



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: AA/05374/2015**

Appeal

**AA/05386/2015
AA/05361/2015**

THE IMMIGRATION ACTS

**Heard at Glasgow
On 27th May 2016**

**Decision Promulgated
On 4th July 2016**

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**SHARLUJAR RAJENDRAM
(ANONYMITY DIRECTION NOT MADE)**

First Appellant

**DHARRISNA NAIDO RAJENDRAM
(ANONYMITY DIRECTION NOT MADE)**

Second Appellant

**RAMZAN BABA BIN ABDULLAH
(ANONYMITY DIRECTION NOT MADE)**

Third Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Ruddy, solicitor, of Jain, Neil & Ruddy, solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting
Officer.

DECISION AND REASONS

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of these Appellants when their appeals were decided before the First-tier. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by all three Appellants against the decision of First-tier Tribunal Judge McGavin promulgated on 6 November 2016, which dismissed the Appellants' appeals on all grounds.

Background

3. The First Appellant was born on 6 September 1986. The second Appellant was born on 15 July 1988. The third Appellant was born on 20 March 1954. The third appellant is the father of the first and second appellants. All three appellants are nationals of Malaysia.

4. On 10 March 2015 the Secretary of State refused each Appellants' application for asylum.

The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge McGavin ("the Judge") dismissed the appeals against the Respondent's decisions.

6. Grounds of appeal were lodged and, on 2 December 2015, Judge Davies gave permission to appeal stating inter alia

"2. I have serious concerns that a Judge, who heard an appeal on 5th June 2015 and prepared his decision on the 4th November 2015 (promulgated on the 6th November 2015) could be in a position to give full and proper consideration to the evidence that was put before him. It could not have been fresh in his mind.

"3. The Judge has given no explanation for the delay in preparing his decision.

"4. The grounds and decision do disclose an arguable error of law on the basis of my concerns expressed above. "

The Hearing

7. (a) Mr Ruddy, solicitor for all three appellants, moved the grounds of appeal. He conceded that, although there is an emphasis on the question of delay, the appeals could not succeed on the question of delay alone. He

told us that the issue of delay is not an independent ground of appeal. He told us that the real thrust of this appeal is (it is argued) that the Judge has not taken account of material passages of evidence and, as a result, her assessment of risk to the appellants in Malaysia is flawed.

(b) He took us to [21] of the decision and told us the language used there indicates that the Judge proceeded on assumptions rather than on the evidence placed before her. He reminded us that at [17] the Judge records that the account given by all three appellants of distressing incidents in 2003, 2010 and 2014 is accepted by the respondent. Against that background, Mr Ruddy said that the Judge's finding that she could not place reliance on the evidence of the appellants was unsafe, and her finding that the agent of persecution, Imam Khalid, was a man who does not have far-reaching power connections to the immigration authorities was without foundation. He told us that "Jakim" (of whom, it is said, Imam Khalid is a director) is a powerful, unscrupulous branch of the Malaysian state which targets all three of the appellants and has ambitions to oppress Christians.

(c) Mr Ruddy argued that the Judge's findings between [17] and [45] of the decision are unsafe and should not stand because of the approach that the Judge took to each appellant's evidence; he told us that the Judge took inadequate account of the respondent's acceptance of the overall history given by the appellants, and he argued because the background material supports the appellants' account. He urged us to set the decision aside.

8. Mr Matthews, for the respondent, accepted that the appellants have all suffered in incidents in 2003, 2010 and 2014. He told us that the Judge considered each strand of evidence before coming to the sustainable conclusion that there was no reliable evidence of a connection between Imam Khalid and "Jakim". He reminded us that none of the appellants made a serious attempt to find protection within Malaysia. He told us that the Judge's decision does not contain any errors, material or otherwise. Mr Matthews argued that the Judge's decision is a carefully worded decision which accurately reflects the content and quality of the evidence before the Judge. He argued that the appeal is, in reality, simply a disagreement with sustainable conclusions which were open to the Judge to reach. He urged us to dismiss the appeal and allow the decision to stand.

Analysis

9. We are grateful to Mr Ruddy for clarifying at the outset that the delay in writing the decision is not a freestanding ground of appeal and that the focus in this case is the manner in which the Judge dealt with the evidence placed before her. It is common ground that the appellants were victims of assaults and harassment in 2003, 2010, & 2014. The focus in all three cases is almost entirely on the third appellant. All three appellants claim that they have a well-founded fear of persecution in Malaysia because of

their religious belief, and that the agents of persecution are a man known as Imam Khalid and an organisation called Jakim. The appellants claim that Imam Khalid has significant power because he is a director of a government backed organisation known as Jakim, and that Jakim has a mandate to persecute Christians, particularly the appellants.

10. Before dealing specifically with the decision, it is helpful to look at the evidence which was before the Judge. The three incidents about which the appellants complain occurred. We consider what evidence there was of Imam Khalid's role, and Jakim's role, in those incidents. At paragraph 15 of the grounds of appeal it is said that there are 86 pages of background materials which provide crucial evidence ignored by the Judge. We asked Mr Ruddy to take us to the specific passages which identify the claimed agents of persecution. He was unable to do so.

11. The background materials tell us that Malaysia has a majority Muslim population in most of its states and an economically-powerful Chinese community. Consisting of two regions separated by 640 miles of the South China Sea, Malaysia is a federation of 13 states and three federal territories. Ethnic Malays comprise about 60% of the population. Chinese constitute around 26%; Indians and indigenous peoples make up the rest. Since 1971 Malays have benefited from positive discrimination in business, education and the civil service, but ethnic Chinese continue to hold economic power and are the wealthiest community. The Malays remain the dominant group in politics while the Indians are among the poorest.

12. There has been a proposal to provide Jakim, a Muslim organisation in Malaysia, with seconded police officers to assist in the prosecution of Shari'ah criminal cases. Jakim and the Shari'ah justice system in Malaysia only have jurisdiction over adherents to Islam. Jakim is a non-government Sunni Muslim organisation active in Malaysia.

13. There was a five-month delay in preparing the determination. That is disappointing, but a careful reading of the determination indicates that the passage of time did nothing to diminish the Judge's ability to assess the evidence in this case. At [24] the Judge records verbatim a passage of the third appellant's evidence in chief. No challenge is taken to the Judge's recollection of the evidence. No overt argument is made in these appeals that the passage of time contaminated the quality of decision-making.

14. The determinative question in these appeals is the approach that the Judge took to the evidence relating to the claimed agents of persecution. At [6] and [7] the Judge accurately records the evidence that was placed before her. Between [9] and [11] the Judge accurately sets out the fundamentals of the law that she is to apply. At [17] the Judge records that the unpleasant incidents in 2003, 2010 & 2014 occurred. The fulcrum of the decision is contained in the Judge's succinct finding at [19].

15. At [19] the Judge says

“Having considered all of the evidence in the round, I find that there is no credible evidence that the person who the appellants, and in particular, the third appellant, claim to fear, Imam Khalid, is part of the Malaysian authorities, or that he preaches in a mosque which is “related to the government” (R3.D4), creating a risk for all three appellants which is, effectively, from the Malaysian authorities.....”

16. To succeed, the appellants would have to establish that Imam Khalid is linked to the Malaysian authorities or preaches in a mosque sponsored by the Malaysian authorities. A fair reading of the Judge’s detailed decision (which quotes passages of oral evidence verbatim) makes it clear that after considering each strand of evidence the Judge could not find that the appellants’ evidence properly engaged with those two crucial matters.

17. In the hearing before us, we asked the appellants’ solicitor to take us to the documentary evidence which identified Imam Khalid, linked him to Jakim, and then linked Jakim to the Malaysian authorities. He was entirely unable to do so. We asked the appellants’ solicitor to take us to the evidence that Christians are targeted by the Malaysian authorities. He response was only to tell us that Islam is the official religion of Malaysia. A constitution which enshrines one recognised religion does not equate to state-sponsored persecution of members of other religions.

18. The appellants argue that the Judge should have made two crucial findings of fact

(i) the appellants are persecuted by Imam Khalid, and

(ii) the Malaysian authorities condone that persecution.

The Judge did not, and could not, make those two findings of fact, because there was no reliable evidence placed before her to lay the foundations for such findings.

19. At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that *“Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned”*. In the same paragraph *“Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned”*.

20. The findings at [17] to [45] are findings which were well within the range of findings which could competently be made by the Judge on the evidence placed before her. It is not an arguable error of law for a Judge to give less weight or greater weight to a factor, unless irrationality is

alleged. Nor is it an error of law for the Judge to fail to deal with every factual issue under argument. Disagreement with the Judge's factual conclusions, her appraisal of the evidence or assessment of credibility, or her evaluation of risk does not give rise to an error of law. Irrationality has a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible.

21. The Judge carefully considered each strand of evidence placed before her. She carefully records the submissions that were made and then, after correctly directing herself in law, makes reasoned findings of fact before reaching conclusions which were manifestly open to her to reach.

22. We find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. No errors of law have been established. The Judge's decision stands.

DECISION

24. The appeals are dismissed. The decision of the First-tier Tribunal stands.

Signed

Date 31 May 2016

Deputy Upper Tribunal Judge Doyle