



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
AA/13339/2015

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Manchester  
Reasons Promulgated  
On 21 June 2017**

**Decision &  
On 22 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**SEA  
(anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms N. Braganza, Migrant Legal Action  
For the Respondent: Mr Harrison, Senior Home Office Presenting  
Officer**

**DETERMINATION AND REASONS**

1. The Appellant is a national of Iran born in 1993. On the 3rd August 2016 the First-tier Tribunal (Judge Ransley) dismissed his protection appeal. The Appellant now has permission to appeal against that decision, granted by Upper Tribunal Judge Ockelton on the 13<sup>th</sup> March 2017<sup>1</sup>.

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<sup>1</sup> Permission was refused by the First-tier Tribunal (Judge Kinnell) on the 30<sup>th</sup> August 2016 and by the Upper Tribunal (Judge Allen) on the 28<sup>th</sup> October 2016. The decision of Upper Tribunal Judge Allen was quashed by order of the High Court (Master Gidden dated the 13<sup>th</sup> February 2017, implementing the 'unless' order of Judge Andrew Baker dated 16<sup>th</sup> January 2017). Judge Ockelton granted permission in light of the High Court orders.

## **Anonymity Order**

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## **Basis of Claim and Decision of the First-tier Tribunal**

3. The Appellant claimed to have a well-founded fear of persecution in Iran for reasons of his religious belief. It was his claim that he had abandoned his former religion of Islam, and had converted to Christianity. In particular, he said that he had joined the Church of Jesus Christ of Latter Day Saints ('the Mormon Church'). He had not only joined this church, but had been in regular attendance at its services since 2013 and had been ordained as a priest.
  4. The evidence before the First-tier Tribunal came from the Appellant himself and two supporting witnesses. A Mr Frank James Smith attended the hearing to confirm that to his knowledge the Appellant is a practising Mormon. Mr Smith is Bishop of the Mormon Church in Rochdale. A Mr Mostafa Golbaksh gave oral evidence to the effect that he knows the Appellant personally and that they are both Mormons.
  5. The First-tier Tribunal found the following factors to be relevant to its assessment of the Appellant's credibility:
    - i) In 2012 the Appellant, his mother and brother had claimed asylum, advancing an account of anti-regime protest in Iran. Their appeals had been dismissed by First-tier Tribunal Lever who had found the claims to be a fabrication. He accepted that they may dislike the regime in Iran, and want to live in the West, but this did not make them refugees. Applying the *Devaseelan* principle this credibility assessment had to be the
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Tribunal's starting point;

- ii) The Appellant had given contradictory evidence about when he had started to lose faith in Islam;
- iii) The claim that in May 2012 the Appellant had started to attend church in Bolton appeared inconsistent with the evidence that he had given to an immigration officer in March of that year. At interview he had said that he considered Islam the "most complete" religion, and that he was most certainly a devout Muslim. He had been unable to satisfactorily explain how so much had changed in those two months and gave "convoluted and evasive" evidence when asked about it;
- iv) The Appellant had given contradictory evidence about when and how his interest in Christianity had been sparked;
- v) There was contradictory evidence given about whether the missionaries who first spoke with the Appellant had been Canadian or American;
- vi) The Appellant had attempted to blame the interpreter/interviewing officer for an answer recorded at interview that he wanted to distance himself from. Asked whether he read the Bible he had said that he had watched a film about Jesus. He now denied having said that;
- vii) The Appellant had shown a lack of knowledge about the New Testament when interviewed.

6. In assessing the evidence of Mr Smith the Tribunal expressed some concerns. Mr Smith could confirm the Appellant's attendance at the church in Rochdale, and state that he believed his conversion to be genuine. The Tribunal noted however that he had apparently made a conscious decision not to make enquiries into the Appellant's background or immigration history. He had not known that the Appellant had been found to be an untruthful witness in his first asylum appeal. He had agreed with the Home Office Presenting Officer that most churches would be inclined to trust and welcome someone coming to their doors. He was unable to speak to the procedure or instruction that the Appellant underwent when he first joined the Mormon Church in Bolton: he had arrived in Rochdale an already ordained minister.

7. As for Mr Golbakhsh the determination notes that he was recognised as a refugee only after an 'administrative decision' by the Respondent

and could not therefore be assessed from the starting point that he had been found to be a credible witness by another Tribunal: AC (Somalia) [2005] UKAIT 00124. His evidence was found to be “general” in nature. All he could say is that he was a Mormon from the church in Bolton, he knows the Appellant and they talk together.

8. The Tribunal considers all of this evidence in the round before concluding, at paragraph 60, that the Appellant is an untruthful and unreliable witness. His own evidence was found so lacking in credibility that that of the supporting witnesses could not advance the case to any significant degree. The Tribunal was not satisfied that the Appellant was a genuine convert from Islam to Christianity, or that he has the intention to practise the Christian faith in the future. The Tribunal accepts, unchallenged as it was, the evidence that the Appellant has in fact been attending this church on a regular basis, and that he has taken up the position of secretary of the youth group of the church in Rochdale. This was, however, due to his desire to fabricate a claim for asylum rather than because of his actual faith. The appeal was therefore dismissed.

### **The Challenge**

9. The Appellant applied for permission to appeal first to the First-tier Tribunal, and then to the Upper Tribunal. When he was unsuccessful he pursued his case to the High Court, where he succeeded in having the decision of the Upper Tribunal quashed. Mr Justice Andrew Baker granted permission for judicial review in the following terms:

“The decision of the First-tier Tribunal gives rise to an important point of principle, namely whether regular attendance and participation at (Christian) church services, if giving rise to a risk of persecution in the country of origin (here, Iran) is sufficient in law to constitute a person a refugee as defined by Article 1A of the Geneva Convention, such that further inquiry into the genuineness of the person’s professed (Christian) faith is either (a) not required or (b) not permissible”.

10. That is, in summary, the first ground. The Appellant contends that the Tribunal misdirected its enquiry. The question was not whether the Appellant actually *believed* the teachings of the Church of Jesus of the Latter Day Saints, it was whether he had a well-founded fear of persecution in Iran for reasons of his religious belief, or that imputed to him. A real risk arose, it is contended, simply by virtue of the Appellant having attended church every Sunday for four years, having been baptised and having been ordained as a Christian minister, all

unchallenged matters of fact. Reliance is placed on Dorodian (01/TH/01537) and SA (Iran) [EWHC 2575 (Admin)].

11. The remaining grounds are concerned with the negative credibility findings reached by the Tribunal. Although Andrew Baker J did not address any of these grounds in his grant of permission, Mr Ockelton has not limited the grounds upon which the appeal can be advanced.

### **Discussion and Findings**

12. The case of Dorodian is now of some vintage, but it remains good law. The principles set out in that Iranian conversion case are simple and well-known. A person who has declared themselves to be a Christian should be expected to evidence this by his regular attendance at church, and that attendance should be evidenced before the Tribunal by the attendance at court of one or more ordained ministers of a church of this country. The reason that this is important is because *“it is church membership, rather than mere belief, which may lead to risk”*.
13. In SA (Iran) the High Court visited the same territory, in the context of a fresh claim with a dismissed Devaseelan appeal in the past. At paragraph 24 HHJ Gilbert QC said this:

*“Thirdly, there is a matter closely related to the second point of concern. What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant's conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church. But I accept that such judicial boldness as this judge showed does not necessarily undermine a decision in law if he does so, and his decision was not successfully appealed. But that is not the only point. There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy. On the basis of the Home Secretary's now stated position, that amounts to a potentially different circumstance from that addressed by the Immigration Judge”*.

14. The grounds suggest that these authorities reveal two errors in

the decision of the First-tier Tribunal. First they emphasise the very significant weight that should be attached to evidence given by Dorodian witnesses as to the *bona fides* of any profession of faith. Secondly, they suggest that it is the attendance at church rather than the underlying faith (or lack of it) that is, in the context of Iran, significant.

15. I need not make a finding on the first point, since the Respondent concedes that the second is made out. The First-tier Tribunal accepts that the Appellant has been attending church since 2013, has been baptised and ordained as a priest in the Mormon Church. There is however no assessment of whether those facts would in themselves expose the Appellant to a risk of harm in Iran if returned there today. The Secretary of State for the Home Department accepts that this was an omission amounting to an error of law.
16. In SSH and HR v Secretary of State for the Home Department (illegal exit - failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) the Tribunal found that failed asylum seekers returning to Iran are likely to be questioned about what they have been doing in the UK. Regardless of whether they have a passport or not, they are screened on arrival: see further BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC), AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC). The Appellant would at that point have a choice about what to say.
17. He could tell the interviewing officer the truth, that he had been attending church in the UK and had claimed asylum on the basis that he was an apostate from Islam. This was certainly a scenario that concerned the court in SA, and I have no difficulty in accepting that such a disclosure would lead to a real risk of serious harm. In both SSH and BA the Tribunal heard evidence to the effect that the Iranian authorities are aware that economic migrants make false asylum claims in Europe, and that in the case of alleged political opponents they will be discerning in their treatment of returnees; decision-makers are urged to consider whether the political activity in question would give the impression of real commitment to a cause, rather than opportunism. It seems to me that four years of regular Christian worship, having been baptised and being ordained as a priest are the kind of facts that would give an Iranian border guard cause to transfer the Appellant for 'further questioning', where, it is accepted (see for instance paragraph 23 of SSH) there would be a real risk of serious harm. I should add that in the particular context of Iran - an oppressive and paranoid theocracy - there is good reason to suppose that there will be a particular sensitivity around religion (as opposed to general antipathy towards the regime). I am doubtful whether protestations that it was all a sham would carry much weight. The baptism itself constitutes a formal denunciation of Islam. It would matter not to the Appellant's interrogators whether he did this

because he was a Christian, or simply an atheist.

18. The alternative is that when questioned the Appellant lies, and makes up some other reason to explain why he has been in the UK for so long, why he had overstayed his visa and why he had claimed asylum. He would of course have to do so in the hope that none of the Iranians he had come into contact with through the Church in the North West were actually informants for the government (see AB, BA), or that the authorities had otherwise discovered his history. He would have to do so in the knowledge that he had *in fact* publicly denounced Islam, an offence punishable by death. Setting these difficulties aside, the requirement that he lie in order to avoid persecution is now settled to be contrary to the Refugee Convention. In RT (Zimbabwe) and Others [2012] UKSC 38 the Supreme Court made a significant extension to the principles set out in HJ (Iran) and HT (Cameroon) [2011] UKSC 596. In HJ the court held that claimants should not be expected to conceal matters fundamental to their identity in order to avoid harm. In RT the court held that even absent any 'core' characteristic - in that case political opinion - claimants should not be expected to lie. That is because the 'core' right is the right not to be persecuted - in this case for religious beliefs that the Appellant, on the findings of the First-tier Tribunal, does not have.
19. It follows that on the facts as found by the Tribunal, the appeal must be allowed.
20. As I note above, Mr Justice Andrew Baker said nothing about the remaining grounds. Ms Braganza asked me to consider them nevertheless, on the basis that the grant of permission had not been limited.
21. Various criticisms are made about the way that the First-tier Tribunal approached the question of the Appellant's credibility. It is said, for instance, that in focusing on matters such as whether the missionaries were Canadian or American, the Tribunal has impermissibly placed weight on obviously irrelevant matters. Central to Ms Braganza's submissions on this point were however the Tribunal's findings that the Appellant had been "vague and evasive" in several places in his evidence. At paragraph 44 of the determination it states that the Appellant made "repeated attempts to evade legitimate questions put to him during cross examination". At paragraphs 32, 37 and 43 similar judgements are made. These comments were, Ms Braganza submits, unhelpful to the Appellant as he tries to understand why he has been disbelieved. Unless they are particularised, the Appellant cannot know why he has lost. Reliance is placed on JB (torture and ill-treatment - Article 3) DR Congo [2003] UKIAT 00012 in which the Tribunal said this:

"[7]...The Adjudicator has given no indication about the areas in which

he found the appellant to be vague. Given that the appellant appeared before him, if he had thought that the appellant needed to give more detail than he had, he should have sought such details and if the appellant had not provided the detail then the Adjudicator could properly have concluded that he had been evasive in his evidence. To describe a person's evidence as vague and use that as a ground for disbelief is, in our view, quite unsatisfactory unless of course the areas of lack of detail, which cause concern, are clearly spelt out".

22. This was a detailed determination which gives several reasons why the Judge was not persuaded that the Appellant was a genuine Christian; I note that neither Judge Kimnell nor Judge Allen were satisfied that there was any arguable error in approach. I accept, in light of the authority cited above, that describing evidence, without elaboration, as "vague" is unhelpful. I accept that to expect a young Iranian to be able to differentiate a Canadian accent from an American may be splitting hairs. Those findings are therefore set aside. I am not persuaded however that the credibility findings overall should be set aside. In particular the Tribunal was entitled to draw adverse inference from the fact that this was a very swift conversion. The Appellant went from being a devout Muslim in March 2012 to attending Mormon services in May: I do not accept that it was irrational for the Tribunal to look for some explanation, a 'timeline', of what happened to the Appellant in those two months to make him leave the faith that he had been raised in.

### **Decision**

23. The decision of the First-tier Tribunal contains a material error of law and the decision is set aside.
24. The decision in the appeal is re-made as follows:
- "The appeal is allowed on refugee grounds.
- The Appellant is not entitled to humanitarian protection because he is a refugee.
- The appeal is allowed on human rights grounds".
25. There is a direction for anonymity.

Upper Tribunal Judge Bruce  
21<sup>st</sup> June 2017