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

Decision Making Challenges Concerning Christian Converts in Iran: AS (Iran) v SSHD [2017]

Question(s) at stake:

Whether adequate reasons were provided by tribunals when offering their conclusion that the appellant had failed to demonstrate a well-founded fear of persecution under the Refugee Convention on the grounds of (a) her illegal exit from Iran, (b) her membership in a social group (that of women suffering domestic violence), and (c) her conversion to Christianity.

Outcome of the ruling:

The Court of Appeal dismissed the appellant's claim on all grounds. According to its ruling, since we should "avoid a requirement of perfection", the tribunals' reasoning had been sufficient to establish that they had not erred, and that the appellant was not at risk of persecution.

Topic(s):

- Immigration and Asylum

Keywords:

- Grounds/Reasons of persecution
- Membership of a particular social group
- Refugee status
- Asylum seeker
- Religion or belief

Tag(s):

- Christian converts

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Country:

United Kingdom

Official citation:

AS (Iran) v Secretary of State for the Home Department [2017] ECWA 1539

Link to the decision:

https://www.asylumlawdatabase.eu/en/case-law/uk-iran-v-secretary-state-home-department-12-october-2017

ECLI:

No ECLI number / ECLI number unknown

Date:

12 October 2017

Jurisdiction / Court / Chamber:

The England and Wales Court of Appeal (Civil Division)

Remedy / Procedural stage:

Appeal from Upper Tribunal (Immigration and Asylum Chamber)

Previous stages:

- The asylum application was rejected by the Secretary of State on 14 November 2012 and 8 February 2013.
- The appellant's appeal to the First-Tier tribunal was dismissed on 18 March 2013.
- Following an appeal to the Upper Tribunal on 24 May 2013, the case was remitted to the First-tier Tribunal for a full rehearing. The remitted appeal

was dismissed on 15 January 2014, and again on 11 April 2014.

Subsequent stages:

None

Branches / Areas of law:

Administrative law; Asylum law

Facts:

AS, the appellant, entered the United Kingdom (UK) for the first time on 28 September 2001, using a visitor visa. On 15 October 2001, the appellant, who is a national of Iran, applied for asylum for the first time, citing her political activities in that country as the basis for her application. This application was refused on 6 December 2001, with a subsequent appeal being dismissed on 19 September 2002. “[A]ppeal rights were exhausted” by the appellant on 30 October 2002. On 14 February 2003, she applied for permission to apply for judicial review, which was refused on 16 March 2003. On 20 June 2009, the appellant was removed to Iran. (para. 5)

Upon her illegal return to the UK on 12 September 2012, the appellant claimed that on her arrival in Iran she had been detained by the immigration service who confiscated her passport on the grounds that it had expired. (para. 6) She made a claim for asylum on 15 October 2012, claiming fear of persecution on three counts: (1) her illegal exit from Iran; (2) her membership in a particular social group, that of female victims of domestic violence; (3) her Christian religion. (ibid.)

On 14 November 2012 and 8 February 2013, her asylum claim was refused by the Secretary of State. The matter then came before the First-tier Tribunal, which dismissed the appeal. (paras. 8-9) This decision was confirmed by the Upper Tribunal. The appellant then sought, and obtained, permission to appeal. (para. 10)

In her appeal, the appellant argued that the First-tier Tribunal had not provided “adequate reasons for its conclusion that” a well-founded fear of persecution had not been demonstrated by the appellant. (para. 13) This was so regarding the first two grounds: it had thus made, on each ground, a material error of law. The appellant also argued that the First-tier Tribunal approach to her religious conversion was wrong. (paras. 12-15) Here, the three grounds of her asylum claim are summarized in more detail:

First ground of asylum: Illegal exit

The appellant claimed that she and her family “were involved in the Mujahedin-e-Khalq”, an organization “hostile to the Iranian government”. (para. 16) Subsequent to her arrival in the United Kingdom, she had taken part in demonstrations and meetings against the Iranian regime. These activities, coupled with her illegal exit, made her fear persecution in case of her being returned to Iran. However, the authorities in Iran were not cognizant of the appellant’s political activities, and there was no arrest warrant against her. (paras. 18, 20)

The First-tier Tribunal had concluded that, on and after her arrival in Iran on 9 June 2009, the appellant was not interrogated about any political activities that she might have been engaged in. The questioning which she had undergone at the airport was of a sort to be expected by any person entering a country “with an expired passport”. “After questioning” at the airport, the appellant had been allowed to return to her home. (para. 16) She claimed that, following her return, “she had been frequently” required to submit herself for interrogation. (para. 20) Evidence about the appellant’s interrogation by Iranian authorities, offered in support of her claim, was found by the First-tier Tribunal to be fabricated. The appellant, the Tribunal ruled, “was not a wanted individual” whom the Iranian regime was seeking. (para. 16)

Second ground of asylum: Membership in a particular social group

The appellant claimed that her husband had subjected her to “extreme domestic violence.” (para. 21) In support of this claim, she submitted “photographic

evidence of bruises" (ibid.) , and also supporting evidence from a close friend. (ibid.) According to expert evidence, many women in Iran were unable to escape domestic violence due to their being economically dependent on their husbands, and afraid of being denied contact with their children. (para. 23)

The Court of Appeal noted that the First-tier Tribunal had rejected the factual basis of such injuries as well as the evidence from the close friend: the latter was rejected because the friend had not directly witnessed the injuries referred to. (para. 21) The Court of Appeal then quoted the conclusion of the First-tier Tribunal:

"I find that even if I accept on the lower standard of proof that the Appellant suffered domestic violence at the hands of her husband, that in itself is insufficient to establish a well-founded fear of persecution for a Convention Reason. In *Shah and Islam* [1999] 2 AC 629 the Court held that members of a particular social group must share a common immutable characteristic independent of and not defined by persecution. I find that the Appellant as a woman in Iran even in circumstances of claimed domestic abuse is not a member of a particular social group." (para. 22)

The First-tier Tribunal added "there was no evidence" of the appellant at any time seeking assistance or aid from women's rights organizations in Iran, from "other individuals", or "from the authorities". (para. 23) There was no evidence of the appellant ever seeking a divorce "from her husband while in Iran." With regard to the expert evidence which confirmed that, in Iran, many women dealing with violent domestic situations are unable to escape from such circumstances of violence, this was rejected in the appellant's case on the grounds that she was economically independent of her husband. (ibid.)

Third ground of asylum: Christian religion

Regarding the "appellant's conversion to Christianity", the First-tier Tribunal highlighted the fact that there was "no evidence" that this religious conversion had formed the basis of the appellant's 2002 claim for asylum or humanitarian protection in the United Kingdom. It found that when, "in the screening interview

on 15 October 2012, the appellant" had been asked to state her religion, she had responded by saying "that she had no religion." (para. 24) Subsequently, in her witness statement, the appellant claimed that she had not felt comfortable professing that she had the status of a Christian convert in front of the interpreter, "who was a Muslim". (ibid.) In addition, she was of the opinion that religion is a personal matter and that she did not, therefore, wish to exploit it in an attempt to remain in the UK. (para. 24) The First-tier Tribunal did not find this credible. (ibid.)

Additionally, the First-tier Tribunal rejected the expert evidence that, were she to find herself at Tehran airport, the appellant would be at risk of arrest. (ibid.) The First-tier Tribunal noted that there was no evidence that the appellant had ever proselytized her faith. It pointed out that there is, living in Iran, a "considerable number of practising Christians" who are not subject to persecution so long as they do not proselytize. (ibid.)

Although the appellant did not challenge the adequacy of the First-tier Tribunal's reasoning, she did challenge its approach. She argued that her conversion history constituted a fundamental element of her identity, one that she was obliged to keep unconcealed, even if she feared persecution arising out of that obligation to shun concealment of her status as a convert. (paras. 27, 37)

Ruling:

The Court of Appeal rejected all three grounds of appeal. In so doing, it accepted the respondent's argument that the grounds of appeal need not satisfy "a requirement of perfection" (para. 26): it is sufficient that there be a record of the critical reasons for the Tribunal's decision, and that this record be detailed enough :to show the principles on which the Tribunal acted." (ibid.)

First ground of asylum: Illegal exit

Regarding the illegal exit argument, the Court of Appeal found that the appellant's previous illegal exit from Iran would not, alone, suffice, to produce a risk of persecution, should be return to that country. While it was possible that, on arrival, the appellant could be held and questioned for a few days, the country

information suggested “there was no evidence to suggest” that she was suspected of being a politically active person, or “that she would be questioned directly” (para. 32) about any possible political activities in which she might have been engaged. In addition, according to the expert evidence, while persons travelling to Iran are often questioned on entry to that country, the reasons for this are not always clear. The Iranian regime actively monitors the activities of dissident Iranians outside the country. Although the appellant had engaged “in political activities in the” UK, these activities had been of a low-profile character, a point which justified the First-tier Tribunal’s conclusion that they “had not been sufficient to bring her to the attention of the Iranian regime”, (ibid.) despite active monitoring measures. The appellant, it concluded, has “no real political profile in Iran”: “there was no convincing evidence” that she was either identified, or identifiable, by the Iranian authorities. (ibid.)

Second ground of asylum: Membership in a particular social group

The Court of Appeal accepted the appellant’s argument that, on the basis of their innate characteristics, women in Iran do form a particular social group: it agreed that the First-tier Tribunal had erred on this element of the matter. (para. 27) The appellant’s claimed fear of persecution on the grounds of her membership in this group was, however, not well-founded, the Tribunal argued. “Unlike many members of that social group in Iran, she would not”, if retuned to that country, be forced to live with her husband for economic reasons, or for the purpose of caring for dependent children. She was a “well-educated” person who had no dependent children. There was no impediment to her living an independent life in Iran, and it was likely that she would do so. (para. 28)

Third ground of asylum: Christian religion

As far as of the religious grounds of persecution was concerned, the Court of Appeal found that the history of conversion was not a part of the appellant’s religious belief or identity as a Christian, and that she did not fall within the category of persons concealing their identity in order to avoid persecution (a category specified in *HJ (Homosexuality: Reasonably Tolerating Living Discreetly)*

Iran v Secretary of State for the Home Department [2008]). (para. 41) This may have been different had she been a member of a Christian group that considered active proselytization a duty: in a such a case, duties of this type might require the convert to express her faith. Such an expression, in such circumstances, of the appellant's religious faith in could well have included a description of her conversion, but that did "not arise on the facts of this case." (para. 42)

The appellant, in light of the evidence presented, did not engage in proselytizing or evangelizing activities, and regarded her religion as a personal matter. Furthermore, between 2009 and 2012 the appellant lived in Iran, where people knew that she had been brought up as a Muslim. And yet there was no evidence that she faced, or had faced, persecution or interference as a result of practicing her faith. (paras. 42, 44) Therefore, the appellant did not fall within the category of persons concealing their identities in order to avoid persecution, as specified in *HJ (Homosexuality: Reasonably Tolerating Living Discreetly) Iran v Secretary of State for the Home Department* [2008].

Main quotations on cultural or religious diversity:

- "Expert evidence before the Tribunal from Dr Fatah stated that many women were not able to escape a violent home in Iran because of economic dependence on their husband and the fear of losing their children. However, the Tribunal went on to find: '... the Appellant is not economically dependent on her husband. She is an educated woman who could seek to live elsewhere in Iran with the assistance of her friends, and indeed her sister from the United Kingdom, to re-establish herself in Iran. Her daughter is almost an adult and lives with her father." (First Tier Tribunal Judgment, paragraph 59) (para. 23)
- "As the Appellant's expert Dr Fatah stated (paragraph 55), it is 'not always clear why people are questioned' on entry and 'there is no way of knowing what they are questioned about'." (para. 33)

- In the witness statement submitted to the First Tier Tribunal, the appellant stated “that she was trying to explain in interview that religion is personal to her and that she did not want to use it to try to stay in the country. She states that she now realises that she should have mentioned it as she would not be able to practise her faith if she returns to Iran. The appellant goes on to make detailed comments about the questions asked of her in interview regarding her Christian faith […] The appellant gave evidence that she did not speak to anyone about the Christian faith and did not attend church. In cross-examination the appellant confirmed that she has spoken to her sister and her niece about her Christian faith. I find that there is no evidence before me that the appellant has made any serious attempts to convert either her sister or her niece to Christianity. In cross-examination she said that she gave bibles to two friends […] I find that there is no evidence from any church or fellow Christians other than the appellant’s friend Abel Chogani that the appellant considers herself to be an evangelist and considers this to be an integral part of her faith. There is no credible evidence before me that the appellant has ever evangelised in this country.” (para. 24, referring to paragraph 62 of the First Tier Tribunal decision)

Main legal texts quoted in the decision:

- The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (the Refugee Qualification Regulations), Statutory Instrument 2006 No 2525, 18 September 2006
- United Nations Convention and the 1967 Protocol relating to the status of refugees (Refugee Convention) art 1(A)
- United Nations International Covenant on Civil and Political Rights (1966) art 18

Cases cited in the decision:

- *Fornah v Secretary of State for the Home Department (linked with Secretary of State for the Home Department)* [2006] UKHL 46

- *HJ (Homosexuality: Reasonably Tolerating Living Discretely) Iran* [2008] UKIAT 00044
- *Islam (AP) v Secretary of State for the Home Department; Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (AP) (Conjoined Appeals)* [1999] UKHL 20
- *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982
- *RT (Zimbabwe) v Secretary of State* [2013] 1 AC 152
- *SB (Risk on Return-Illegal Exit) Iran CG* [2009] UKAIT 00053
- *Shah and Islam* [1999] 2 AC 629
- *SZ and JM (Christians – FS Confirmed)* [2008] UKAIT 00082

Commentary

Decision Making Challenges Concerning Christian Converts in Iran: AS (Iran) v SSHD [2017]

Asylum claims involving Christian converts in Iran frequently come before British courts. The leading guidance was given in the case *FS and others (Iran -Christian Converts) Iran CG* [2004] UKIAT 00303, which has been reaffirmed many times. In *FS and others*, the then Immigration Appeal Tribunal found that:

- "There are a number of important distinctions to draw between different Christian groups and activities. The first is between those who are ethnic Christians, ie members of ethnic Churches which do not seek converts or even reject them, carrying on their worship in a language other than Farsi, and other Christians who are members of Protestant or evangelical Churches." (para. 152)
- "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. They are accepted but nonetheless suffer from societal discrimination and a second class [sic] status in the eyes of the state and its institutions, such as the substantive laws and the administration of justice, the Majlis, public sector employment and university entrance. The

attitude towards them of the state in its various manifestations may vary over time, as may the attitude of Muslims where they live, but at present those Christians do not face a real risk of persecution even though they face real discrimination. Persecution after the Revolution had given way to discrimination." (para. 153)

- "Turning to the position of the individual convert, plainly that will be affected to some extent, in the light of those differences, by which of the Churches he or she is a member of, if any." (para. 158)
- "There are obvious gradations of potential risk to converts in general which need to be considered. There will be some converts whose conversion is unknown to the authorities or to employer, even to family; the principal risk to them is what would happen to them after discovery. We regard it as appropriate to assess the risk to these Appellants on the basis that their conversion would become known to the authorities, to friends, family and colleagues. They will probably be asked why they have been abroad, either when seeking travel documents or on return; they may be asked at some stage in that process about conversion." (para. 159)

Where asylum claims are based on religion, both applicants and decision-makers will find that such cases present them with challenges. The main issues appear to be the "content" of the right to freedom of religion, and the evidence required to prove that someone's religious beliefs are genuine. It is usually accepted that the content of freedom of religion usually includes the right to change one's religion: but whether a person who is committed to a religious faith can be expected to practise that faith in private, with the goal of avoiding persecution, is a more debated topic. (Clayton and Firth 2018: 472) The appellant in *AS (Iran) "*had always been private about her faith" and conversion. (ibid. 473) By contrast, in *MN and Others (Ahmadis-County Conditions) Pakistan CG* [2012] UKUT 00389, the court found that where a person is an adherent of the Ahmadi sect, that person cannot be required "to avoid persecution" by practising "their faith in private", as exercise of the public aspects of the Ahmadi sect is important for such persons.

(ibid. 472) At the time of writing of this commentary, a key case on these issues is pending before the Supreme Court in *FA (Pakistan) v SSHD* UKSC 2016/0167. (ibid. 473) In particular, in *FA (Pakistan)*, the main questions to be decided include:

1. whether the right to live freely and openly can be reconciled with a refusal of asylum based on the expectation that an individual should conceal his or her faith in countries where such identity is criminalized, and;
2. whether refugee status should be granted only to those persons claiming that religion and the public manifestation of religion are particularly important to them, and how can the status of such claims be ascertained? (ibid. 473)

It should not be overlooked that in the case of *AS (Iran)*, the appellant claimed, also, other grounds of persecution: the (substantial) risk of domestic violence at the hands of her husband and her history of having exited Iran illegally, both of which increased the risk that upon her return to Iran, she would be arrested by the Iranian authorities and questioned about her political activities. However, the religious ground of her claim to asylum was more thoroughly addressed by the court, probably because it was the strongest part of the claim and expert evidence was provided to support it. The finding that the appellant lacked credibility, in particular the fact that she had failed to raise a claim on religious grounds in her first asylum application, affected the final outcome of the case. All grounds of the case were ultimately dismissed.

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

- Clayton, Gina and Firth, Georgina. 2018. *Immigration and Asylum Law* Oxford: Oxford University Press.
- Hodgkin, Luke. 2017. “UK - AS (Iran) v The Secretary of State for the Home Department, 12 October 2017”. *European Database of Asylum Law,* < https://www.asylumlawdatabase.eu/en/case-law/uk-iran-v-secretary-state-

home-department-12-october-2017> accessed 1 September 2023.

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