Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

The Risk of Persecution or Serious Harm on Return to Iran Faced by Iranian Citizens who Claimed to Have Converted from Islam to Christianity

Question(s) at stake:

1) Whether Iranian citizens who "claim to have converted from Islam to Christianity" face a real risk of persecution as defined by the Refugee Convention or treatment contrary to their rights under Article 9 of the European Convention on Human Rights (ECHR) on return to Iran. (para. 141) 2) Whether the appellant, as an Iranian who engaged in Christian activities abroad, would face a real risk of persecution upon return to Iran, regardless of whether he holds a genuine religious belief in Christianity.

Outcome of the ruling:

The situation faced by Christian converts in Iran has deteriorated significantly since the previous country guidance decisions issued in *FS and Others (Iran – Christian Converts) CG [2004]* and *SZ and JM (Christians – FS confirmed) Iran CG* [2008]. In so far as they relate to non-ethnic Christians, they are replaced by the current decision as follows:

- An "ordinary" Christian convert "seeking to openly practice that faith in Iran would face a real risk of persecution" (para. 143). A claimant in this position choosing to conceal their faith because of their fear of such persecution is entitled to international protection. By contrast, where a claimant would choose to conceal their conversion to Christianity for any other reasons, such as family pressure, societal disapproval of the religion or a personal preference, their asylum application should be refused. This is because, generally, solitary worship within the privacy of one's home does not entail a

real risk of persecution.

- Iranian citizens who claimed asylum as converts but who do not hold a genuine belief in Christianity do not face a real risk of persecution within Iran. Nevertheless, decision-makers must consider the risk of harm arising from the detention and interrogation that all failed asylum seekers face upon arrival. There is a risk of ill treatment where a detention becomes prolonged. Factors leading to prolonged detention include “previous adverse contact with the Iranian security services, connection to persons of interest to the Iranian authorities, attendance at a church with perceived connection to Iranian house churches” and having promoted Christianity on social media. (para. 144)

In light of the Country Guidance (CG) findings, the appellant’s case was dismissed. The Upper Tribunal concluded that PS was likely to be interrogated by the authorities on arrival and to be required “to sign an undertaking promising that he would not undertake any Christian activities” in Iran, and would be released thereafter. (para. 151) He did not present any aggravating factors that would lead to a prolonged detention. As such, PS did not face a risk of serious harm on return to Iran either on account of his false conversion-based asylum claim or on account of his church attendance and baptism in the UK.

Topic(s):

- Immigration and Asylum

Keywords:

- Applicant's credibility
- Freedom of thought, conscience and religion
- Grounds/Reasons of persecution
- Real Risk of persecution
- Refusal of asylum
- Religion or belief

Tag(s):

- Christian converts
- Apostasy

Author(s):

- Mirzac, Iulia (Birmingham Law School, University of Birmingham)

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United Kingdom

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PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC)

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2020-ukut-46

ECLI:

No ECLI number / ECLI number unknown

Date:

20 February 2020

Jurisdiction / Court / Chamber:

Upper Tribunal (Immigration and Asylum Chamber)

Remedy / Procedural stage:

Appeal from the First-tier Tribunal (Immigration and Asylum)

Previous stages:

- At a hearing in 2018, the Vice President of the First-tier Tribunal (*hereafter FTT*), Mr CMG Ockelton, set aside the previous decision of the FTT because it was found to contain an error of law.
- In July 2017, the FTT dismissed PS' appeal.

- The Home Office (hereafter HO) rejected PS's second application for asylum. PS appealed against the HO's refusal decision.
- In December 2015, PS submitted a new application for asylum on the basis of his claimed conversion to Christianity.
- In April 2013, the FTT dismissed PS' appeal against the HO.
- In 2013, the HO refused PS' application for asylum on both grounds (fear of persecution on political grounds and fear of honour-based violence).

No official citations of the previous stages are available.

Subsequent stages:

No information found.

Branches / Areas of law:

Administrative Law; Asylum Law

Facts:

The appellant, PS, was an Iranian national. He arrived in the United Kingdom in January 2013. He claimed asylum based on two grounds:

1. Imputed political opinion following the appellant's attendance of a "green movement" protest in 2009;
2. "[H]onour based violence" arising from his wish to "marry his girlfriend". (para. 145)

The respondent issued a rejection letter in response to the application, and PS appealed against it. The First-tier Tribunal (FTT) Judge Shanahan rejected both claims and dismissed the appeal. PS exhausted his appeal rights by June 2013.

"In December 2014, he was arrested for affray and spent approximately five months in prison". (para. 146) "[H]e attended chapel whilst in prison and […] was counselled by the chaplain". (para. 146) In May 2015, PS started "attending the Coverdale Christian Church in Manchester" and was baptised two weeks later. (para. 147) He was subsequently moved to another area of the UK. He did not join

a new church there nor did he maintain contact with anyone from the church in Manchester. In December 2015, the PS submitted another application for asylum on the basis of his claimed conversion to Christianity. The respondent rejected the claim, arguing that the haste of PS' baptism and his lack of subject-specific knowledge was evidence that his conversion was not genuine. Similarly, the FTT concluded that PS claimed false conversion as a tool to obtain international protection and dismissed PS's appeal. Upon reconsideration, the FTT's decision was found to have erred in law because it failed to consider whether engaging in Christian activities abroad and relying upon those activities to claim asylum were sufficient to place PS at risk of harm upon return to Iran, regardless of the credibility of his conversion claim or the genuineness of his claimed religious beliefs.

Previous Country Guidance

The Upper Tribunal in the current appeal was asked to review the previous country guidance decision in *FS and Others (Iran – Christian Converts) Iran CG* [2004], as reinforced in *SZ and JM (Christians – FS confirmed) Iran CG* [2008].

In *FS and Others* [2004], the Asylum and Immigration Tribunal found that the Iranian legal framework draws a distinction between "ethnic" Christians in Iran (i.e. people born into the Christian religion such as "the Chaldeans, Assyrians and Armenians") and "converts to Christianity" from Islam (apostates). (para. 5) Generally, the discrimination faced by ethnic Christians who are not actively evangelising is not sufficiently serious to amount to persecutory treatment. This is because the Iranian Constitution recognises them as a protected religious minority (*Ahl al-Kitaab or* "people of the book").

By contrast, under Iranian law, anyone who converted from Islam to Christianity has committed *ertedad* (apostasy or turning away from Islam). Iran's penal code does not specify *ertedad* as illegal. However, "paragraph 167 of the Constitution stipulates" that where an issue falls outside the country's codified law, the courts are to apply traditional Islamic law. (para. 26) Therefore, converts can be prosecuted for *sabb al-nabi* ("insulting the Prophet"), *fisad fil-arz* ("corruption on

earth") or blasphemy contrary to "Article 513 of Book 5 of the Penal Code", or for interfering with or damaging Iran's national security contrary to Article 498. (para. 31)

Both *FS and Others* [2004] and *SZ and JM* [2008] held that "ordinary" converts (i.e. anyone who converted from Islam to Christianity but is not a pastor, a house church leader, an evangeliser or a proselytiser) can be safely returned to Iran. Generally, the level of harassment they face that does not amount to a real risk of serious harm unless they present additional risk factors such as, for instance, a history of adverse contact with the Iranian security services or a political profile. By contrast, pastors, leaders of house churches, and anyone "perceived by the Iranian state to be actively evangelising or proselytising in the Muslim population" are at risk of arrest and ill-treatment during detention, amounting to a real risk of persecution under the 1951 Refugee Convention. (para. 5)

The current appeal

In the current appeal, the Upper Tribunal was asked to consider whether the situation of Christian converts in Iran has differed since the decision in *SZ and JM* [2008]. The appeal was heard as a Country Guidance case on the risk of persecution and serious harm faced by:

1. Christian converts upon return to Iran;
2. Iranian citizens who "engaged in Christian activities abroad, regardless of whether such individuals hold genuine religious belief in Christianity". (para. 2)

The respondent's submission was that the situation faced by Christian converts in Iran remained unchanged since the last country guidance decision of *SZ and JM* [2008]. The suffering inflicted on Christian converts in Iran, such as through short-term detention of house church attendees, did not reach "the high threshold of harm required to engage the [Refugee] Convention". (para. 122) Christian converts could generally live out their faith, unless they presented aggravating factors such as a political profile. Although apostasy is a criminal offence in Iran, it

is rarely used in practice. At the time of the hearing, there were only three recorded convictions for apostasy since 1979. The respondent conceded that new evidence suggested restrictions on Christian worship in Iran. However, the respondent submitted that this did not engage the converts' rights under Article 9 of the ECHR because "the act of collective worship does not go to the core of what it is to be a Christian" [para 135].

With regard to the appellant, the responded cited reports by organisations including Amnesty International and the International Organization for Migration (IOM), from 2018 and 2014 respectively, which stated that the Iranian authorities would not be concerned with a

a returning asylum seeker on grounds of Christian activities abroad. The respondent therefore argued that because PS was not a genuine adherent of the Christian faith, he did not face a real risk of harm on return despite his Christian activities in the UK.

The appellant's case was that "the situation for Christian converts in Iran [had] markedly deteriorated since 2008". (para. 7) Ordinary Christian converts are now being targeted by the State. House churches are being closed down and their leaders, members of the congregation and their relatives are either placed under surveillance or detained and tortured. "[T]he effective ban on collective Christian worship" amounts to persecution in light of the Supreme Court decision in *HJ (Iran) and HT (Cameroon)* [2010], (para. 139) which held that a homosexual person who would be exposed to a real risk of harm for living openly as gay is entitled to international protection "even if he could avoid the risk by living 'discreetly'". (para. 132)

The appellant also argued that Iran registered a low number of convictions for apostasy because converts are prosecuted via other legal avenues. The Iranian authorities perceive Christian activities, such as collective worship, evangelising and "contact with Christian organisations abroad [...] as political" in nature and "as a threat against the country's Islamic identity and national security". (para. 22) For reason, all returnees who spent some time abroad are suspected of being

spies for the West. They are questioned on arrival. Those who submitted a conversion-based asylum claim are transferred to second-line questioning, during which they are exposed to a real risk of ill-treatment. Therefore, PS faced a real risk of serious harm upon return to Iran on account of his Christian activities abroad, regardless of whether or not his conversion claim was genuine.

In response, the respondent noted a caveat to the principles of "living discreetly" set out in *HJ,* namely, that the purpose of the Refugee Convention is not to guarantee an asylum seeker the same rights in their home country as they would enjoy in the receiving state. Therefore, it is not reasonable for a Christian convert in Iran to expect to live out all aspects of their faith in the same manner as they would have been able to in the UK.

Ruling:

The Upper Tribunal considered an extensive amount of country background information, as well as evidence from one expert witness presented in oral and written form. The ruling can be divided into two main parts. The first is concerned with giving country guidance concerning Iranian citizens "who claim to have converted [from Islam] to Christianity". (para. 106) The second part of the ruling is concerned with determining PS's appeal.

Country Guidance

The most important conclusions are the following:

1. The country guidance set out in the current decision replaces the guidance related to "non-ethnic Christians" contained in the previous "country guidance decisions in *FS and Others (Iran – Christian Converts) Iran* CG [2004] and *SZ and JM (Christians – FS confirmed) Iran CG* [2008]". (para. 142) The guidance relating to ethnic Christians contained in *SZ and JM* [2008] remains valid. (paras. 119 and 142)

   "[T]he situation for Christian converts in Iran has deteriorated drastically" in the past decade, with the effect that they live under "an ever-present fear of

ill-treatment". (para. 119) This is the case regardless of whether one is a church leader, an evangeliser or an "ordinary" convert. (paras. 119, 127 and 130-131)

2. The first step in each determination is to establish whether the claimant has demonstrated a reasonable likelihood that s/he is a Christian convert. (para. 143)

3. A genuine Christian convert wishing to practice their faith openly on return to Iran would be at real risk of persecution. (paras. 111 and 143(i))

   The Upper Tribunal was satisfied with the evidence that there is an "effective ban on collective worship for Christian converts" in Iran. (para. 139) This "amounts to a severe violation of religious freedom" because congregating to pray and worship is an "irreducible core of what it is to be a Christian" (paras. 137 and 139). The Upper Tribunal noted that this finding is consistent with Article 10 of Council Directive 2004/83/EC and with Article 9 of the ECHR, both of which state that the concept of religion and the right to freedom of thought include the right to freely manifest one's religious beliefs through acts of public and private worship. (paras. 38-39 and 137-139)

   The Iranian authorities routinely raid house churches and place converts under surveillance, arrest them or subject them to physical and psychological harm in detention. The Upper Tribunal reasoned that such arbitrary short-term arrests and detention of Christian converts amount to persecution because their purpose "is to intimidate Christians and to try and prevent them from practicing their faith through attendance at house churches". (para. 125) The Upper Tribunal reached this conclusion by applying the Court of Appeal decision in *Ravichandran* [1996], which held that arrests may only take place for a legitimate purpose recognised in international law, such as to prevent terrorism and ensure domestic public order). (paras. 83 and 122-125)

When detained, either as a result of a house church raid within Iran or on arrival in the country as part of the questioning of a failed conversion-based asylum seeker, converts are asked to sign an undertaking requiring them to renounce Christianity and formally accept Islam. The Upper Tribunal concluded that being asked to desist from practicing one's faith "plainly engages the Refugee Convention". The tribunal quoted Sir John Dyson in *HJ (Iran) (FC)* [2010] when noting that by signing such an undertaking, a genuine convert would "surrender the very protection that the Convention is intended to secure him". (paras. 53-55, 111 and 128)

4. If a genuine Christian convert concealed his or her faith upon return to Iran, the decision-maker should determine the claimant's motivation for doing so.

5. If the claimant concealed their faith for fear of being persecuted, the asylum claim should be allowed. (paras. 131-132 and 143(ii))

   The Upper Tribunal reasoned that the situation faced by Christian converts is analogous to that faced by homosexuals in Iran. The principles set out by the Supreme Court in *HJ (Iran)* [2010] were applied: a person should not be expected to be discreet about their faith unless they wish to do so for reasons other than their fear of persecution. (paras. 132-135)

6. If the claimant concealed their faith for reasons other than a fear of persecution, such as "family pressure, social constraints, personal preference, etc" then the asylum claim should be rejected. (para. 143) This is because the evidence shows that Christian converts can worship in solitude within the privacy of their home without facing a real risk of persecution. (paras. 121, 133 and 143(iii))

7. Where a claimant's conversion claim to Christianity is found to be insincere, the appeal should be refused. A person in this position would not face a real risk of persecution in Iran. (paras. 113, 140 and 144)

8. Nonetheless, where an insincere conversion-based claim is involved, decision-makers must consider the following risk factors on return to Iran:

- All Iranians who unsuccessfully claimed asylum abroad are questioned by the Iranian authorities upon arrival, including about their reasons for having claimed asylum; (paras. 113 and 144(i))
- All returnees who claimed to be Christian as part of an asylum application will likely be transferred for further questioning. This is because “the Iranian security services perceive there to be a clear link between Christianity and attempts by the West to undermine the Iranian state”. (paras. 113 and 144(ii))
- As part of the second-line questioning, the returnee would be asked to sign an undertaking requiring them to renounce their claimed faith in Christianity. In the case of a false conversion claim, it is expected that the returnee will sign the undertaking. Therefore, the questioning would be short and entail no risk of ill-treatment. (para. 144(iii))

  On the evidence, the Upper Tribunal was satisfied that the returnee may be subjected to temporary surveillance upon release. However, it would not place the returnee under a real risk of ill-treatment because the surveillance would only be temporary until the security services are satisfied s/he “is not in fact a Western spy” and does not attempt to contact a house church within Iran. (paras. 114 and 115)
- There is a reasonable likelihood of persecutory treatment in any detention longer than a week. Therefore, where a returnee’s detention on arrival is prolonged for any reason, the risk of serious harm rises correspondingly. “Factors that could result in prolonged detention must be determined on a case-by-case basis. They could include but are not limited to: previous adverse contact with the Iranian security services, connection to persons of interest to the Iranian authorities, attendance at a church with perceived connection to Iranian house churches” and having promoted Christianity on social media. (paras. 4, 88-89, 92-94, 116 and 144(iv))

The Upper Tribunal emphasised that decision-makers must always undertake a risk assessment in light of the particular circumstances of each case because “there is a reasonable likelihood of physical harm during ‘second-line’ investigations”. (para. 116)

The Upper Tribunal noted that this is consistent with its finding in the country guidance case of *SSH and HR* [2016], which found that an Iranian who made up a false story when claiming asylum could re-enter the country without difficulty unless they were transferred to a second-line interrogation that would likely expose them to a real risk of ill-treatment. (paras. 95, 99-110 and 115-116)

Determination of the appellant’s case

The Upper Tribunal concluded that PS’s claim of conversion to Christianity was insincere. Applying its country guidance determination, the Upper Tribunal found that PS did not face a real risk of persecution on return to Iran and dismissed the appeal.

The most important findings are the following:

- PS “attended church between May 2015 and sometime in 2016”. (para. 151) After about two weeks of starting to attend church, he was baptised. He did not have any contact with the Iranian authorities before leaving the country. He did not have connections with people of interest to the authorities in Iran, nor any adverse social media content. (para. 151)
- PS would return home with “an emergency travel document obtained from the [Iranian] embassy in London” as he did not have a passport. (para. 99) Therefore, the Iranian authorities would expect PS to be a failed asylum seeker. They would, accordingly, question him on arrival. It would become known during the questioning that PS’ asylum claim was based on conversion to Christianity. In light of this finding, PS would be transferred for second-line questioning. (para. 150)

PS would be asked to sign an undertaking declaring that he renounces his faith and promising that he would not be involved in any Christian activities. Having concluded that PS's conversion claim was not genuine, the Upper Tribunal concluded that PS had no reason to refuse to sign the undertaking. Following from that, PS is "likely to be judged to present a negligible risk to the security of Iran". (para. 151) He would be released thereafter without facing a risk of ill-treatment. "PS may be placed under surveillance" until "the authorities are satisfied that he is not attending house church or attempting to to contact known Christians". (paras. 150-151)

Main quotations on cultural or religious diversity:

- "That leads to our second point: what we mean by 'Christian convert'. It is not possible to make windows into men's souls. Whether someone is, or is not, a Christian is a matter of fact that is impossible to objectively verify. For example, an individual may pay very little attention to scripture or sermon but might fervently believe that Jesus Christ is the son of God; Christians with a long-held and deep belief can still face a crisis of faith at any given moment. It is no doubt for that reason that the Tribunal in *Ali Dorodian v Secretary of State for the Home Department* (01/TH/1537) preferred to focus on the externally observable: 'as we have said, it is church membership rather than mere belief, which may lead to risk'. This difficulty means that in this jurisdiction decision makers must rely largely on the observations of others to determine whether someone is, or is not, a 'genuine' Christian. A further complexity arises. There is no doubt for many a path to wholehearted belief, with gradations marked by life events and a deepening understanding. At what point along that path an individual might become a 'Christian' is not clearly signposted. There is certainly no theological consensus on the matter**;** baptism is an indicator, but it should not be regarded as determinative. The terminology used in this decision must therefore be read with that caveat in mind. For our purposes we are primarily concerned with those whom the Iranian state regard as

‘Christians’.” (para. 10)

- “All of the sources before us indicate that the conversion of Muslims in Iran to Christianity is a growing phenomenon. Disenchantment with Islam (or rather the socially conservative brand of Islam regarded as orthodoxy by the Iranian regime) is identified as one driving factor. As the state has equated itself with Twelver Shi’ism so many Iranians have come to associate the negative aspects of daily life – socio-economic deprivation, political and religious repression – with their traditional faith. They conversely associate the allure of the West – wealth, social and political freedom – with its traditional faith of Christianity. Academics cited by Landinfo point out that such conversions are made more palatable by the fact that there are aspects of Christianity that are theologically compatible with Shi’a belief, such as the preoccupation with martyrdom, and the reverence for Jesus (‘Isa). Other studies have identified an emerging narrative of Islam being a colonial import, imposed upon Persia by Arab conquerors. Then there are more cynical motivations. An elder of the Church of Iran told Landinfo that he believes some Iranians seek baptism only in order to facilitate their emigration abroad, in particular to the United States which for a number of years offered a refugee resettlement program for Iranian Christians.” (para. 14)
- “Given the unanimity in the sources we accept that the Iranian state tends today to associate Christian activity with political opposition, and in particular political opposition fuelled by the ‘West’, or by the United States, United Kingdom and Israel in particular. We further accept that this trend has become markedly more pronounced since approximately 2008/2009, and that this has been a feature of a worsening political climate for Christians – and minority faiths in general – in Iran.” (para. 24)
- “As a matter of Iranian law an individual who turns away from Islam - to another faith or simply atheism - has committed the crime of *ertedad*, or apostasy. It is a crime which can draw, and has drawn, the ultimate

punishment of execution. Mrs Enayat and Landinfo both explain that although this is not a crime to be found in the penal code it is regarded as law because paragraph 167 of the Constitution stipulates that in cases where an issue is not covered by the codified law, the judge shall apply traditional Islamic law. In his work *Tahrir Al-Vasileh*, Ayatollah Khomeini prescribed the death penalty for apostasy in his legal deliberations, and his opinion is regarded as a source of law in Iran." (para. 26)

- "Having had regard to the evidence we are satisfied that apostasy (*ertedad*) charges are very rarely pursued through to actual prosecution. In the vast majority of cases where individuals are brought to court it is to face alternative, lesser, charges. Apostasy – a capital offence - nevertheless remains a potent tool for interrogation, a threat that is frequently used against detainees in the course of questioning." (para. 35)
- "We should add that detection of these 'hidden believers' is not impossible. As the Danish report acknowledges, Amnesty International, Middle East Concern and others have pointed out that a conversion might be revealed by default. If the convert does not participate in the many normal social and cultural activities associated with Islam he or she may draw the unwanted attention of neighbours, family or the wider community, who may in turn inform the authorities of their suspicions. They are compelled, by social convention and expectation, to act in a certain way." (para. 41)
- "It has long been accepted that Christians face entrenched discrimination in Iran in matters of their personal status, and that such discrimination operates to deny them the opportunity to express their faith in all aspects of their public lives. This discrimination is to be abhorred but we remain to be satisfied that it interferes with the core right of this particular group of Christians to practise their faith in a manner acceptable to them." (para. 42)
- "There is a group, of unquantifiable size, whose spiritual life is confined within the walls of their own home, and whose interaction with other Christians is strictly limited to virtual or remote contact via the internet or

television. Whilst we accept that some of these individuals run the risk of discovery – be that by informants in their community or online surveillance – we do not find it established that as a group they are at risk *per se*. These 'hidden believers' are by and large able to engage with Christian media content and to study their faith in private and in relative safety. We cannot think, however, that the life led by these Christians is going to be particularly relevant to any case before the Tribunal. That is because protection claims brought in this arena invariably come from individuals who have asserted - either expressly or impliedly by their actions - that a fundamental part of their faith is to attend church. It is this desire to take part in collective worship which will expose them to risk." (para. 121)

- "Setting aside any theological debate that might be had about whether collective worship is a formal requirement of Christianity, it is a fact that for the vast majority of Christians it is an integral element of their faith. We are satisfied that for these people congregating to pray and worship forms part of the irreducible core of what it is to be a Christian: it cannot be regarded as being on the margins of the protected right. That this is so is reflected by Article 10 of Council Directive 2004/83/EC (the Directive)" (para. 137)

Main legal texts quoted in the decision:

International Law and European Union Law

- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (hereafter Refugee Convention)
- EU Council Directive 2004/83/EC on Minimum Standards for the Qualification Status of Third Country Nationals or Stateless Persons or Refugees or as Persons Who Otherwise Need International Protection (No longer in force; date of end of validity 21 Dec 2013; repealed by Directive 2011/95/EU)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November

1950, entered into force 3 September 1953) ETS 5 (hereafter ECHR)

UK Domestic Law

- Borders, Citizenship and Immigration Act 2009
- Immigration Rules (adopted 23 May 1994, entered into force 1 October 1994)
- Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (adopted 18 September 2006, entered into force 9 October 2006) (hereafter Protection Regulations
- Statement of Changes in Immigration Rules CM6918 (hereafter the amended Immigration Rules)

Iranian Domestic Law

- Penal Code, Articles 498 and 513

Cases cited in the decision:

Previous Country Guidance

- *FS and Others (Iran – Christian Converts) Iran CG* [2004] UKIAT 00303
- *SZ and JM (Christians – FS confirmed) Iran CG* [2008] UKAIT 00082

Assessing credibility of a faith-based claim

- *Ali Dorodian v SSHD* (2001) 01/TH/1537 (unreported)

Risk on return

- *HB (Kurds) Iran CG* [2018] UKUT 00430
- *HJ (Iran) v SSHD* [2010] UKSC 31
- *Ravichandran v SSHD* [1996] Imm AR 97
- *SSH and HR (Illegal Exit: Failed Asylum Seeker)* [2016] UKUT 308

Commentary

The Risk of Persecution or Serious Harm on Return to Iran Faced by Iranian Citizens who Claimed to Have Converted from Islam to Christianity

Country Guidance (CG) cases are an integral part of the UK immigration system. They involve the evaluation of a large number of evidence related to the general social and political conditions in a specific country, as well as the particular circumstances of an individual case. CG decisions have a binding effect on subsequent cases concerning similar issues and evidence (Clayton and Firth 2018: 389).

The CG case of PS represents an authoritative precedent on the conditions faced by Christian converts in Iran. Building on a growing body of judicial decisions concerning apostates, the PS case is the third time that the Immigration Asylum Tribunal - now the Upper Tribunal - was asked to assess the risk of persecution in relation to Christianity in Iran.

Prior to *PS*, the leading authority on the topic was the country guidance decision in *FS and others (Iran - Christian Converts) Iran CG* [2004]. It held that "Christianity can be practiced, if necessary, cautiously at times, by Church attendance, association with Christians and Bible study" (para. 187 of the judgement). This finding was endorsed in *SZ and JM* [2008] and was applied to all relevant asylum applications subsequently (Home Office, 2019; Thomas 2008).

The case of *PS* represents a shift in case law, in that additional risk factors are longer needed to consider someone at risk of persecution, such as proselytising or being a house church leader. Indeed, "simply being a Christian is enough to get you arrested" (para. 86 of the judgement). After a detailed examination of the evidence, the Upper Tribunal came to the conclusion that "ordinary" Christians are "subject to extraordinary punishments" for nothing more than having "gathered in private homes for the purpose of collective worship*"* (para. 87). The Upper Tribunal held that this amounts to a severe violation of their religious freedom because collective worship is perceived by Christians as a core element of their faith. The Upper Tribunal strengthened its reasoning by noting that its approach is consistent with key international instruments on religious freedom, and with the UNHCR (2004) Religious Persecution Guidelines, all of which

recognise the concept of religion to include public manifestations of faith.

Although keeping ethnic Christians outside of its scope, PS nonetheless has a wide remit in practice because it applies to three main categories of potential asylum seekers:

- *Christian converts from Iran;*
- *Iranian citizens converting to Christianity abroad (sur place conversion); and*
- *Iranian citizens "who* have engaged in Christian activities abroad regardless of whether such individuals hold a genuine belief in Christianity". (para. 2)

PS provided some clarification to questions that earlier case-law left outstanding. For example, in *MN and others* [2012], the Upper Tribunal held that an Ahmadi person cannot be required to modify their religious-based conduct in order to avoid harm in Pakistan if publicly manifesting their faith is of particular importance to their religious identity (see CUREDI022UK008 for a full analysis). This left open the following questions:

1. whether refugee status should be granted only to individuals for whom public expression of their faith is particularly important to them; and
2. whether refusing asylum on the expectation than an individual will conceal their faith to avoid persecution is consistent with the right to live freely and openly.

PS addressed this uncertainty by differentiating between the motivations behind concealing one's faith. According to *PS*, anyone who refrains from publicly manifesting their faith because of a well-founded fear of persecution is entitled to protection (*HJ (Iran)* [2010] applied). By contrast, those who hide their conversion for other reasons, such as family pressure, societal disapproval of the religion or personal preference, are not to be granted refugee status. The Upper Tribunal did not explicitly justify its decision not to extend protection to the second group, other than by quoting from paragraph 110 of the judgement in *HJ (Iran)* [2010]

with regard to the first:

“If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention is intended to secure for him.”

This sits somewhat uncomfortably with cases where the cumulative effects of family pressure and community stigma experienced by returnees were deemed capable of reaching the high threshold of persecution, such as *SB (Moldova)* [2008] (see CUREDI41UK002 for the analysis). Scholars argue that what might initially appear to be only an inconvenience, such as not letting relatives know that one no longer follows the teachings of Islam, might reasonably constitute persecution for a claimant (Good 2009; Gunn, 2013). In the context of a Christian convert in Iran, this would involve continuing to participate in the Muslim community and being married and buried according to Islamic tradition. This has wider implications, especially for women, relating to marriage, divorce, ownership of property, inheritance, children custody rights, etc. (Gunn, 2013: 1). As such, this aspect of the decision may come back before the courts for clarification.

Another challenge faced by decision-makers when dealing with a conversion-based case is assessing whether a person’s claimed religious beliefs are genuine *(UNHCR, 2013: 30). In PS, the Upper Tribunal acknowledged that “[i]t is not possible to make windows into men’s souls” (para. 10 of the judgement). Although it endorsed the conventional approach focused on externally observable variables (such as church attendance, baptism and accurate knowledge of religious texts), the Upper Tribunal acknowledged that decision-makers ought to be mindful that “the path to wholehearted belief” is not a straight line. The most devout believers “can still face a crisis of faith”, whilst someone with little knowledge of scripture “might fervently believe that Jesus Christ is the son of God” (para. 10 of the judgement). To avoid the issue, the Tribunal proposed to focus on those whom the Iranian authorities would perceive as Christians for the purpose of its assessment. The Upper Tribunal’s comments may be welcomed by the large community of scholars and practitioners who have repeatedly criticised*

the UK Home Office for rejecting asylum seekers who are unable to quote a particular Bible verse accurately during a credibility assessment interview (APPG, 2016; UNHCR, 2013). However, its impact on future conversion-based decisions remains to be seen in courts.

Literature related to the main issue(s) at stake:

Cases cited in the commentary:

- *SA (Iran)* [2012] EWHC 2575
- *MN and others (Ahmadis – country conditions – risk) Pakistan CG* [2012] UKUT 00389
- *SB (PSG – Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002

Other relevant cases:

- *MH (review; slip rule; church witnesses) Iran* [2020] UKUT 125
- *RT (Zimbabwe) and others (Respondents) v SSHD* [2012] UKSC 38
- *TF and MA* [2018] CSIH 58 *WA (Pakistan) v SSHD* [2019] EWCA Civ 302

Guidelines and reports cited in the judgement:

- Home Office 'Country Policy and Information Notes Iran: Christians and Christian Converts' (Home Office, 2019), available at <https://www.gov.uk/government/publications/iran-country-policy-and-information-notes> accessed on 20 July 2020.
- UNHCR 'Guidelines on International Protection: Religion-Based Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (Geneva 2004) (UNHCR Religious Persecution Guidelines)

Reports cited in the commentary:

- APPG, *Fleeing Persecution: Asylum Claims in the UK on Religious Freedom Grounds* (All Party Parliamentary Group for International Freedom of Religion

or Belief 2016), available at <https://appgfreedomofreligionorbelief.org/media/Fleeing-Persecution-Asylum-Claims-in-the-UK-on-Religious-Freedom-Grounds.pdf> accessed on 20 November 2020.

- Home Office 'Country Policy and Information Notes Iran: Christians and Christian Converts' (Home Office, 2020), available at <https://www.gov.uk/government/publications/iran-country-policy-and-information-notes> accessed on 20 July 2020.
- UNHCR 'Beyond Proof: Credibility Assessing in EU Asylum Systems' (Geneva 2013), available at <https://www. unhcr.org/51a8a08a9.pdf> accessed on 20 July 2020.
- U.S. Department of State, *Report on Religious Freedom: Iran* (Office of International Religious Freedom 2019), available at < https://www.state.gov/reports/2019 - report-on-international-religious-freedom/iran/> accessed on 20 July 2020.

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Other literature:

- Clarke, Ben. 2009. "Law, Religion, and Violence: A Human Rights-Based Response to Punishment (by State and Non-State Actors) of Apostasy"

Adelaide Law Review 30(1): 111-148.

- Cohen, Jennifer. 2008. "Islamic Law in Iran: Can It Protect the International Legal Right of Freedom of Religion and Belief?" *Chicago Journal of International Law* 9(1): 247–274.
- Cranmer, Frank, 'Asylum, Iran and 'genuine conversion': PS (Christianity - risk)' (*Law & Religion UK,* 27 February 2020), available at < https://lawandreligionuk. com/2020/02/27/asylum-iran-and-genuine-conversion-ps-christianity-risk/> accessed 20 July 2020.
- European Database of Asylum Law, 'UK: Country Guidance on Risk of return to Iran in the event of conversion to Christianity' (*EDAL*, 20 February 2020), available at <https://www.asylumlawdatabase.eu/en/content/uk-country-guidance-risk-return-iran-event-conversion-christianity> accessed 20 July 2020.
- Grim, Brian and Roger Finke. 2011. *The price of freedom denied: religious persecution and conflict in the 21st century*. Cambridge: Cambridge University Press.

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