



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01434/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 2 December 2021
Via Microsoft Teams**

**Decision & Reasons Promulgated
On 17 March 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**[L K G]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Georget, instructed by Aschfords Law

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal. She appealed to the First-tier Tribunal against the Secretary of State's decision of 31 January 2020 refusing her application for asylum and also refusing her human rights claim.
2. The appellant came to the United Kingdom in December 2010 as the dependent partner of her husband. He applied for leave to remain under family and private life in December 2013. That application was refused in January 2014 and he and the couple's two children left the United Kingdom and returned to Nepal in April 2014. The appellant was apprehended by

the UK authorities on 4 June 2019 and was served with removal papers as an overstayer. She claimed asylum on 20 June 2019.

3. The appellant claims to be at risk on account of the fact that, first, though she was brought up as a Buddhist, her husband is a Hindu and her family did not approve of inter-caste marriages. Subsequently, since her husband's departure in 2014 and her remaining in the United Kingdom she has converted to Christianity and has been baptised. She claims that on return her husband's family will employ people to harm or kill her because of her inter-caste marriages and her conversion to Christianity, and that she will be discriminated against because her husband took her children from her.
4. The judge heard evidence from the appellant and also from the Reverend Tamang, of whose church she is a member and in whose home she lives. There was also a psychological report from Dr Piper.
5. The judge took into account the fact that the appellant was a vulnerable adult witness, suffering as she did from intermittent anxiety and depression. She took these matters into account in assessing the discrepancies in the evidence.
6. The respondent had accepted both that the appellant was Nepalese and also that she is a baptised Christian who has been attending church since 2015.
7. The judge found that the appellant's account was essentially consistent as regards core events. Her claim was sufficiently detailed in nature and not vague and was plausible.
8. At paragraph 87 the judge made a number of findings of fact. These include that the appellant is a member of the Gurung caste and grew up in a Buddhist family, that she had run a beauty parlour in Pokhara for five years, and had married her husband, who is a member of the Shah caste and a Hindu, in secret in 2009. She also accepted that the appellant's family did not approve of inter-caste marriages so she did not tell them about her relationship with her husband. She had had little contact with her family since moving to the United Kingdom. Her father had died four or five years ago and her only remaining family in Nepal was her stepmother and younger brother. Her husband had left her in 2014 and returned to Nepal with their two children, who had both been born in the United Kingdom. She began practising Christianity after her husband and children left the United Kingdom, and she was baptised in 2015.
9. The judge noted that there were two elements to the appellant's claimed risk on return to Nepal. The first was the risk of harm from her husband's family.

10. With regard to this, the appellant had claimed in her asylum interview that her mother-in-law had told her not to go to her house because “anything can happen to you”. She claimed not to have had any contact with anyone in Nepal since she left. She had not had any contact with her husband since he left the United Kingdom with their children. In her witness statement she said she was scared that if she returned to Nepal her husband’s family could employ a person to harm her or even kill her.
11. The judge considered this evidence to be merely speculation. The appellant’s evidence was that she had had no contact with her husband or his family for over six years and there was no indication that the threats had been repeated. Her husband and children were living in Jhapa, which was 570 kilometres from Pokhara and 430 kilometres from Kathmandu. The judge bore in mind that the country background evidence confirmed that women in Nepal might face discrimination, but the law prohibited it. Patriarchal attitudes, deep-rooted traditional stereotypes and practices still existed and women rarely received the same education and employment opportunities as men. She found, however, that this discrimination would not be enough to amount to persecution. She accepted that domestic violence remained a serious problem in Nepal but did not find that the appellant would be at risk of domestic violence from her husband or his family nor would she be at risk of persecution based on her gender.
12. The other element of the claim was the fact that the appellant was a practising Christian. The judge observed that there was evidence that the appellant could freely practise Christianity in Kathmandu and there was no evidence that she had tried to convert anyone in the United Kingdom. The Reverend Tamang in his evidence had confirmed that the London Family Centre which the appellant attends in the United Kingdom has a church community in Kathmandu and there were practising Christians there. He confirmed that he had himself converted from Christianity from Buddhism and was still able to return to Kathmandu to visit his parents and visit the church there. He had, in the judge’s view, been unable to specify the problems that the appellant might face on return to Nepal as a Christian other than to state that she could be persecuted and sent to prison.
13. The judge noted the background country evidence which emphasised the problems Christians and other minority religions faced when they engaged in proselytising behaviour. However, she stated, the appellant had not engaged in such behaviour in the United Kingdom and there was no indication that she would do so on return to Nepal. She did not have a leadership position within the church. The principles outlined in HJ (Iran) were borne in mind, and the judge considered that people who live openly as Christians were not liable to persecution in Nepal. The appellant would not need to practise her relationship discreetly. She was not at risk on account of her conversion to Christianity.
14. The judge went on to consider sufficiency of protection and concluded that such corruption and/or inefficiency as there was in the Nepalese police was

not such as to show that there was not a sufficiency of protection to the required standard.

15. As regards internal relocation, the judge noted that freedom of movement was generally respected in Nepal, the appellant had not demonstrated that her husband or her husband's family had either the power or influence to locate her throughout Nepal and her husband had had no contact with her for more than six years and had said he wanted nothing to do with her. She had not demonstrated that he had influence throughout Nepal. She had said in her asylum interview that her husband's family was powerful but there was no evidence that her mother-in-law would have the means or ability to find her in Kathmandu if she was returned there.
16. The judge noted that the appellant was educated and had run her own business for five years in Nepal and claimed that she had lived in Kathmandu without any problems even though she had been outcasted from her family due to her inter-caste marriage and they had not found her there even though she said that they were looking for her. She had managed to survive alone in the UK for six years without family ties by building a network of friends which she would be able to do again on return to Nepal. As a consequence, the judge found that the appellant had not shown that it would be unreasonable or unduly harsh to expect her to return to Kathmandu or another location in Nepal. She also did not find that the appellant had shown a real risk of serious harm such as to entail a need for humanitarian protection.
17. The judge considered the medical evidence. The appellant had been assessed by Dr Piper in October 2020 as having had no reported mental health problems prior to that and no mental health treatment or intervention. Dr Piper had noted that the appellant could feel severely depressed and over the years when depressed could experience periods of intense suicidal ideation. She had not sought professional help for her bouts of depression but had relied instead upon the support and prayers of her friends and members of the church. The judge found that the degree of depression identified by Dr Piper was at odds with the appellant's own statement in her asylum interview that she did not have mental health problems and the fact that she had had no mental health treatment or intervention. She concluded that it was unlikely that the appellant would not have been encouraged by her friends to seek medical help if she was experiencing episodes of suicidal ideation. She accepted that the appellant might not have wished to seek medical help while her immigration status was uncertain, but she was released from immigration detention in July 2019 after which time she would have been able to seek help. Overall, while the judge accepted that the appellant was vulnerable and suffered from depression, she gave less weight to Dr Piper's report of her suicidal ideation due to the inconsistencies in the evidence regarding the appellant's mental health. The case law of N [2005] UKHL 31 was considered with regard to whether or not her Article 3 rights would be

breached by her removal and it was concluded that the evidence did not show that her medical condition was at such a critical state that it would be inhumane to remove her.

18. The judge went on to consider Article 8 issues and concluded that the requirements of paragraph 276ADE(1)(vi) were not satisfied nor could the claim succeed outside the Immigration Rules. As a consequence, the appeal was dismissed.
19. The appellant sought and was granted permission to appeal (initially on limited grounds but subsequently after a further appeal to the Upper Tribunal on all grounds) as regards the findings in respect of risk, sufficiency of protection, internal relocation and humanitarian protection. In addition, it was argued that the judge had erred with regard to the Article 8 findings.
20. In his submissions Mr Georget adopted and relied on the grounds of appeal. It was relevant to note that the appellant had been found to be credible. The judge at paragraph 89 had rejected the well-foundedness of the claim on the basis that there was no ongoing interest on the part of the appellant's husband's family in harming her. This was a point on credibility, it was argued. There was support in the background evidence about the well-foundedness of the appellant's fear, with regard to violence in relation to inter-caste marriages in Nepal, so this was more than speculation. It was a basis for the claim and in any event, the fact that it was speculation did not mean that the claim could not succeed. The judge could not say it was just mere speculation. The appellant had been found to be credible including with regard to threats made just six years ago, so the issue of risk had been inadequately addressed. That was a matter relevant to internal relocation also. It was relevant to note that the appellant's evidence was that her husband kept coming and going to Kathmandu even though he lived in Jhapa so he would be able to see her, given that he had friends in Kathmandu also.
21. The judge needed to explain why these elements of the claim were not accepted, given that the appellant had been found to be credible in other respects. She would know what the position was as she had been married to her husband. This was a critical issue in the case.
22. With regard to the risk as a Christian convert, the judge found she would only be at risk if she would proselytise and did not accept she was likely to do so. This was also an issue as to sufficiency of protection. The judge had erred as contended at paragraph 1(d) of the grounds. The appellant had indicated during interview that spreading her faith to others was important to her and that when she met people or friends she explained the importance of Christianity, read the Bible for them and helped distribute leaflets and pamphlets about their religion. This was consistent with the fundamental tenets of Christianity. The judge had not addressed the appellant's evidence on this. As with the findings about risk from the

appellant's family, the judge needed to say why she did not believe the appellant on this. As regards the HJ (Iran) [2010] UKSC 31 issues the judge had failed to address important evidence.

23. In addition, the judge erred as contended in ground 1(e) in finding that people who lived openly as Christians were not liable to persecution in Nepal. Relevant background evidence was referred to in the grounds. There was increasing persecution in Nepal and this was relevant to sufficiency of protection also.
24. In that regard it was relevant to bear in mind the judge's failure to take into account material considerations with regard to her earlier finding that women in Nepal might face discrimination. The judge had not considered all the evidence or provided reasons for her findings. There was police corruption including significant corruption as referred to in the 2019 Country Report on Human Rights Practices in Nepal.
25. The judge had also erred as contended in the grounds with respect to internal relocation. The issue in this regard that concerning risk from her family had already been referred to. This was akin to the Article 8 challenge in respect of significant obstacles to integration and issues of the reasonableness of relocation. The judge had failed to take account of her earlier findings that women in Nepal might face discrimination and the existence of patriarchal attitudes. As a lone woman with no support network there was no evidence of state-provided support. These were relevant issues as to the viability of internal relocation. She had transgressed Nepalese social norms in two respects, having been divorced and having converted, and also had mental health issues and these were all matters relevant to relocation which had not really been addressed by the judge, particularly with regard to the latter point. The judge had ignored the fact that the appellant arrived in the United Kingdom with her husband and also had support from friends in the United Kingdom.
26. With regard to humanitarian protection and Article 3 and the Rule 24 response, the judge should have considered AM (Zimbabwe) [2020] UKSC 17 but found that in any event the claim did not reach the threshold. This was addressed in the grounds. The appellant was a suicide risk and there was limited availability of medical treatment, in particular concerning mental health issues. Paragraph 4(c) of the grounds made the point that the judge had failed adequately to engage with the background country information concerning the quality of healthcare in most cases outside Kathmandu Valley and Pokhara. The test set out in AM (Zimbabwe) was high, but the judge's consideration was unsatisfactory.
27. Even if this were immaterial to Article 3, it was relevant to internal relocation and Article 8. Her earlier findings materially impugned the judge's conclusions in respect of paragraph 276ADE(1)(vi). The judge had failed to consider the reality for the appellant if she had been found to be credible. There would be no-one for her in Nepal. The consideration at

paragraphs 108 and 109 was cursory. The judge appeared to think that the appellant did not meet the requirements of the Rules as she was not at risk of harm. If she were not at risk she had a claim as a single lone woman. Likewise, the challenge in respect of Article 8 outside the Rules was maintained as set out in the grounds.

28. In her submissions Ms Everett relied on the Rule 24 response, which, as she observed, was provided before the extended grant of leave made by the Upper Tribunal.
29. With regard to the fear of the ex-husband, this was speculative, the judge believed that the appellant experienced a fear but was entitled to decide whether or not it was borne out. There was speculation as to the risk from the appellant's family. The burden was on the appellant. This did not clash with the credibility findings. The judge found the fear was not borne out. At interview the appellant had said she had not even tried to convert anyone. In Nepal she could live openly as a Christian and the judge was entitled so to find. The witness had confirmed this. He went back to Kathmandu and there was a gathering of Christians there who would support her, so on her evidence she would not require protection.
30. Reliance was placed on the Rule 24 submission with respect to the Article 3 health issue. With regard to the very significant obstacles to integration point, it was the case that there were different thresholds, but the judge's decision was thorough as to what the appellant's living circumstances would be. She would have support and would be able to live safely and these matters had already been covered earlier in the decision to a large extent.
31. By way of reply, Mr Georget argued, with respect to Ms Everett's contention that the judge was entitled to find the appellant's fears as to the appellant's husband's family to be speculative, that she had given evidence as to why they were powerful and why she feared them. With regard to the issue of her ex-husband not wanting to have anything to do with her, she had wanted contact with the children and he had said what was recorded, so that was at the point when she was staying in the United Kingdom and he was returning to Nepal and not when she was back in Nepal. Also, her fear was mainly with regard to the ex-husband's mother and not the ex-husband and the threats that she had made. The evidence had not been accepted, so the appellant was either lying or mistaken and the issue of risk turned on it.
32. With regard to ground 2, it was unclear whether the judge had properly considered faith-based risk for the appellant as a woman. The evidence was slightly more nuanced but there was enough to show that she would carry out risky activities. This needed to be considered by the judge and the HJ (Iran) approach was required. The judge had not considered why the appellant would be discreet. The appeal should be allowed.

33. I reserved my decision.
34. I consider first the judge's findings with regard to the claimed risk on return from the appellant's family. The risk is said to be essentially from the appellant's ex-husband's mother rather than the ex-husband though any potential risk from him required also to be considered. The appellant's evidence in this regard was that her mother-in-law had told her that she did not come to her house, i.e. the mother-in-law's, and if she came there anything could happen to her. She had been told not to step in her house, not only in her house but in the area and said if she did that anything could happen and she had threatened her in that way. The appellant's evidence was also that she had not had any contact with anyone in Nepal since she left. In her witness statement she said she was scared that if she returned to Nepal her husband's family could employ a person to harm her or even kill her. It appears that the appellant's husband's family live in Jhapa, he has two younger brothers and his mother. One brother teaches, the other does nothing and stays at home and the mother is a housewife. It is also the case that her ex-husband does not work. The judge noted that the appellant had said he wanted nothing to do with her, though, as Mr Georget pointed out, this was at the point when she was staying in the United Kingdom and he was returning to Nepal. She said in her evidence that he keeps coming and going to Kathmandu and keeps informants there and though he lives in Jhapa he knows a lot of information in Kathmandu. The judge bore in mind that the appellant's husband has had no contact with her for more than six years and that she had not demonstrated that he had influence throughout Nepal. As a consequence, she did not consider that the appellant's husband or his family have the means or ability to find her if she were returned to Kathmandu.
35. I consider that it was open to the judge to find that the fear that the appellant's husband's family could employ a person to harm her or kill her was speculation. There had been no threats made by her husband, who lives well away from Kathmandu, though her evidence was that he visits there. He had, however, said that he wanted nothing to do with her, albeit that was in the context of her wanting access to the children when he was leaving the United Kingdom, which is not without relevance to his ongoing views towards her as I consider the judge was entitled to find. There had been no contact with her husband or his family for over six years and there is no indication that the threats had been repeated. It was, in my view, fully open to the judge also to find that the appellant had not demonstrated that her husband has influence throughout Nepal. The fact that she had been found to be credible on a number of points does not require that she had to be found credible on every issue, and in the absence of supporting evidence on this point the judge was entitled not to accept it. As a consequence, I consider that it was properly open to the judge to find as she did that the appellant was not at risk of violence from her husband or his family on return.

36. As regards risk as a practising Christian, the judge noted the appellant's evidence that she was able to practise her religion freely in Nepal. She would continue to practise Christianity in the same way that she did in the United Kingdom. She said that she practises her faith openly. She was asked whether it was important to her to spread her faith to others and she said yes because she believed that if she got a good life she thought others also should get a good life. When she was asked in what way she intended to spread her faith in the future she said that after she kept on going to church after a long time in Nepali services, if pastors gave her some responsibility she would try to fulfil them honestly and that was what her intentions were. She was asked why she had not tried to convert anyone else to Christianity and said once she met people or friends she explained the importance of Christianity and she read the Bible for them and helped to distribute leaflets or pamphlets and that was how she was trying to do that.
37. The judge considered that the appellant had not engaged in proselytising behaviour in the United Kingdom and that there was no indication that she would do so on return to Nepal, noting that she does not have a leadership position within the church. The judge, in my view, was entitled to attach weight to the appellant's answer to question 249 when she was asked whether she had ever tried to convert someone else to Christianity and she said she had not actually done that but whenever she met friends she told them her testimonies. There was no indication that she would intend to do anything beyond that on return to Nepal, and I consider that it was open to the judge to find that she had not engaged in proselytising behaviour in the United Kingdom and there was no indication that she would do so on return to Nepal. Her answer to question 252 is of significance in this regard. Likewise, with regard to the answer to question 309 and explaining the importance of Christianity when she meets people or friends and distributing leaflets or pamphlets, this, in my view, does not go beyond what the judge found to be the case. It was also relevant to bear in mind that the Reverend Tamang converted to Christianity from Buddhism and is still able to return to Kathmandu to visit his parents and visit the church there and also that there is in the London Family Centre which the appellant attends in the United Kingdom a church community in Kathmandu where there are practising Christians. Though the judge did not refer to the background evidence referred to at paragraph 1(e) of the grounds concerning risk to Christians in Nepal, she was entitled to attach weight to what the appellant herself said in her evidence as to her ability to practise her religion freely in Nepal. Accordingly, I find no error of law in that respect either. In light of the judge's proper findings as to how the appellant practises her religion in the United Kingdom and would in Nepal, I consider that it was further open to her to find that she would not need to practise her religion discreetly. The background evidence as well as the evidence of the Reverend Tamang was properly taken into account in this regard.

38. As regards sufficiency of protection and indeed internal relocation, the judge had found that women in Nepal may face discrimination. She bore in mind, however, that the law in Nepal allows for freedom of movement of citizens and for citizens to marry inter-caste and that the Nepal government has no problems with inter-caste marriages. The judge was aware of the fact that there was evidence that the police in Nepal are corrupt and ineffective but did not find that that was to a level such as to preclude a sufficiency of protection to the required standard. Although the analysis in this regard is brief, I consider that it was open to the judge to find as she did with regard to sufficiency of protection.
39. As regards internal relocation, this is interrelated to the findings on risk. It was, as I have found, open to the judge to conclude that the appellant had not shown that her husband or his family had either the power or influence to locate her throughout Nepal. She had had no problems while living in Kathmandu with her husband prior to the journey to the United Kingdom because no-one knew where to find her and it was open to the judge to find that that indicated that she would be able to return anonymously to Kathmandu. As I have found above, it was open to the judge to find that the appellant's husband's family had not been shown to be so powerful that they could find her in Kathmandu. It was relevant to bear in mind that the appellant is educated and ran her own business for five years in Nepal. She had lived in Kathmandu without problems even though she had been outcasted from her family and they did not find her there although she had said they were looking for her. I do consider that the judge in assessing the viability of internal relocation failed to take into account as she should have done the discrimination issues and the health issues of the appellant as part of that overall evaluation as to the reasonableness of internal relocation. This is not, however, in my view a material error of law, given my findings as to the soundness of the judge's conclusions on risk. In short, since risk had not been shown, the need for internal relocation does not arise. Likewise, with regard to humanitarian protection, the findings on risk are sound and therefore determine this issue.
40. The judge gave careful consideration to the medical evidence. Although she applied the guidance in N as opposed that in Paposhvili, there is no material error in that regard. The evidence was set out carefully and thoroughly and properly considered and it clearly falls well short of the high threshold in Article 3 health cases even as now clarified in AM (Zimbabwe). As a consequence, no error of law in this regard has been identified either.
41. The next challenge is that in respect of the findings on very significant obstacles to integration. The judge bore in mind that the appellant would be returned to Nepal where she had lived for the majority of her life, she speaks the relevant languages and had run her own business for five years and has skills which she would be able to employ on her return. She would be able to participate in a church group in Kathmandu. She was not at real

risk of serious harm. The appellant's health problems were borne in mind also. The judge set out her proper findings on the appellant's mental health problems and the health issues experienced and the availability of basic healthcare in Nepal when concluding that the test in this regard was not met. Those findings were open to her.

42. The final issue is that of Article 8 outside the Rules. The judge again gave careful consideration to these issues in the context of the Razgar guidance and of her earlier findings. Again, I find no error of law in this respect. As a consequence, this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

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 her or any member of her 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 5 January 2022

Upper Tribunal Judge Allen