



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01843/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester CJC

**Decision & Reasons
Promulgated**

On 14 November 2019

On 20 December 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

M F M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bradshaw, Counsel, instructed by Braitch RB Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the adjourned hearing of the appeal of the Appellant FM, following a hearing before the Upper Tribunal on 3 September 2019 before Upper Tribunal Judge Chalkley. A transfer order has today been made by Upper Tribunal Judge O'Connor under paragraph 9 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, on the basis that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay, and directing that the appeal be heard by a differently constituted Tribunal. At the hearing of 3 September 2019 Judge Chalkley ruled that the decision of the First-tier Tribunal dated 10 June 2019 by Judge V C Dean,

dismissing the Appellant's appeal, contained a material error of law. The Appellant's appeal to the First-tier Tribunal had related to the decision of the Respondent dated 12 February 2019 refusing his protection and human rights claim.

2. The Appellant is a citizen of Pakistan and had arrived in the United Kingdom in or around December 2015 and had made a claim for asylum in February 2016. The nature of his claim for protection was that he had come to the adverse attention of two local Islamists, by reason of the Appellant's alleged activities of financially supporting the family of a Christian pastor who had been imprisoned, accused of blasphemy. The Appellant was also said to have provided practical assistance to members of the pastor's family by giving them a lift on two different occasions. It had been said that in June 2015 the Appellant had been warned off in no uncertain terms by the two Islamists, and that in November 2015, upon them seemingly witnessing him giving further practical assistance to the pastor's family, had physically beaten him and made threats to kill him. It was said that he had only escaped from that scenario by the intervention of bystanders. The Appellant was said to have moved to Lahore but then upon finding that a fatwa had been made against him, decided to leave Pakistan altogether and to travel to the United Kingdom. He had already been issued entry clearance as a visitor which he utilised to enter the UK.
3. The Respondent had rejected the credibility of the Appellant's account to have come to the adverse attention of the Islamist group for reasons set out in the decision letter of 12 February 2019.
4. The Appellant appealed to the First-tier against that decision, the matter coming before Judge Dean at the Birmingham hearing centre on 1 May 2019. In the judge's decision the events which were said to have led to the Appellant's departure from Pakistan were not accepted. In particular the judge had relied upon a Document Verification Report obtained by the Respondent which suggested that a First Incident Report (FIR) relied upon by the Appellant was simply not genuine.
5. It is relevant to note that as part of the Appellant's account as given to the Respondent in the SEF interview on 31 October 2018 there were references to the Appellant's older brother S M. The Appellant and other members of his family are Christian but were Christian from birth and are not converts to Christianity. For his part, the Appellant had stated in his SEF interview that his was not an Evangelical faith (question 21) and that it was not important in his faith to convert others (question 22). He stated that he had not actively tried to convert others to his faith (question 23). However, the Appellant's brother had, it was claimed by the Appellant, been evangelical in his Christian activities. The Appellant described at question 115 that his brother had been active in evangelising persons in the street in Pakistan and had at one point disappeared (see also question 78). The family were concerned about him; when the brother was later found he stated that he had been kidnapped by Islamists and seriously mistreated. The Appellant is said to have assisted his older brother in leaving Pakistan for, ultimately, Nepal.

6. There was no reference to that matter within the Respondent's decision and although there was a document before the First-tier Judge at page 11 of the Appellant's bundle, issued by the United Nations High Commission for Refugees in relation to SM, stating that he had been recognised as a refugee on 24 November 2014 after a thorough assessment of his refugee claim, no details are given within that document as to what the nature of SM's claim for protection had been. The judge did not make any reference to the brother's position or the fact that he had allegedly been recognised as a refugee by UNHCR in his decision. But the judge dismissed the appeal on the basis that he agreed with the position of the Respondent that the Appellant's account of events in Pakistan had not been true.
7. The Appellant appealed against that decision on grounds in summary that the judge had erred in law in failing to have regard to material evidence, being that the brother had been recognised as a refugee by UNHCR, and in failing to make any finding as to any risk of harm that may exist to the Appellant as a Christian per se.
8. Permission to appeal was granted on those two grounds and the matter came before Judge Chalkley on 3 September. Judge Chalkley made a ruling that the decision contained an error of law as is set out in his brief decision dated 13 September. He stated that unfortunately in dismissing the appeal '... the judge failed to consider the risk if any to the Appellant as a Christian on return to Pakistan. It was accepted by the Respondent that the Appellant is a Christian. That matter needs to be decided. The adverse findings made by the First-tier Tribunal Judge are preserved'. Judge Chalkley adjourned the hearing in order that the question of the risk to the Appellant as a Christian upon return to Pakistan could be considered at a later date. The matter was reserved to the Upper Tribunal and no interpreter would be booked since it was said by Judge Chalkley that the evidence had already been heard.
9. There was in fact a letter sent by the Appellant's solicitors to the Tribunal querying the reasons for the error of law, suggesting that if the findings of fact were to be retained that any subsequent decision remade by the Upper Tribunal would similarly contain an error of law. For my part, I do not understand the Appellant's query in that regard. The query was in fact responded to by Judge Chalkley in directions, in which Judge Chalkley had stated that those acting for the Appellant should simply read his decision in full.
10. It has been necessary for me to recount the basis of the Appellant's appeal to the Upper Tribunal, Judge Chalkley's decision on the error of law, the subsequent correspondence from the Appellant, and Judge Chalkley's response, because when the matter came before me to be re-heard, the Appellant has sought to rely upon an expert report prepared by Dr Farhaan Wali, lecturer in religious studies at the School of History, Social Science and Philosophy at Bangor University. He sets out his expertise on matters relating to Pakistan and states that he has provided country expert reports in a number of cases. He sets out at paragraph 12 of his

report the scope of his instructions. He was asked to comment on the following issues:

- “(i) The risk that the Appellant and his family would face upon return to Pakistan as a result of his religion.
- (ii) We require the report to comment on whether our client would be stopped by the authorities as a result of his brother’s problems (evidence provided that he has been granted refugee status).
- (iii) Whether our client would be detained upon arrival due to the allegations of blasphemy.
- (iv) What sentence would be imposed upon our client if he is accused of blasphemy.
- (v) What treatment our client’s family would face upon return if the Appellant is arrested.
- (vi) Whether there are any areas of Pakistan where the Appellant would be able to reside without facing any problems due to his religion (Christian communities).
- (vii) Whether our client would be able to secure employment having left Pakistan illegally and having claimed asylum in the United Kingdom (previous employment with the Australian High Commission).
- (viii) Once you have reviewed the documents please also comment on other risks in your expertise you believe the Appellant and his family would face upon return to Pakistan.
- (ix) Please also comment on the risks that the Appellant’s wife and two children face upon return i.e. obtaining accommodation and attending school on the basis that they are practising Christianity.”

11. I have had regard to the content of that report in more detail. It is to be noted however that the Appellant made a written application for an adjournment of the present appeal hearing by letter of 12 November 2019 after that expert report had been filed and served (although Mr McVeety only received his copy this morning) seeking an adjournment of the appeal for the following reasons:

“Unfortunately at the time of sending instructions to the expert the findings of UTJ Chalkley were misunderstood and the expert has been wrongly instructed as a result. The report is contained in the Appellant’s bundle which was served on 6 November 2019. Instructing solicitors apologise for the inconvenience and request that

an adjournment of four weeks can be granted to enable the expert to amend the report to reflect the findings of the Upper Tribunal Judge.”

12. That application was decided by Ms A Hussain, Lawyer of the Upper Tribunal, on 13 November 2019, refusing the adjournment on the basis, in summary, that the Appellant had had ample opportunity to comprehend the error of law decision by Judge Chalkley and to instruct an expert. It was unsatisfactory that the adjournment application was being made so late.
13. I have received this morning a skeleton argument from Mr Bradshaw, who appears on behalf of the Appellant, which stated that he may make a renewed application for an adjournment in the present appeal. Indeed he did so before me. The Appellant’s basis for seeking an adjournment are that the instructing solicitors did not focus the instructions that were sent to the expert with sufficient clarity to elicit a response that more directly addressed the issues remaining in the appeal. It is accepted on behalf of the Appellant that the majority of the expert report is framed on the assumed basis that the Appellant is accused of blasphemy in Pakistan. However on the basis of Judge Chalkley’s findings the Appellant’s account of having been so accused was disbelieved and indeed there was no direct challenge to those findings in the Appellant’s grounds of appeal.
14. Mr Bradshaw accepted that the content of the expert report which addresses the difficulties which may be faced by persons who are accused of blasphemy is no longer directly relevant to the issues in the appeal and suggested that it would be appropriate to adjourn the matter so that further and more direct instructions could be provided to the expert for him to comment about any deterioration in the situation for Christians in Pakistan which has arisen in the recent years.
15. The application was formally resisted by Mr McVeety.
16. I ruled that the matter should not be adjourned. I, having read the report of the expert, am satisfied that there was neither any misapprehension on his part as to the scope of the instructions that were provided to him, nor any error in the series of questions that were posed. Mr Bradshaw puts his case today on the basis that there has been a deterioration of the situation for Christians in Pakistan such that the acknowledged level of discrimination that the minority Christian community face in Pakistan has now passed the threshold into persecution rather than simply discrimination. An associated element to this present Appellant’s appeal is the potential effect on him of the fact that his brother is said to be recognised as a refugee in Nepal by UNHCR.
17. However, both of those matters were put to the expert. The fact that the expert has not provided very much information by way of response does not necessarily mean that he was asked the wrong questions or has misapprehended the scope of his instructions. It seems to me that the Appellant is seeking to have another bite of the cherry of trying to muster evidence in support of his appeal, but there is no legitimate basis for the

matter being adjourned and I therefore ruled that the appeal should proceed. The appeal therefore did proceed, by way of submissions only.

18. For his part Mr McVeety drew my attention to a number of passages within recent human rights and press reports contained within a supplementary bundle provided by the Appellant for the purposes of this rehearing which for formal purposes I confirm I admit into evidence under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Mr McVeety suggested that the majority of the human rights reports and news articles set out within the Appellant's supplementary bundle related to persons who are specifically accused of blasphemy in Pakistan. Although there were some incidents of violence to Christians generally, it was noted that on one occasion some persons were suspected of theft, and it was merely a coincidence that they happened to be Christian, and that any violence towards Christians that was demonstrated by the country information did not demonstrate that the level of discrimination against Christians in Pakistan had increased in any material way, and had not increased in any way which permitted any departure from the country guidance given in the case of AK and SK(Christians: risk) Pakistan CG [2014] UKUT 00569 (IAC).
19. For his part Mr Bradshaw accepted that the press reports within the Appellant's supplementary bundle did largely relate to persons who have been accused of blasphemy which was not, subsequent to the First-tier findings of fact, the Appellant's case any longer. Mr Bradshaw helpfully took me through passages contained within the Home Office Country Policy and Information Note entitled 'Pakistan Christians and Christian Converts' dated September 2018. He asserted that the evidence set out within certain passages of that report established the proposition that there had been a deterioration in the situation for Christians in Pakistan (and we are here referring to persons who were born Christian, not necessarily converts or evangelising Christians) such that they can now be deemed to be at real risk of serious harm amounting to persecution merely by reason of their own Christianity.
20. At its highest I find that the evidence set out at paragraph 8.1.3 of that report establishes that, according to the Foreign and Commonwealth Office's annual human rights report of 2017, that intolerance towards Pakistan's religious minorities including Christians increased over the last year. It was noted that discrimination and violence against Christians was widespread and Pakistan was ranked fourth on the Christian Support Group Open Doors World Watch List 2017 of the 50 countries where it was most difficult to be a Christian. Mr Bradshaw drew my attention to a number of other passages within the CPIN report which set out discriminatory practices in certain parts of Pakistan, interfering with Christians continuing their worship. There was some evidence set out of prohibition on the setting up of new churches and the geographical location of churches in relation to mosques and other Muslim residential areas. Mr Bradshaw also drew my attention to evidence of violence at the hands of the number of different Islamists groups and militia which exist in Pakistan, for example that set out at paragraph 7.2.4. However I note that

the existence of violence at the hands of hard-line Islamist organisations was a feature that was already considered by the Upper Tribunal in the case of AK and SK and Mr Bradshaw candidly accepted that paragraph 190 of that decision discussed that very phenomenon.

21. Mr Bradshaw ultimately advanced the case that the Appellant would be at real risk of serious harm because of his Christianity per se. He did not advance the proposition that the Appellant would be at heightened risk of serious harm by reason of association with his brother, who I am prepared to accept and find as a fact was a street evangeliser in Pakistan and has been recognised by UNHCR as a refugee for that particular reason. However Mr Bradshaw did not advance the proposition that the present Appellant would be at increased risk of serious harm by reason of his association with his brother. Rather he argued that if the Appellant were to come to the adverse attention of the authorities in Pakistan for being targeted as a Christian then the brother's position would be likely to be known by the Pakistani authorities who would as a consequence be less inclined to afford the present Appellant effective protection. That is the way in which the Appellant's case is put today.
22. I make the following findings therefore in relation to this appeal. Notwithstanding Mr Bradshaw's valiant efforts to persuade me, I am not satisfied, having regard to the country information I have summarised above, that there has been any material change of circumstances in the security situation for Christians in Pakistan subsequent to the country guidance case of AK and SK which demonstrates that the risk to Christians in Pakistan per se is any different to the assessment of the level of risk of harm identified by the Tribunal within that country guidance case. The country guidance given in that case is as follows, providing here the paragraphs of the headnote which are relevant for present purposes.
 - "1. Christians in Pakistan are a religious minority who, in general, suffer discrimination but this is not sufficient to amount to a real risk of persecution.
 2. Unlike the position of Ahmadis, Christians in general are permitted to practise their faith, can attend church, participate in religious activities and have their own schools and hospitals.
 3. Evangelism by its very nature involves some obligation to proselytise. Someone who seeks to broadcast their faith to strangers so as to encourage them to convert, may find themselves facing a charge of blasphemy. In that way, evangelical Christians face a greater risk than those Christians who are not publicly active. It will be for the judicial fact-finder to assess on a case by case basis whether, notwithstanding attendance at an evangelical church, it is important to the individual to behave in evangelical ways that may lead to a real risk of persecution."

There are other paragraphs of the headnote which are not necessary to set out at this stage.

23. In addition to my finding that the level of risk of harm to Christians in Pakistan has not materially changed since the Upper Tribunal's assessment in AK and SK, I also consider for myself, quite aside from Mr Bradshaw's apparent concession that the Appellant's brother's position does not materially alter the profile of the Appellant or increase the likelihood of him being targeted, that it is relevant to note that within the country expert report that is relied upon by the Appellant that there is a passage at paragraph 109 which states as follows:

"It is unlikely that the authorities would stop (the Appellant) because of his brother being granted refugee status in Nepal. Instead it is more likely that he will be arrested and stopped for the FIR filed against him."

That paragraph comes below the title 'We require the report to comment on whether our client would be stopped by the authorities as a result of his brother's problems (evidence provided that he has been granted refugee status)'.

24. There was some discussion between Mr Bradshaw and myself as to whether the expert had, when providing his opinion at paragraph 109, limited his assessment of risk merely to the basis that the Appellant's brother had been recognised as a refugee in Nepal, on the one hand, or on the other whether the assessment of risk of harm was on the basis of the brother's activities in Pakistan. For my part I find that the scope of the question posed to the expert is sufficiently clear, as it asks about the consequence as a result of the Appellant's brother's problems, which are clearly that he was targeted by Islamists because of his street proselytising activities, and the expert's opinion that it is unlikely the authorities would stop the present Appellant because of his brother being recognised as a refugee in Nepal, answers the question definitively that the Appellant will not suffer any real consequence as a result of his brother's profile.
25. On the basis that I have found that the Appellant will not as a result of the general situation in Pakistan be at real risk of serious harm by reason of his being a Christian per se it is not necessary for me to consider whether the level of protection that might be afforded to him as a result of his brother's activities may be lessened. The Appellant is simply not at risk of serious harm in Pakistan at all with or without any effective protection. I therefore find that the Appellant's claim for protection is not made out. I dismiss the appeal.

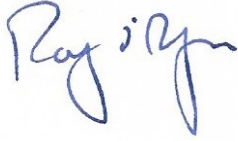
Decision

The decision of the First-tier Tribunal dated 10 June 2019 was previously set aside by the Upper Tribunal on 13 September 2019.

I remake the decision, dismissing the Appellant's appeal

Signed

Date 17.12.19



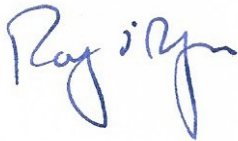
Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17.12.19



Deputy Upper Tribunal Judge O'Ryan