Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04081/2015
AA/04084/2015
AA/04087/2015
AA/04088/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th January 2016	**On 21st January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Mr ES
Mrs RJ
Master MS
Master YS
(ANONYMITY DIRECTION MAINTAINED)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Gaisford, Counsel; Sriharans Solicitors
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge O'Garro dismissing the Appellants' appeals against the Respondent's decision

refusing to grant asylum and to remove them by way of directions pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Although the appeal is jointly brought, I shall refer to the principle Appellant and refer to the Appellants in the singular form.

3. The Appellant appealed against the decision of Judge O'Garro and was granted permission to appeal by First-tier Tribunal Judge Landes. The grounds upon which permission was granted may be summarised as follows:

   (i) It is arguable that the judge erred in failing to consider that the Appellant would be forced to conceal his religious identity as an evangelical Christian priest (as accepted by the Respondent in her Refusal Letter) in order to avoid persecution, contrary to *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31,

   (ii) It is arguable that the judge erred in failing to acknowledge the risk which the Appellant was exposed to by distributing evangelical materials in Pakistan and that the finding that the Appellant would have mitigated the risk had he taken the books to the Church library rather than his home was irrational,

   (iii) It is arguable that the judge erred in failing to apply the relevant Country Guidance of *AK and SK (Christians: risk) Pakistan CG* [2014] UKUT 00569 (IAC),

   (iv) It is arguable that the judge erred in relying on matters not put to the Appellant and erring in relation to the consideration of documentary evidence,

   (v) It is arguable that the judge erred in failing to consider the best interests of the third and fourth Appellant children.

4. I was provided with copies of *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 and *AK and SK (Christians: risk) Pakistan CG* [2014] UKUT 00569 (IAC) by the parties.

Error of Law

5. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

6. In relation to the first ground, it is plain that the judge did err in failing to consider that the Appellant would be forced to conceal his religious identity as an evangelical Christian priest and taught at a Christian school. It was accepted that the Appellant and his family are evangelical Christians. It was also accepted that he assisted in transporting evangelical books around Pakistan to other pastors and evangelists (see paragraph 38 of the Refusal Letter). Although these facts were acknowledged by the judge, §43 of the determination reveals too literal an interpretation and application of the third headnote of *AK and SK*. The third headnote states as follows:

> "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"

7. The judge's determination records that the Appellant is not broadcasting his faith to strangers. Following that reference at §43 there is no mention thereafter of the risk that may emanate from the Appellant's evangelism, solely a consideration of the 25 July 2014 incident. However, this is a matter that requires disposal given the Upper Tribunal stated as follows in *AK and SK* at [223]:

> "We have not drawn a distinction between evangelising and proselytising or preaching, following the approach in *SZ and JM (Christians – FS confirmed) Iran CG* [2008] UKAIT 00082. We consider that no useful purpose would be served and that in any event Muslims would not see any difference between these different activities."

8. The judge is aware that the Appellant has lived in Pakistan as a Christian "save for some element of discrimination" (see §42) however that is in my view insufficient cumulative consideration of the risk he may face on return, particularly in light of *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31. The judge notes herself at §49 that as the only Christian family in the area, the Appellant would need to exercise "utmost caution". Does that form of lifestyle form the basis of something reasonably tolerable to an evangelist? Even if it is contended that the Appellant may live discreetly upon return, as he may have already done in the past, the point is does this discreet self-censorship form a basis of persecution? There are no findings on this crucial issue. Further still, there is no assessment of the Appellant's wish to evangelise. Mr Gaisford submitted it was not disputed that the Appellant continues to practice his faith in the UK and remains evangelical here. In that light, [80] of Lord Rogers' judgment is of relevance by analogy:

> "Another way of pointing to essentially the same basic defect in the approach of the Court of Appeal is to say that a tribunal has no legitimate way of deciding whether an applicant could reasonably be expected to tolerate living discreetly and concealing his homosexuality indefinitely for fear of persecution. Where would the tribunal find the yardstick to measure the level of suffering which a gay man – far less, the particular applicant – would find reasonably tolerable? How would the tribunal measure the equivalent level for a straight man asked to suppress his sexual identity indefinitely? The answer surely is that there is no relevant standard since it is something which no one should have to endure. In practice, of course, where the evidence showed that an applicant had avoided persecutory harm by living discreetly for a number of years before leaving his home country, the tribunal would be tempted to fall into error. The tribunal would be liable to hold that the evidence showed that this applicant, at least, must have found his predicament reasonably tolerable in the past – and so would find it reasonably tolerable if he were returned to his country of nationality. But, in truth,

> that evidence would merely show that the applicant had put up with living discreetly for fear of the potentially dire consequences of living openly."

9. For my part, what also troubled me was that there was no particular evidence, either way, as to how the Appellant would practice his religious beliefs and in what way he would evangelise upon return to Pakistan and whether he would continue to distribute evangelical materials to other pastors and preachers around Pakistan. Consequently, there cannot have been any assessment of that element of risk that he may face. This is obviously a point that needs to be considered in order that the Appellant's appeal fully ventilate all issues of risk on return. I do not accept that this is a matter for a 'fresh claim' as Mr Clarke suggested. The Tribunal is required to administrate justice efficiently and expeditiously. Fresh claims are for fresh evidence or changes in circumstance, not for consideration of old material that the parties overlooked. At any rate, even if the judge disbelieved the incident of 25 July 2014 occurred, the fact remains that the Appellant is an evangelical pastor and the risk of his discovery and the consequences that may result need to be examined. In light of all of the above, I find that ground 1 is made out.

10. In relation to ground 3, although there is a great deal of overlap with ground 1, I find that this ground is also made out, given the above discussion, and as the judge's findings fail to assess the future risk that the Appellant may face, and broadly conflict with [242] of *AK and SK* and which states as follows:

> "… 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."

11. In relation to ground 2, although there is some overlap, concerning the allegation of perversity in relation to the finding that the Appellant would have mitigated the risk had he taken the books to the Church library rather than his home, I find this ground is made out also. I confess I cannot see the distinction between being caught transporting evangelical material to one's home or a Church library. The destination is irrelevant. It is the level of perceived blasphemy of the evangelising material by the Muslim majority that is important. The Appellant's evidence is that the materials were placed in the library when his evangelism was discovered. It is difficult to distinguish the importance of not storing the materials in the Church library when the material itself is not inherent to practicing as a Christian, which according to the objective evidence is generally tolerated, as opposed to evangelism and proselytisation, which is not. Given that the transportation of the materials had been accepted, it is perverse to find that the claim is not credible for the reason of the choice of storage location of the materials.

12. In light of my findings on grounds 1-3, I do not propose to consider the remaining two grounds. I set aside the decision and findings of the judge in their entirety.

Decision

13. The appeal to the Upper Tribunal is allowed.

14. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal, to be heard by a differently constituted bench.

Signed Date

Deputy Upper Tribunal Judge Saini