



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06718/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**Decision and Reasons  
Promulgated**

**On 2 November 2018**

**On 15 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**Mrs K M H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Clark (Counsel) instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. To preserve the anonymity direction made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Woolley promulgated on 26 June 2018, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 28 May 1965 and is a national of Iran. On 27 June 2017 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Woolley ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 27 July 2018 Judge Haria gave permission to appeal stating inter alia

2. The grounds assert that the Judge erred in taking an incorrect approach to:

- a. The evidence of two reverends from the appellant's covenant Church [46], and
- b. The account of the partner's evidence on the basis that he is a Muslim [47], and
- c. To the absence of evidence from the baptismal church a point which was not taken in the respondent's refusal letter and a point on which the appellant was not asked to respond [44],
- d. The evidence of the appellant's conversion, and
- e. The risk faced by Christians [54]

3. The weight to be given to evidence is a matter for the Judge. It is arguable that the Judge may have applied to high a standard of proof and may have conflated the position of those who were born and raised Christians on the one hand with those who convert from Islam on the other. Accordingly, I find that there is an arguable error of law.

4. All grounds may be argued

### The Hearing

5. Both Mr Clark and Mr Diwnycz told me that in light of the decision in TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58, the Judge's decision contains a material error of law and should be set aside. They both joined in asking me to remit this case to the First-tier Tribunal so that fresh findings of fact can be made.

### Analysis

6. The appellant claims to have a well-founded fear of persecution because she says she has converted from Islam to Christianity. Between

[14] and [17] the Judge records the evidence that he heard from the appellant's witnesses. At [46] the Judge says

I have great respect for both the Rev Burnard and the reverend Maynard, and have no doubt as to their sincerity as witnesses.

The Judge however goes on to reject their evidence and finds that the appellant has not genuinely converted to Christianity.

7. In TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58 there is

an extensive discussion of how to approach the fact-finding exercise in cases where the appellant claims to have converted to Christianity. So far as Dorodian was concerned, it was said that while it would no doubt be desirable that the individual concerned be vouched for by someone in a position of leadership within the relevant church, it is more important that the evidence be given by someone who has knowledge of the individual whose commitment is in question. What mattered was that they have sufficient knowledge of the practices of the church of which they are a member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities.

8. In TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58 the court found that church witnesses who were in positions of responsibility within the church who had observed the appellant's activities at church and expressed their views on the genuine nature of the appellant's conversion based on their experience were giving expert evidence. There was also a detailed discussion of the effect of lies, referring to MA (Somalia) and stating

the appellant's case has to be considered in the round, not only on the basis of the appellant's own evidence, which may or may not be accepted as credible, but also on the basis of other evidence that may be available. It does not follow from the fact that the appellant himself is disbelieved, even on very large parts of his story, that other evidence in support of his case cannot be relied upon. ....

And also

Any court or tribunal must be very careful not to dismiss an appeal just because an appellant has told lies. For reasons we have already set out, the judge should not jump too readily to the conclusion that because the appellant has told lies about some matters then his credibility on all matters is fatally undermined. [49] .... The judge should not allow his adverse finding about the credibility of the appellant to sway his assessment of the credibility and relevance of other independent evidence

bearing upon the issue before him. So here, where the FTT judges have disbelieved the appellants' evidence that they are genuine converts to Christianity, their evidence to that effect will be put to one side, given no weight. But the rejection of their evidence on this point does not become evidence that their conversion is not genuine, to be set against other, independent, evidence from which the genuineness of their conversion can be inferred. That other evidence requires to be assessed on its merits, without any a priori assumption derived from the complainer's own false evidence that it is in some way suspect or of little value.

9. The Judge makes findings that the appellant has regularly attended Christian worship and appears to accept that the appellant has been baptised, but the Judge gives no consideration to the principles set out in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31.

10. The decision places inadequate weight on the clear evidence of Dorodian witnesses. That is a material error of law. I set the decision aside. There is sufficient material before me to enable me to substitute my own decision

### The Facts

11. The appellant is an Iranian national who entered the UK on 29 July 2012 and claimed asylum on the basis of imputed political opinion. Her asylum claim was refused on 17 December 2014. She appealed that decision and on 20 May 2015 her appeal was dismissed. Her appeal rights were exhausted on 3 September 2015. The First-tier Tribunal Judge in that case found that the appellant was not a credible witness.

12. On September 2015 the appellant started attending an Iranian Christian Fellowship. In December 2015 she converted to Christianity. On 4 February 2016 the appellant submitted a new claim for asylum on the basis of her conversion to Christianity. The respondent refused the appellant's protection claim on 27 June 2017. It is against that decision that the appellant appeals.

13. On 12 June 2016 the appellant was baptised as a Christian. The appellant still regularly attends Christian worship and plays an active role in the Christian community of faith. Dr Clive Burnard and Revd R Maynard are both pastors in the church the appellant goes to. They both gave evidence in support of the appellant before the First-tier Tribunal on 26 June 2018. They have both witnessed the appellant's formation in the Christian faith. They have both observed the appellant regularly at Christian worship and at Christian instruction. They both know the appellant and they are both convinced that the appellant has genuinely converted to Christianity.

14. In Iran, converting from Islam is punishable by death for men, and life imprisonment for women, in Iran. While those considered ethnic

Christians, such as Armenians or Assyrians, are allowed to practise their faith amongst themselves, ethnic Persians are defined as Muslim, and any Christian activity in the Farsi language is illegal. Underground churches are increasingly monitored, which makes some afraid to attend, and at least 108 Christians were arrested in the last year. Interrogation methods in prison can be harsh and sexually abusive.

### Asylum

15. Even if I ignore the appellant's evidence, I would still have letters from the appellant's church. The First-tier Tribunal has already taken oral evidence from the appellant's 2 pastors and found them to be impressive and sincere witnesses. I have supporting evidence from the appellant's witnesses, who are Christian members of the same church. The appellant's pastors speak in glowing terms of the appellant's conversion, her participation in religious education, her baptism after enquiry by ministers of the church. The Judge found that one of the appellant's pastors is aware that cynical asylum seekers might try to exploit a church, but he is convinced that the appellant has genuinely converted to Christianity, and that the appellant now lives a Christian life. The unshakeable evidence of both Dr Burnard and Rev Maynard is that the appellant has converted to the Christian faith, and that she now sincerely worships at a Christian church, and has been accepted into the community of faith there.

16. In FS and others (Iran- Christian Converts) Iran CG 2004 UKIAT 00303 the Tribunal made the following findings.

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

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

(iii) At paragraph 187 the Tribunal found that the ordinary convert would not be at a real risk of persecution. (“For the ordinary convert, who is neither a leader, lay or ordained, nor a pastor, nor a proselytiser or evangelist, the actual degree of risk of persecution or treatment breaching Article 3 is not sufficient to warrant the protection of either Convention. The reality is that a social and economic life can be maintained; Christianity can be practiced, if necessary, cautiously at times, by church attendance, association with Christians and bible study. There may well be monitoring of services and identity checks. They would be able to practice, however, as most Iranian converts do. It is realistic to expect that they may sometimes be questioning, disruption, orders not to attend church, which may require the convert to stay away for a while. But there is no evidence of a real risk of ill treatment during such questioning or of anything more than a short period of detention at worst. There is evidence of random or sporadic violence by the likes of the Basiji, but at too infrequent a level to constitute a real risk to the ordinary convert. The longer official questioning, detentions and the greater risk of charges trumped up or menacingly vague or simply threatened are not a real risk for the ordinary convert.”)

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

(v) At paragraph 190 the Tribunal found that an ordinary convert with additional risk factors may be at a real risk of persecution, particularly women. (“Where an ordinary individual convert has additional risk factors, they too may be at a real risk. We have already said that we accept that the conversions would become known to the authorities, but that is not of itself an additional factor because it is the very assumption upon which we are assessing risk. These risk factors may not relate to religious views at all. It is the combination which may provoke persecutory attention where, by itself, the individual conversion would have been allowed to pass without undue hindrance. A woman faces additional serious discrimination in Iran, although it falls short of being persecutory merely on the grounds of gender. But for a single woman, lacking such economical social protection which a husband or other immediate family or friends might provide, the difficulties she faces as a convert are significantly compounded. Her legal status in any prosecution is much weaker; the risk of ill treatment in any

questioning is increased. This factor tips the overall nature of the treatment and risk into a real risk of persecution.”) By way of further example, at paragraph 191 the Tribunal noted that FS had a past adverse political profile. That profile was not one which, of itself, would cause any significant difficulties. However, coupled with his conversion, the Tribunal concluded that it would lead the authorities to target FS for questioning and a higher level of harassment, more akin to that which might be experienced by a proselytiser or evangelist, generating a real risk of persecution or treatment breaching Article 3.

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

(vii) At paragraph 161 the Tribunal noted that there were those who, although not strictly proselytising, would be impelled to share or expound their beliefs with those who had not yet received the Gospel. The Tribunal considered arguments on the difference between proselytisation and “bearing witness in 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.”

17. Since FS was decided, Apostasy has been criminalised in Iran. A male apostate can be punished by execution. A female apostate could face life imprisonment. TF (Iran) tells me to place weight on the evidence provided by Dr Burnard and Rev Maynard. On the facts as I find them to be, since 2015 the appellant has participated in Christian worship in the UK. The unchallenged evidence is that the appellant has been accepted into a community of Christian faith and has been baptised. The unchallenged

evidence is that the appellant continues to practice her faith and participates in Christian worship in a Christian church.

18. The Judge had no doubt that Dr Burnard and Rev Maynard told the truth. They have been involved in the appellant's formation in the Christian faith, and enjoy weekly contact with her in church activities. The witnesses are committed Christians who are in the best position to say whether or not the appellant is a Christian, because they have observed the appellant's instruction and growth in that faith, they have observed the appellant at worship and can comment on the impact of the appellant's new-found faith on her daily routines of life. Their unequivocal evidence is that the appellant is a Christian. I therefore find that the appellant was born a Muslim, and has converted to Christianity.

19. Conversion from Islam to Christianity is the basis of the crime of apostasy known to the law of Iran. The Iranian penalty for apostasy is death. Relying on the cases of FS and others (Iran- Christian Converts) Iran CG 2004 UKIAT 00303 & HJ (Iran) v SSHD [2010] UKSC 31, I find that the appellant cannot safely return to Iran.

20. SA (Iran), R (on the application of) v Secretary of State for the Home Department [2012] EWHC 2575 (Admin) was a judicial review against a certification of an asylum claim by an Iranian Christian convert under S.94(2) of the Nationality, Immigration and Asylum Act 2002, his Honour Judge Gilbert QC found that current evidence pointed to a greater risk for Iranian Christian converts than is reflected in the country guidance. He also made the following comments on the judicial assessment of the genuineness of a Christian conversion (at 24):

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.

21. In SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 the Tribunal held that events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam

constitutes another risk factor indicating an increased level of risk of persecution or ill treatment on return. Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.

22. The weight of reliable evidence persuades me that the appellant is a practising Christian, who converted to Christianity from Islam.

23. Given these conclusions, I find that the Appellant has discharged the burden of proof to establish that she is a refugee. **I come to the conclusion that the Appellant's removal would cause the United Kingdom to be in breach of its obligations under the 2006 Regulations.**

24. Therefore, I find the appellant is a refugee.

### **Humanitarian protection**

25. As I have found the appellant is a refugee I cannot consider whether she qualifies for humanitarian protection.

26. Therefore, I find the appellant is not eligible for humanitarian protection.

### **Human rights**

27. As I have found the appellant has established a well-founded fear of persecution, by analogy I find her claim engages article 3 of the Human Rights Convention because she would face a real risk of torture, inhuman or degrading treatment if she were returned to her country of origin.

28. Article 9 of the [European Convention on Human Rights](#) provides a right to [freedom of thought](#), conscience and [religion](#). This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". As I have found that the appellant faces a real risk of persecution in Iran because she has converted to Christianity, by analogy I find that her appeal succeeds on article 9 ECHR grounds.

29. The appellant does not claim that any other articles of the 1950 Convention are engaged. I find that no rights under any other Articles are engaged in this appeal.

30. In the light of the above conclusions, I find that the Decision appealed against would cause the United Kingdom to be in breach of the law or its obligations under the 1950 Convention.

### **CONCLUSION**

**31. The decision of the First-tier Tribunal promulgated on 26 June 2018 is tainted by a material error of law. I set it aside.**

**32. I substitute my own decision.**

**33. The appeal is allowed on asylum grounds**

**34. The appeal is dismissed on Humanitarian Protection grounds.**

**35. The appeal is allowed on article 3 & 9 ECHR grounds.**

Signed  
November 2018  
Deputy Upper Tribunal Judge Doyle

Date 8

A handwritten signature in grey ink, appearing to read "Paul Doyle". The signature is written in a cursive style with a large initial 'P' and a long horizontal stroke extending to the right.