Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01353/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Date Sent**
On 13th September 2013	**On 10th October 2013**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DJAMAL SAYAH

Respondent

Representation:

For the Appellant: Mr M Diwinycz, HOPO
For the Respondent: Mr T Hussain of Counsel, instructed by Fadiga & Company

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Hindson made following a hearing at Bradford on 8th April 2013.

Background

2. The claimant is a citizen of Algeria, born on 9th July 1988. He arrived in the UK in 2011 and claimed asylum on two bases, both of which were found not to be made out. He made a fresh application on the basis that he was a genuine Christian convert who proselytises his Christian faith in the UK and would feel bound to continue to do so on his return to Algeria which was refused on 31st January 2013.

3. The Presenting Officer told the judge that the Secretary of State accepted that the claimant was a genuine convert to Christianity and accepts that he would continue to practise his religion and proselytise on return to Algeria. It was not disputed that there is a 2006 law which makes proselytising a criminal offence carrying a maximum of five years' imprisonment. The Secretary of State's position is that the law is rarely enforced and the claimant is not at risk and could safely live in Kabylie where many evangelical Christians live and practise their faith.

4. The judge referred to a report in the reasons for refusal letter which recorded a court convicting a convert to Christianity of offending the Prophet Mohammed under the penal code and sentencing him, on 25th May 2011 to five years' imprisonment and a fine. He was freed pending an appeal scheduled for November 2011.

5. The judge said that the USSD Report talked of societal abuse and discrimination based on religious beliefs and says that some Christian converts keep a low profile because of concerns for their personal safety and potential legal and social problems. He also recorded that extremists harassed and threatened some converts to Christianity.

6. He then wrote as follows:

> "Having considered all of the background material I am satisfied that the Appellant would be at real risk of persecution in Algeria if he was to return and proselytise his faith as it is accepted that he would. It is not in issue that to do so is a criminal offence punishable with imprisonment. The fact that the law is not regularly enforced is of little consolation to those against whom it is enforced and there is a relatively recent example described above. I note that Christianity is practised more widely and openly in the Kabylie region but there is no evidence that this area is excluded from the reach of the legislation prohibiting proselytising so I am not satisfied that the Appellant would be safe from persecution there. He would also be at risk of harm from extremist religious groups and individuals."

On that basis he allowed the appeal.

The Grounds of Application

7. The Secretary of State sought permission to appeal on the grounds that the objective evidence does not allow the judge to then make his findings on risk; he referred to insufficient evidence to demonstrate a real risk of persecution of any Christian in

Algeria. The judge misdirected himself in stating that there is no evidence that the Kabylie region is excluded from the legislation preventing proselytising. The relevant question is, is there any evidence that this law is enforced in this area or elsewhere such as to generate a real risk?

8. Permission to appeal was granted on 26th April 2013 by Judge Nicholson. He said that, in the absence of evidence to the contrary, the judge was entitled to find that the 2006 law applied to Kabylie, there being no reason to suppose that laws passed in Algeria did not apply to all parts of the country. However he granted permission on the basis that it was arguable that where, as here, a serious issue arose as to whether the law was applied in an area in practice and whether in consequence a claimant would actually be at risk there, it was for the claimant to satisfy the judge that it was reasonably likely he would be at risk in the area: not for the Respondent to satisfy the judge that the calaimant would be safe from persecution there, as the wording in paragraph 24 suggests.

9. On 21st June 2013 the claimant served a reply. He states that since the judge found that State persecution existed, with laws passed prohibiting the conduct with the sanction of imprisonment, he need do no more. In Januzi [2006] UKHL 5 the court held:

> "The more closely the persecution in question is linked to the State and the greater the control of the State over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the State."

10. The grounds then cite at some length the relevant case law with respect to internal relocation and rely on AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 where the UT held:

> "The person who claims international protection bears the legal burden of proving that he or she is entitled to it. What that burden entails will however very much depend upon the circumstances of the particular case … in many cases the Respondent will point to evidence regarding the general conditions in the proposed place of relocation. It will then be for the Appellant to make good an assertion that notwithstanding those conditions it would not be reasonable to relocate there. Those reasons may often be ones about which only the Appellant could know; for example whether there are people living in the area of proposed relocation who might identify the Appellant to those in his home area whom he fears. The Secretary of State clearly cannot be expected to lead evidence on such an issue."

11. It is not for a claimant to establish that they have no internal relocation alternative. A claim succeeds if the relevant risk is established in the home area unless the Tribunal is satisfied by the evidence before it that there is a part of the country where:

    (a) there is no equivalent relevant risk; and

(b) the asylum seeker can reasonably be expected to stay.

The focus with respect to (b) is whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.

12. The reply cites Jasim v SSHD [2006] EWCA Civ 342 where Sedley LJ held:

> "Once the judge of fact is satisfied that the applicant has a justified fear of persecution or harm if returned to his home area the claim will ordinarily be made out unless the judge is satisfied that he can nevertheless be safely returned to another part of his country of origin. Provided the second issue has been flagged up there may be no formal burden of proof on the Secretary of State but this does not mean that the judge of fact can reject an otherwise well-founded claim unless the evidence satisfies him that internal relocation is a safe and reasonable option."

13. The Secretary of State has not shown how the law prohibiting proselytising with a penalty of five years' imprisonment handed down to a Christian as recently as 2011 is not enforced in Kabylie.

Submissions

14. Mr Diwinycz relied on his grounds. He accepted that there were laws in Algeria prohibiting proselytising and said that things were not so harsh in Kabylie but he could not provide any evidence to back up his view.

15. Mr Hussain relied on his reply and said that the Secretary of State simply had not supplied the evidence that the law is not enforced throughout the State. It was not enough to assert that the law was not administered in the proposed area of relocation without evidence.

Findings and Conclusions

16. This determination is thin and, had the judge set out his reasons more fully it is likely that permission to appeal would not have been granted.

17. The question of who bears the burden of proof in establishing whether it is reasonable to relocate is not critical to this appeal. The Secretary of State does not dispute that the law is persecutory. It makes proselytising a criminal offence and carries a punishment of one to three years in jail and a maximum fine of 500,000 dinars and stipulates a maximum of five years in jail and the same fine for anyone who "insights, constrains or utilises means of seduction tending to convert a Muslim to another religion; or by using to this end establishments of teaching, education, health, social, culture, training … or any financial means". The Respondent accepts that anyone who makes, stores or distributes printed documents, audiovisual materials or the like with the intent of "shaking the faith of a Muslim" may also be punished.

18. The Secretary of State accepts that the claimant has a fear of State sponsored persecution. The argument is placed firmly on the basis that the law was not always enforced. The reasons for refusal letter states that "it is noted that those living in Kabylie are able to practise their religion without any problems," but Mr Diwinycz could point to nothing in the background material to establish the basis for the assertion. It may be that such evidence is available but if the Secretary of State wants to rely on it she ought to produce it. It ought to be a matter of public record and reasonably easily obtainable.

19. The claimant bears the legal burden of proving that he is entitled to international protection. He can point to a law which is persecutory and in the absence of any evidence at all from the Secretary of State that the law is not enforced in a particular geographical area, that is sufficient to discharge any burden upon him.

Decision

20. The judge's decision stands. The Secretary of State's appeal is dismissed.

Signed Date

Upper Tribunal Judge Taylor