



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01724/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 9th July 2021

Decision & Reasons Promulgated
On 29th July 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Moffatt, instructed by Irvine Thanvi Natas Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

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 the

Appellant or any member of the 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.

DECISION AND REASONS

1. The Appellant is a citizen of India born in 1980. He appeals against the decision of First-tier Tribunal Judge Pooler, promulgated on 10 July 2020, dismissing his appeal against the decisions to refuse his protection claim and deport him to India on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Lane on 24 August 2021 on the grounds the judge arguably erred in his assessment of internal flight within India for the reasons given in the grounds of appeal.
3. There are three grounds of appeal. In ground 1, the Appellant submits the judge mischaracterised the background evidence in failing to take into account evidence in the 'Open Doors' report dated December 2019 [OD report] which demonstrated that there was still a risk of violence in the states and cities with a high Christian population. The judge failed to take into account the following matters:
 - (i) the number of reported incidents of violence against Christians was very high, but this was only the 'tip of the iceberg';
 - (ii) these incidents of violence occurred all over India and the list of states cited was not exhaustive;
 - (iii) even in states which had not enacted the anti-conversion laws, police have arrested Christians for evangelism activities; and
 - (iv) the rise of violence against Christians in states with tribal societies.
4. In relation to ground 2, the judge failed to take into account uncontested evidence of the prevailing regime of ethno-territoriality in the majority of Christian hill states to which the judge found the Appellant could internally relocate. Those who do not ethnically 'belong' locally are subject to exclusion and do not enjoy rights to employment, state resources and benefits. Due to institutionalised discrimination against outsiders and those who do not have local ethnicity, it would be unduly harsh for the Appellant to relocate to the majority Christian north eastern hill states [Christian hill states].
5. In ground 3, the Appellant submits that grounds 1 and 2 materially infected the assessment of very compelling circumstances under Article 8. Further, the Appellant was socially and culturally integrated notwithstanding his criminal convictions, for motoring offences and excess alcohol, which took place over a limited period of time and from which the Appellant had been rehabilitated following his conversion to Christianity. The judge failed to consider the range of evidence of the Appellant's private life in the UK.

Submissions

6. Ms Moffatt submitted the judge's consideration of the OD report was dispositive of the appeal. The judge preferred the OD report to the expert evidence. However, the judge was not entitled to rely on a lack of evidence of attacks on Christians in the three hill states to infer the Appellant was not at risk. Further, the OD report contradicted the judge's findings. The OD report stated the list of reported attacks was not exhaustive and these attacks occurred all over India and were only 'the tip of the iceberg'. The non-existence of anti-conversion laws was not conclusive of risk because police still arrested Christian for evangelism activity in those states where anti-conversion laws were not enacted. In addition, in tribal societies, there was clan and ethnic antagonism towards the non-indigenous population. The judge erred in law in drawing an inference which was not open to him on the face of the report and then relying on that inference to disregard evidence to the contrary.
7. In answer to a question from me, Ms Moffatt stated the only evidence of attacks on Christians in the hill states was in the OD report. The expert evidence did not deal with this. Professor Aguilar addressed the inability to evangelise not risk of attack.
8. Ms Moffatt submitted the judge failed to take into account uncontested evidence of a real risk of exclusion from employment when assessing the reasonableness of relocation to the Christian hill states. The particular tribal structure in the Christian hill states meant that non-locals would be excluded from employment, state resources and benefits. The Respondent did not challenge evidence of this in the OD report and the 'Oxford' report (pages 38 to 41 of the Appellant's bundle attached to his further submissions). Institutionalised discrimination was not limited to Nagaland. The judge erred in law in failing to attach due weight to the expert evidence of exclusion from rights which was highly relevant to the reasonableness of internal relocation.
9. Ms Moffatt submitted the judge should have taken into account the risk of persecution and reasonableness of relocation in assessing Article 8. Further, there was no detailed assessment of why the Appellant's criminal convictions affected his social and cultural integration. The judge failed to consider the circumstances of the offending and the Appellant's rehabilitation. He failed to take into account the Appellant's relationships in the UK and it could not be said these matters would not make a difference.
10. Mr Walker submitted the OD report stated there were attacks on Christians all over India, but this was not material to the judge's findings. The judge considered all the other evidence of discrimination in India and was entitled to conclude the Appellant was not at risk in states and cities with majority Christian populations. The judge's finding at [64] was open to him on the evidence. The Appellant's offending behaviour was serious and the judge's Article 8 findings were consistent with the authorities relied on.

11. Ms Moffatt submitted the judge ruled out Delhi as a viable option and Article 8 did not entirely stand or fall with grounds 1 and 2. There were very compelling circumstances in those grounds which the judge failed to consider. Taken cumulatively, it could not be said the errors were not material.

Conclusions and reasons

Ground 1

12. The judge concluded the Appellant would be at risk in his home area at [48] and then went on to consider internal relocation. He noted the respondent had produced no evidence to support his position that the Appellant could relocate to Delhi and certain named majority Christian states. The judge acknowledged the Respondent's submissions criticising the expert report of Professor Aguilar.
13. The judge considered the expert evidence at [50] to [56]. He quoted evidence from the OD report at [58]. He took into account that the attacks on Christians occurred all over India and the arrest of Christians occurred all over India. The OD report does not refer to specific attacks in the Christian hill states. At [60], the judge found there was no evidence in the report of attacks or arrests in the Christian hill states. Ms Moffatt accepted there was no other evidence before the judge on this issue. The judge gave adequate reasons at [61] for why he preferred the evidence in the OD report to that in the expert report.
14. The judge took into account all relevant matters in considering internal relocation and his findings on the OD report were open to him on the evidence before him. The evidence in the OD report, taken at its highest, was insufficient to show the Appellant would be at risk of persecution on relocation to the Christian hill states. Any discrimination in relation to employment or access to state resources did not amount to persecution. There was no material error of law in relation to ground 1.

Ground 2

15. The evidence in the OD report and the 'Oxford' report of the existence of a prevailing regime of institutionalised discrimination against those who do not have local ethnicity was insufficient to render internal relocation unduly harsh. The drivers of clan and ethnic antagonism were largely Hindu tribal leaders and the majority of the 'Oxford' report addressed the position of Bangladeshi immigrants. The evidence in this report at page 40 was insufficient to demonstrate that internal relocation would be unduly harsh and any failure by the judge to refer to it was not material.

Ground 3

16. The Appellant has been convicted of numerous driving offences in 2014 and 2015. On 2 October 2015, he pleaded guilty to driving whilst disqualified, using a vehicle while uninsured, dangerous driving and driving with excess alcohol. He was sentenced to 14 months' imprisonment. The sentencing judge acknowledged the Appellant's persistent appalling driving over a considerable period of time and the police chase which was so dangerous it had to be terminated. The Appellant had to be followed by helicopter until he was finally arrested. The judge set out the Appellant's history of offending at [16] to [20].
17. The Appellant has lived in the UK illegally since August 2007 and it was accepted he could not satisfy the exceptions to deportation in section 117C of the 2002 Act. The weight to be attached to the public interest is significant. The Appellant's relationships in the UK and his rehabilitation following his conversion to Christianity were not capable of enhancing his private life to the extent that it could outweigh the public interest. Taking the Appellant's case at its highest, his private life could not outweigh the public interest in deportation.
18. The judge properly directed himself in relation to Article 8 and his findings were open to him on the evidence before him. There was no material error of law as alleged in ground 3.
19. Accordingly, I find there was no material error of law in the judge's decision promulgated on 10 July 2020 and I dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 16 July 2021

TO THE RESPONDENT FEE AWARD

As I have dismissed the appeal, I make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 16 July 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email