



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA087892016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Manchester**  
**On 11 July 2017**

**Decision and  
Promulgated**  
**On 14 July 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**AHS**

**(anonymity direction made)**

Respondent

**Representation:**

For the Appellant: Mrs Petterson Senior Home Office Presenting Officer  
For the Respondent: Mrs Faryl instructed by Broudie Jackson and Canter  
Solicitors

**ERROR OF LAW FINDING AND REASONS**

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Alis ('the Judge') promulgated on 17 February 2017 in which the Judge allowed the appellant's protection appeal on asylum and article 3 ECHR grounds.

## **Background**

2. AHS is a national of Iran who claimed asylum on the basis of a risk of persecution on return as a result of his conversion from Islam to Christianity.
3. The Judge considered the evidence from all sources together with the advocates submissions before setting out findings of fact from [42] of the decision under challenge.
4. At [57] the Judge finds:

“57. Applying the lower standard of proof I am drawn to the conclusion that whilst this appellant did not tell the truth about what happened in Iran he has demonstrated a contrast interest in the church since arriving here. He has been baptised and he has been a regular attendee at both services, study groups and charitable events within the church. The standard of proof is low and based on the evidence given by both appellant and Reverend Cotes I accept he is a convert and that he is genuine in his faith. I am satisfied he would follow that faith if returned to Iran.”

5. The Secretary of State sought permission to appeal asserting the Judge failed to make any findings on whether the appellant is an “ordinary” convert or someone who would evangelise on return and thereby come to the attention of the authorities in line with the country guidance caselaw.
6. The Secretary of State places reliance upon the decision in *SZ and JM (Christians, FS confirmed) Iran CG [2008] UKAIT 00082* in which reference is made to [138], [140] and [148] which are in the following terms:

“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 because this has exercised the Tribunal in a number of cases involving religious persecution (see, for example, MJ and ZM (Ahmadis - risk) Pakistan CG [2008] UKAIT 00033 where the possible distinction was between preaching 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. Insofar as it is necessary to consider whether it would be persecutory to expect an individual returning to modify his behaviour, the Tribunal has now promulgated HJ (homosexuality: reasonably tolerating living discreetly) Iran [2008] UKAIT 00044 which deals with that issue. The Tribunal identified a two stage approach. The first is to decide how it is likely a possible returnee will behave. That question must be decided from the evidence and facts of each case including the way in which the person has behaved up until the present. It should not be based on how it is thought an individual should behave. The Tribunal described a factual and not a normative approach. The second stage is a test to decide whether that would entail that person having to live a life that he could not reasonably be expected to tolerate because doing so would entail the suppression of many aspects of his identity (which is an objective test). In HJ it was the sexual aspects of that appellant's identity, here it would be the religious aspects. HJ was recently cited without comment by the Court of Appeal in XY (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 911.

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148. It remains our view that for the ordinary convert (within the meaning which we have slightly modified from *FS* and *Others*) that there is a risk, but not a real risk, of serious harm if returned to Iran. We do not demur from the concept of the added risk factor as referred to in *FS* and *Others*.”

7. Permission to appeal was granted by another judge of the First-tier Tribunal on 13 March 2017. The operative parts of the grant are in the following terms:

“3. The issue raised in the grounds was not mentioned in the refusal letter and was not mentioned in closing submissions for the respondent. Neither was it mentioned in closing submissions for the appellant. The judge was therefore given no assistance by either side in this respect, and the respondent is raising this issue for the first time in the grounds.

4. The above points would normally point to a refusal, on the basis that there will be no legal error in the judge not dealing with a point not put before him, but I have decided to grant permission nevertheless. This is because country guidance cases have a special status, and the case was included in the appellant’s background bundle. Even where a relevant CG case has not been provided it is arguable that a judge has a duty to consider it, even if he has been let down by both representatives. Current country guidance should be raised at the start of the hearing, as it may inform questioning of witnesses. At this hearing it appears that the distinction in *SZ* and *JM* was not raised at any point.”

### **Error of law**

8. The lead case when considering an appeal by Iranian Christian converts is *FS and others (Iran- Christian Converts) Iran CG [2004] UKIAT 00303* promulgated on 17 November 2004. *FS* is 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 economic 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 wellbeing 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 one’s 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.”

9. 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* grounds.
10. The reference in *SZ and JM* to *HJ (Iran)* is to the decision of the Upper Tribunal. This case was appealed, eventually to the Supreme Court, and now carries the citation *HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31*. The Supreme Court's comments in *HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31* arguably put a very different take on *SZ and JM*.
11. It is important to consider the case law as a whole as well as the specific findings made by the Judge. As shown above at [57] the Judge accepted AHS is a convert and that he is genuine in his faith. The Judge also found that he was satisfied that AHS would follow that faith if returned to Iran. What the Judge does not do is provide further clarification on what is meant by AHS "following his faith". Does this mean AHS will return to Iran and continue to attend church groups and church meetings without proselytising or attempting to convert others or does it mean that he will engage in activities designed to support or promote Christianity which would bring him to the adverse attention of the authorities.
12. Another question is whether it is in fact necessary to identify and make a finding concerning the conduct of an individual on return. The Judge refers to the decision in the case of *FG v Sweden App No 43611/11 ECtHR Grand Chamber (2016)* in which that Court noted that the Swedish government accepted that Christian converts were at risk in Iran.
13. It is also necessary to consider the *HJ (Iran)* principles which find that an individual cannot be expected to lie about the existence of a fundamentally held belief relevant to their personal identity if the reason for lying, and hence denying such belief, would be to escape persecution. If AHS were to be returned to Iran there is a possibility he will be questioned about what he has been doing in the United Kingdom. He cannot be expected to lie about his conversion from Islam to Christianity which will arguably place him at risk of ill-treatment amounting to persecution sufficient to engage the Refugee Convention and Article 3 ECHR. If AHS is not questioned on arrival but continues to follow his faith within Iran and is encountered and questioned by the authorities whilst doing so, he will again face a real risk of persecution or ill-treatment sufficient to engage Article 3 as a convert from Islam to Christianity. If AHS follows his faith in Iran in a discreet manner, but such discretion is only exercised to avoid the persecutory consequences of being discovered by the authorities, it is arguable AHS is entitled to the protection of the Refugee Convention

in accordance with the *HJ(Iran) v Secretary of State for the Home Department [2010] UKSC 31* principle.

14. Even if it is an arguable legal error for the Judge not to have considered the points raised by the Secretary of State there still remains the question of whether any such error is material to the decision to allow the appeal. The basis of the appeal being allowed is the positive finding that AHS is a genuine convert from Islam to the Christian faith and the real risk of persecution or ill-treatment arising from the same if this fact was known to the Iranian authorities. The country material relied upon by AHS shows that even though the current President of Iran is described as a “liberal” there has been an increased level of repression and arrests of Christians and followers of other minority faiths by those willing to prevent what they see as acts contrary to the interests of Islam.
15. Considering all the material relied upon by the parties, I find the Judges made no material error of law in allowing the appeal as it cannot be said that this finding is outside the range of reasonable findings open to the Judge on the basis of the evidence made available, the findings made, and country material.

## **Decision**

- 16. There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed.....  
Upper Tribunal Judge Hanson

Dated the 13 July 2017