his knowledge and belief is greater now than when he left and his active involvement in such activities has, I am satisfied from the evidence before me, increased with that level of knowledge and belief.
18. The appellant's brother left Iran some 15 years ago and, according to unchallenged evidence, was recognised as a refugee in Canada because of his political activities. The appellant and his family have not sustained any problems as a result of that but I do accept that it is

possible that the Iranian authorities would have knowledge of such recognition.

19. The appellant left Iran illegally. Although insufficient on its own to result in adverse attention amounting to persecution, this is a risk factor if in addition to other factors.
20. Although there was evidence put in connection with the delivery of a summons and although it was accepted by the respondent that a summons could be delivered to the appellant's family home I am not satisfied that there has, in this case, been such a summons. The appellant's evidence was that it would have referred to 'advertising against Muslims and spreading Christianity' yet he says that his father does not know of his conversion and thinks he has fled because of 'political problems' as his brother did. Whilst acknowledging that the appellant says the summons was given to his mother I do not accept that had there been a summons the fact of the summons and its contents would not have become known to the appellant's father. The appellant said that his uncle had lost the actual summons and therefore it could not be sent to him. Although he says he is in touch with his family once or twice a week he knew nothing more about the progress of the summons. I am not satisfied, given the seriousness of such a charge and the potential consequences, that the appellant would not have known what had happened to the summons and the progress of the criminal proceedings if they existed. It was not his case that he had no contact with family members and he had contact with the uncle who, on his evidence had resolved problems with the authorities for other family members.
21. Although therefore I am not satisfied that the appellant is actively wanted by the authorities for activities in Iran prior to leaving Iran I do accept that he will be questioned on arrival in Iran; that he will be discovered to be a Christian convert and that he will be asked about his beliefs and activities. Although I am not satisfied that he is subject to an arrest warrant I am satisfied that he was attending a house church in Iran and there is a significant possibility that he will be linked with churches where other members have been arrested and charged. I am satisfied that although in the past the status of his brother and his brother's activities have not had an adverse effect on the appellant's family, I accept that this may have a slight adverse effect as one of a cumulative number of additional risk factors. I also take account of the appellant's evidence that his uncle has in the past assisted other family members where they have problems with the authorities. This is of course relevant in considering the extent to which protection would be available but in this case, where the appellant will seek to actively display his faith, his conversion and seek to convert others (or would not do so because of fear of reprisals) I am satisfied that there would be a lack of protection long term. I note the background evidence indicates that in many cases individuals are

released after some time but that some remain in detention and that charges remain hanging over individuals as a means of control.

22. Taking all the evidence before me into account and particularly bearing in mind the appellant's adherence to his faith and beliefs and his introduction of and encouragement of others to convert, I am satisfied that this appellant will be perceived as a person intent on actively spreading his Christian beliefs and seeking to convert others.

Conclusions:

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it

Anonymity

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

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

Date 30th January 2014

Judge of the Upper Tribunal Coker