Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04377/2020 (V)

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 8 November 2021	**On 22 November 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MM
(Anonymity Direction made)

Respondent

Representation:
For the Appellant: Mr J Holborn, Senior Home Office Presenting Officer
For the Respondent: Ms Brakaj of Iris Law Firm (Middlesbrough)

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing MM's appeal against the respondent's decision to refuse his protection and human rights claim further

to a decision to deport him pursuant to section 32(5) of the UK Borders Act 2007.

3. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and MM as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

4. The appellant is a citizen of Iran, born on 20 January 1979. He claims to have arrived in the United Kingdom clandestinely on 19 July 2010, having left Iran on 18 June 2010. He claimed asylum. His claim was refused on 9 September 2010, with a supplementary claim refused on 15 October 2010. He appealed against the decision, but his appeal was dismissed. He became appeal rights exhausted on 21 February 2011. On 20 March 2013 he applied for discretionary leave to remain which was granted until 3 March 2016 in relation to his family life. On 19 February 2016 he applied for indefinite leave to remain on the basis of his family life.

5. Whilst that application was pending, the appellant was convicted of sexual assault on a female by penetration and sexual assault on a female without penetration and on 10 May 2016 he was sentenced to 90 months' imprisonment, after being held on remand since 2 December 2015. In light of his conviction, the appellant was served with a notice of decision to make a deportation order on 5 March 2018.

6. In response, the appellant made an Article 8 human rights claim, relying upon his family life with his partner TG and their two sons. His claim was refused on 3 October 2018 and on 14 November 2018 he was served with the decision refusing that claim and refusing his application for indefinite leave to remain, together with a Deportation Order made pursuant to section 32(5) of the 2007 Act. He appealed against the refusal of his human rights claim but his appeal was dismissed, with the First-tier Tribunal accepting the relationships but finding that the impact of deportation upon his partner and children would not be unduly harsh and that his deportation would not be disproportionate. The appellant became appeal rights exhausted once again on 5 March 2019.

7. On 6 November 2019 the appellant made further submissions which were refused on 29 November 2019 under paragraph 353 of the immigration rules as not amounting to a fresh claim.

8. The appellant then made a new asylum claim on different grounds to previously, on 1 March 2020. On 26 June 2020 the respondent advised the appellant about the intention to deny him protection under the Refugee Convention on the basis that he was considered to have been convicted of a particularly serious crime and to constitute a danger to the community of the UK under section 72 of the Nationality, Immigration and Asylum Act 2002 and he was invited to seek to rebut the presumption under section 72. The appellant did not make representations in response.

9. On 25 September 2020 the respondent refused the appellant's asylum claim, certified that the presumption in section 72(2) of the 2002 Act applied to him in light of his conviction and refused to revoke the deportation order previously made against him. The appellant appealed against that decision and his appeal was allowed by the First-tier Tribunal on 12 April 2021 on Article 3 grounds. The respondent now seeks to appeal that decision.

10. The basis of the appellant's asylum claim was that he was at risk on return to Iran as a result of having converted from Islam to Christianity. He claimed that he became interested in Christianity after his parents died in 2014/2015, when he met a Christian friend who was Iranian. He started attending church in December 2018 and was baptised on 19 February 2020. The appellant claimed to have a tattoo of a Christian cross. He claimed that he would be tortured and would die in Iran as a result of converting and also as a result of the fact that his brother was a journalist working for the BBC in the UK.

11. The respondent, in refusing the appellant's claim, accepted that he had an interest in Christianity but considered his claim to be a Christian to remain unsubstantiated owing to the timing of his conversion, namely shortly after having had his submissions refused by the respondent and whilst he remained the subject of a deportation order. The respondent found there to be no reason why the appellant had not mentioned his embracing of the Christian faith at an earlier stage. There was no evidence of the claimed tattoo and it was unlikely that he would have been able to get tattooed as his interest in Christianity had begun only two to three months before being imprisoned. The respondent accepted that the appellant's brother worked for the BBC but considered that it was unclear whether his work fell under the description of a journalist, since his CV indicated that he worked as a picture editor for the BBC as well as a freelance web designer. In light of statements made by the appellant, the respondent did not accept that he would proselytise his Christian religion and attempt to convert Muslims in Iran and concluded that it was his desire to be discrete about his religious views and refused to discuss those beliefs with Muslims. As a result, the respondent considered that, in accordance with the relevant country information and country guidance, the appellant would not be at risk of persecution in Iran due to apostacy. With regard to the appellant's brother, the respondent noted that there was no indication that he wrote or spoke out against the Iranian regime and no indication that he was known to the Iranian authorities because he worked for the BBC. The respondent considered that there was accordingly no reason why the Iranian authorities would have any interest in the appellant because of his relationship with his brother. The respondent concluded that the appellant was not entitled to humanitarian protection and that his removal would not breach his Article 3 or 8 human rights. The respondent found there to be no basis upon which to revoke the deportation order.

12. The appellant's appeal was heard on 3 March 2021 by First-tier Tribunal Judge Cruthers, who heard from the appellant, his partner, his brother and Mr W Downs, the CEO of a Christian charity, Renewal North West. The judge considered that the appellant constituted a danger to the community and

concluded that he had not rebutted the presumption in section 72 and therefore could not rely on asylum. It was also accepted that he was excluded from humanitarian protection on the same basis. The judge, further, found that the appellant had nowhere near demonstrated that his deportation would be disproportionate, for the purposes of Article 8. The judge also found that the appellant would not at risk on return to Iran on the basis of some of the individual matters he had raised, such as his church tattoo and his brother's employment with the BBC. With regard to the church tattoo, it was considered that the appellant had not attached any significance to it, in terms of any religious convictions, when he had had it done. As for the appellant's brother's work for the BBC, the judge agreed with the conclusions reached by the respondent in that regard.

13. However, the judge was impressed with the evidence of Mr Downs, the CEO of Renewal North West, an organisation which provided Christian courses in prison, who confirmed that the appellant had been referred to his organisation by the prison chaplain when he expressed an interest in attending a Christian programme on release from prison and whose weekly bible study group the appellant attended. The judge noted Mr Downs' evidence that the appellant had told him about having had problems from other Muslim prisoners as a result of his attendance at the bible study group and that he took the appellant's participation in the bible study class and his voluntary work for Renewal North West as a sign of a genuine Christian. The judge considered that the evidence overall established that the appellant had become genuinely committed to the Christian faith and he found that the points going against the appellant were insufficient to reject his claim to be a genuine convert to Christianity. With reference to the case of PS (Christianity - risk) Iran CG [2020] UKUT 46, the judge therefore accepted that there was a real risk of the appellant being subjected to persecutory ill-treatment on return to Iran. The judge found, in the alternative, that the appellant would also be at risk as a "disingenuous Christian", having been in the west since June 2010, given that his brother worked for the BBC and having previously received a three-year suspended sentence in Iran. The judge accordingly allowed the appeal on Article 3 grounds.

14. The Secretary of State sought permission to appeal to the Upper Tribunal on three grounds: that the judge, having found the appellant to be a genuine Christian, failed to go on to consider whether he would openly practice his faith and, if not, whether any part of his motivation to conceal his faith was due to a fear of persecution; that the judge had failed to consider matters relevant to whether the appellant was a genuine Christian; and that the judge had made material omissions when considering whether the appellant would be at risk at the point of arrival in Iran as a "disingenuous Christian".

15. Permission was granted in the First-tier Tribunal on 19 May 2021. The appeal then came before me for a remote hearing by way of Microsoft teams.

16. Both parties made submissions before me. Mr Holborn expanded upon the grounds of appeal. He submitted that the judge had failed to apply his mind to

the relevant question in PS (Iran) and did not consider the second stage in the test, of whether the appellant would practice his faith openly in Iran. He submitted that that undermined the overall test of whether his commitment to the Christian faith was genuine. The judge's alternative findings, if the appellant was a "disingenuous Christian" did not include a proper analysis of the test at [4] of the headnote to PS (Iran). The judge took into account matters which he had already found would not put the appellant at risk, such as his brother's work for the BBC, and failed to consider relevant matters, such as the fact that his other brother in Iran was able to travel in and out of the country without problems. Mr Holborn requested that the judge's decision be set aside in its entirety.

17. Ms Brahaj submitted that the addition of the words "in the way that he claims to be" to the finding that the appellant was genuinely committed to Christianity was effectively the application of the relevant test in PS (Iran) as it involved an acceptance of the way in which the appellant had claimed in his statement that he practiced and would practice his faith. He had stated that he practised Christianity in prison despite the risks from the Muslim inmates and continued to practice despite being targeted. He had stated in his statement that he would speak to others about Christianity in Iran. The judge had accepted all of that and there had been no challenge to that evidence. There was no evidence to suggest that he would hide his religion. In such circumstances there could be no other conclusion in applying the test in PS (Iran). As for the challenge to the judge's alternative findings in the event that the appellant was a "disingenuous Christian", the judge had taken all the risk factors cumulatively, as PS (Iran) required.

18. Taking the third ground first, I am entirely in agreement with the respondent that, in considering the risk to the appellant as a disingenuous Christian as an alternative finding, the judge made material omissions as set out at [11] of the grounds. There was no proper explanation by the judge why the appellant's presence in the west would give rise to suspicions against him at the point of arrival in Iran, nor why, when considering the findings made at [88] to [92] and the ability of another brother to travel in and out of Iran, his brother's job with the BBC would arouse the suspicions and adverse interest of the Iranian authorities. The same can be said of the impact of the appellant's previous suspended sentence in Iran. I do not see how, even taking those factors cumulatively, as Ms Brahaj submitted, they could possibly be considered as amounting to factors of a similar nature and severity to those set out at [xi] to [xv] of the headnote in PS (Iran). Accordingly, there is merit in the third ground of challenge and I agree with the respondent that the judge's decision in that regard is not sustainable.

19. That, of course, would be immaterial if the judge's findings on the genuineness of the appellant's commitment to Christianity were properly made. However, having heard from both parties, I am of the view that the judge erred in law in that respect too. I have to agree with the respondent that the judge's decision does not show that he properly engaged with the second stage of the test in PS (Iran) and I cannot see that the addition of the words "in

the way that he claims to be" at [106] is sufficient to conclude that he did. As Mr Holborn said in response to Ms Brahaj's submissions, the judge's findings at [99] were very much concerned with what the appellant was currently doing in relation to his practice of Christianity, and his findings at [106] did not grapple with what he would be doing and how he would be acting in the future in Iran. That was a matter specifically raised by the respondent in the refusal decision when rejecting the appellant's claim to be at risk of persecution in Iran on the basis of his conversion. The respondent, in the refusal decision, referred to the appellant's evidence in his interview, whereby he made it clear that he discussed his religion only with those who were non-Muslim and who were going to believe. The respondent referred in particular to the appellant's evidence at [152] to [169] at the interview, from which there is a notable absence of any claim by the appellant to intend to proselytise or attempt to convert Muslims or to openly practice his faith outside the confines of study groups and church, all of which were relevant matters to consider as part of the test in PS (Iran). However, none of that was considered by the judge. I cannot agree with Ms Brahaj that that should simply be read into, and implied from, the evidence, given the absence of any challenge to the appellant's credibility in terms of his religious commitment. However it seems to me that the judge was required to make full and proper findings in that regard, in line with the guidance in PS (Iran) and he simply failed to do that. I agree with the respondent that that infected the judge's overall findings as to the genuineness of the appellant's commitment to Christianity and I am in agreement with Mr Holborn that the judge failed to undertake a full analysis of the matter.

20. For all of these reasons I consider that all three grounds are made out. In my view, Judge Cruthers erred in law in his decision and his decision has to be set aside in its entirety. It seems to me that, given the nature and extent of the error, and the need for further oral evidence, the appropriate course would be for the matter to be remitted to the First-tier Tribunal to be heard afresh, with no findings preserved.

DECISION

21. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

22. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Cruthers.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 10 November 2021