



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10137/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 January 2018

Decision & Reasons Promulgated
On 23 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

AS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr Z Nasim, of Counsel instructed by M-R Solicitors

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Jerromes who, in a determination promulgated on 20 November 2017, allowed the appeal of AS against a decision of the Secretary of State to refuse her application for asylum.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier. Similarly I will refer to AS the appellant as she was the appellant before the First-tier Judge.
3. The appellant is a citizen of India born on [] 1962. She was born as a Hindu and has a Hindu name. She lived in Gujarat where she attended university and graduated with a Bachelor degree in Commerce before obtaining a diploma in hospitality. She worked in hospitality in a hospital there. She met and married a Muslim man, converting to Islam in 2000 when she married. She came to Britain in 2002, and her husband joined her in February 2003. In April 2003 her husband claimed asylum with the appellant as his dependant. An appeal was lodged and dismissed in the First-tier in September 2003. A fresh asylum claim was made in 2007 and in September 2014 she lodged an application for judicial review of a decision to refuse to grant her leave to remain. Although permission was refused in April 2015. She made a further application for JR in November that year which was also refused. she then made a further application for leave to remain in November 2015, which was refused in April 2016 with an out of country right of appeal. The refusal decision was reconsidered under the provisions of paragraph 353 in August 2016, and again refused without a right of appeal. In April 2017 there was a fresh asylum claim which was refused in October 2017 with a right of appeal, and thus the appeal came before the First-tier Tribunal.
4. It was accepted by the respondent that the appellant had converted from Hinduism to Islam, but it was not accepted that she had been attacked as she had claimed by Hindu extremists in India or that she had been threatened by her cousins at work. The Secretary of State stated that she had provided no evidence that she would be harmed in India due to her religion. The appellant had said that her family did not know she had converted to Islam while in India and that she had had no contact with anyone in India since she moved to Britain and had not received any threats. The Secretary of State took the view that she could seek protection given the background information about religious freedom, which indicated that India was a secular state with no official religion and religious minorities were able to practise their faith freely. In the Reasons for Refusal Letter it was stated that "'anti-conversion' laws have been used to discriminate against minorities and to arbitrarily arrest minorities perceived to proselytise, though the conviction rate is low". It was accepted by the respondent that there had been instances of abuse which might amount to persecution in individual cases, but the respondent considered that they were not at a level to pose a general risk. It was therefore considered that there would be a sufficiency of protection within India and it was pointed out that before she left her husband had sought protection in India, although that was over 25 years ago. It was also considered that, should she not wish to return to her home area, she could internally relocate in India given the fact that she spoke Hindi, Gujarati and English and had spent the majority of her life in India where she was educated and had worked.

5. The judge heard evidence from the appellant and from a friend, Mrs KPJMZ. In paragraphs 43 onwards the judge set out her findings of fact, accepting the appellant had been born in 1962 in India and had lived with her family in Gujarat, had been educated in India and had worked in a hospital, that she had been raised as a Hindu but that she had married a Muslim on 22 February 2000 and had then converted from Hinduism to Islam. She had entered Britain as a visitor in December 2002 being joined by her husband in February 2003. The judge stated that she did not accept that the appellant had sought protection at the earliest opportunity and said that that damaged her credibility. She considered that the appellant's family had been displeased when they had found out about her marriage but the judge did not accept that they were looking for her to kill her, and she noted that in any event the appellant's parents and brother had died since she came to Britain. The judge indicated that she believed that the appellant's parents would have known about her marriage after 2000 as she had remained living with them. The judge did not accept that the appellant's wider family would be able to trace her when she went into hiding following the riots in Gujarat to which the appellant had referred and concluded that the appellant's family would not be interested in pursuing or punishing her. The judge accepted, however, that given her conversion the wider family would not accommodate or support her.
6. From paragraphs 50 onwards the judge assessed the appellant's risk on return. She accepted that the appellant would not voluntarily modify her Muslim appearance or exercise discretion with regard to her faith on return and would therefore present as a Muslim. She stated that in general Muslims were able to practise their faith freely, attend places of worship and participate in religious activities. There had been instances of societal abuse which might amount to persecution in individual cases but that was not at a level as to pose a general risk of persecution.
7. In paragraph 50.3 she considered the appellant's position as a Muslim who had converted from being a Hindu. She stated that the appellant's appearance as a Muslim would present as an inconsistency with her Hindu name, which she would be obliged to use for official purposes. As her passport and other Indian identification was in that name she would be identified as a convert and the judge said that therefore she would "draw adverse attention at a level which I find amounts to persecution." The judge said that she had drawn support for this conclusion from the respondent's policy "Country Information and Guidance India: religious minority groups April 2015". She stated that whilst it was clear that religious minorities were able to practise their faith freely, religious conversion was a different matter. She said that anti-conversions laws in seven states including Gujarat had been used to discriminate against minorities, including Muslims and that said that these anti-conversion laws had been described as "*deeply problematic*", "*one-sided and discriminatory, placing hurdles and penalties for converting out of Hinduism, but not towards it*". She said that these laws "*have led to higher incidents of intimidation, harassment and violence against religious minority communities, particularly Christians and Muslims, with few arrests and no convictions*". She said that they "*have fostered a climate of societal impunity against minorities and had led to police harassment*".

8. She stated that there was therefore an insufficiency of state protection, referring to the report entitled "Country Information and Guidance India: religious minority groups April 2005" which stated that whilst the government generally enforced legal protections for religious freedom, it had been criticised for failing to respond effectively to abuses committed by state and local authorities and private citizens. She stated that it would be unduly harsh for the appellant to relocate as:

"The problems she will face as a Muslim, and in particular someone who has converted from Hindu, will be exacerbated by the fact she will be returning as a lone woman with no family support/network. She is educated and has previously worked in India but only as a Hindu; the country background information says that on return she will face discrimination, both as a Muslim and as a lone woman and this will make it difficult to find accommodation and work and be able to support herself."

The judge therefore allowed the appeal.

9. The Secretary of State appealed stating that the underlying findings of the judge was not that the appellant was at risk of persecution on account of her own experience historically in India or that the family had sought to harm her. The respondent then went on to say that:-

"The reasoning in respect of the risk of persecution is perverse and/or fails to take into account other material evidence, such as - whilst there may be 7 states in India where anti-conversion laws are deployed the background evidence indicates that there are 29 states in the whole of India as well as 7 union territories. The judge has failed to identify why the Appellant would be at risk in other states of India - this was either perverse or a failure to resolve the matter materially in dispute between the parties".

10. The grounds went on to say that the judge had failed to identify sufficient evidence to indicate that "the level of discrimination (apparently amounting to persecution) is reasonably likely to effect a Muslim in India bearing in mind that the total population exists at around 160 million people of the same guidance".
11. It was pointed out that the judge had failed to take into account the "Country Information and Guidance (India: Background information, including actors of protection and internal relocation - February 2015)" report when finding that there would be no reasonable internal relocation for the appellant on return to India. It was argued that the judge had failed to reflect on the fact that discrimination that had been identified in the judgment only existed in a small minority of the states in India and there was no background evidence to support the judge's contention that a lone Muslim woman would not be able to support herself in India and therefore there was a failure to take into account evidence of internal relocation which showed there were over 800 working women hostels across India, there was NGO support and that the expansion of the Indian economy has led to increasing numbers of lone women working in the major cities.

12. Mr Jarvis relied on the background information which had been submitted and to which the judge referred in paragraph 6 of the determination. He pointed out the judge did not accept that the appellant was at risk from her family and argued that she had been wrong to find that there would be an insufficiency of state protection. He stated that there was no clear findings to indicate why the judge considered that the appellant could not internally relocate. He repeated the information in the grounds of appeal that there are 160 million Muslims in India and pointed out that the judge had found that there was not general persecution of that group. There were no specific findings, he argued, that the appellant would face persecution on return. Moreover, when considering the issue of the appellant's circumstances on return, he stated that it was clear from the background evidence that there were 800 working women's hostels and that there were increasing numbers of single woman working and living on their own, particularly in the larger cities. He stated that therefore there was nothing to indicate that the appellant, as a lone woman would face persecution on return. It was important, he stated, when considering the issue of internal relocation, to consider the specific circumstances of the appellant - this was an appellant who had worked in the past and was educated. There was no reason why she would not be able to work again. Moreover he referred to the fact that there were a number of states where there was a majority Muslim population and he again referred in some detail to the documentary evidence in the papers before the judge. He referred to the report "Country Information and Guidance (India): Background information, including actors of protection and internal relocation of February 2015" where, at paragraph 2.4.7 the Refugee Board of Canada was quoted as saying: -

"According to India's Ministry of Women and Child Development, since 1972, the government has funded NGOs and other organizations ... to build hostels for working women. The hostels are intended to provide safe and affordable housing to single working women; widowed, separated or divorced women; working women living outside their home towns or living without their out-of-town husbands; women undergoing employment training; and women studying in professional programs.

There are reportedly 887 working women's hostels throughout India providing accommodation for approximately 65,000 women. Women can stay in the hostels for up to three years, with the possibility of an extension in exceptional circumstances. According to the Ministry, the hostels have day care centres for residents with children".

He accepted that it was indicated that the sanitary conditions in most hostels were said to be "very bad" but pointed out that what was relevant was standards of accommodation in the appellant's own country, not the standard of living which she might have here. He emphasised that the appellant would receive the sum of £1,500 when she left Britain voluntarily, which would help to ease her into life in India on return. He asked me to find that the judge had erred by not finding that internal relocation was open to her.

13. In reply Mr Nasim argued that there was no error in the determination as the judge had relied on the background evidence before her. He referred to the appellant's individual circumstances and said that the judge had clearly looked at the relevant question which was not whether or not Muslims in general would face persecution but whether a woman such as the appellant, who had converted, would face persecution. It was on that basis that the judge had allowed the appeal. He referred to the fact that it was stated in the background information dated February 2015 that there are some difficulties with state protection and said that there were human rights violations in Jammu and Kashmir. He argued that the judge had reached conclusions which were open to her.
14. In reply Mr Jarvis referred to the refusal letter and to the background evidence and stated that in a country of approximately 1.2 billion people and over 160 million Muslims there was nothing to indicate that the appellant would be sought out for ill-treatment. With regard to the claimed persecution because she had converted, he referred to paragraph 4.1.1. of the Country Information and Guidance India: religious minority groups pamphlet which stated:-

"India is a secular republic and all religions are considered equal under the law. The constitution and other laws protect religious freedom and this is generally respected by the government. However, some laws and policies restrict this freedom including the enforcement of 'anti-conversion' laws by some state governments. Some local police and enforcement agencies failed to effectively respond to attacks against religious minorities and communal violence in certain areas."

He stated that the reality was that it was clear from section 4.1.4 of that report that there were seven states which had anti-conversion laws but stated that:-

"These laws generally require government officials to assess the legality of conversions and provide for fines and imprisonment for anyone who uses force, fraud, or 'inducement' to convert another. These laws have resulted in few arrests and no convictions, but have created a hostile atmosphere for religious minorities, particularly Christians."

He pointed out that that paragraph went on to quote from the US Department of State's International Religious Freedom Report 2013 which had stated that:-

"Arunachal Pradesh anti-conversion law was not implemented due to a continuing lack of enabling legislation. Authorities explained these laws as protective measures meant to shield vulnerable individuals from being induced to change their faith. For example the Gujarat Law prescribes religious conversion through 'allurement, force or fraud'."

It was pointed out that under Himachal Pradesh law:

"No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion".

Discussion

15. The judge makes it clear that she does not accept that the appellant would be persecuted by her wider family on return but accepts that they would not look after her or give her support and accommodation. Moreover, the reality is that the judge went on to find that, as a Muslim, the appellant would not face persecution. The judge then went on to consider the issue of internal relocation. She makes, I consider a fundamental error by stating that, as a lone woman that it would be unduly harsh for the appellant to relocate. That clearly cannot be the case – I consider that the appellant would be able to relocate throughout India, but in particular she would be able to relocate to a state where there is either a substantial minority of Muslims or where a majority of the population are Muslim. I cannot see how the appellant would be discriminated against if she did so. The judge was clearly wrong to find that if in seven states there is anti-conversion legislation which she believed could lead to the appellant being harmed she would not be able to go to any of the other states where there is no anti-conversion legislation.
16. I consider that the judge has erred in two ways. Firstly, in not considering that the issue of internal relocation relates to all of the appellant's country not merely to the seven states which she mentioned, but also, and more importantly she misunderstands the anti-conversion law. It is clear from the paper "Country Information and Guidance India: religious minority groups" that the laws- which may not necessarily have been enacted- are in any event against proselytising by forcible conversion or undue persuasion. It is the person who converts the individual who would be breaking the law, not the person who themselves is converted. The appellant would not face legal sanction because she converted. I can therefore only conclude that there is nothing in the papers before me to suggest that the appellant would face persecution on relocation within India or could not relocate and I consider that the judge erred in law by reaching that conclusion. Indeed her conclusion is at odds with the background documentation which was before her. For these reasons I find that there is a material error of law in the determination of the First-tier Judge and I set aside her decision.
17. I consider that it is appropriate for me to remake the decision because the findings of fact of the judge, with regard to the appellant's personal circumstances – that she met a man who was a Muslim and married him, converting to Islam, and then came with him to Britain and claimed asylum and that the application was then refused and the appeal dismissed and further that her parents and brother are now dead and although the wider family would not support her if she returned, they would not seek her out or indeed would not be able to seek her out if she did return - can clearly be accepted. Moreover, the background evidence is clear: there is nothing whatsoever to indicate that the appellant would be persecuted by the state. The reality is that the anti-conversion laws do not target the person who is converted but targets the person who proselytises or attempts to convert the individual. I consider that the appellant could, should she not want to return to her own state, relocate without difficulty to a state where there is a majority of Muslims or a large number

of Muslims. The appellant's conversion would not lead to any discrimination against her – there is nothing to indicate that that would be the case. Moreover, she would be able to seek work and should be able to obtain work using the skills which she has, not only her ability to speak Gujarati, English and Hindi, but also using her former experience in India and, of course, she will have gained further experience here. There are hostels available for lone woman and there are increasing numbers of single women moving to the towns to work. The appellant would of course be assisted by the funds given to her by the British government when she leaves. In these circumstances I find that the appellant would not face persecution on return, nor would the circumstances which she would face on relocating internally be such that it would be unreasonable to expect her to do so.

18. I therefore, having set aside the decision of the First-tier Judge, remake the decision and dismiss this appeal.

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 February 2018

Deputy Upper Tribunal Judge McGeachy