Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/03654/2016**

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U/03656/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th June 2017	**On 28th June 2017**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

ARSEN BARTIA (1)
NINO EJIBIA (2)
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Karbani, of Counsel, instructed by Turpin Miller Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The first appellant is a citizen of Georgia born in January 1972 and the second appellant is his wife, who is also a citizen of Georgia, who was born in March 1973. They entered the UK illegally in February 2009. On 2nd July 2015 they applied to remain in the UK outside of the

Immigration Rules due to their membership of the London Church of Jesus Christ and on the basis that return would be in contravention of the UK's obligations under Article 9 of the European Convention on Human Rights. This application was refused on 22nd January 2016. Their appeal against the decision was dismissed by First-tier Tribunal Judge S J Pacey in a determination promulgated on the 13th December 2016.

2. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in failing to address how the appellants would be able to continue their religious practices if removed. It was further arguable that the First-tier Tribunal erred in law in refusing to admit a previous decision which was relevant to the issue in accordance with AS & AA (Somalia) [2006] UKAIT 5. It is also arguable that the First-tier Tribunal did not apply the law properly as set out in Hamat (Article 9 – freedom of religion) [2016] UKUT 00286 or properly consider background evidence about discrimination against minority religions in Georgia.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the appellant's grounds and in oral submission by Ms Karbani the following is argued for the appellant.

5. It is contend that firstly the applicant erred in law in not applying Hamat (Article 9 – freedom of religion) [2016] UKUT 286 because the judge failed to apply Article 9 in a free standing way without a requirement of exceptionality, and also by applying s.117B of the Nationality, Immigration and Asylum Act 2002 and not making it clear that information was needed on English language and finances. The evidence before the First-tier Tribunal was that the particular church, London Church of Jesus Christ (henceforth the LCJC), requires regular congregational worship. The judge did not make a finding as to whether he accepted that communal prayer was central to the LCJC, and how the appellants would continue their religious practices if removed and whether any interference would be proportionate. The appellants would not see their pastor again if they were removed as they would not be allowed to visit him due to their immigration records and he could not return to Georgia for asylum reasons. There was also a failure to look at the way the religion operated now as opposed to the past as it was a young and developing religion. The evidence was that separated from the pastor the appellants would lose their religion.

6. Secondly it is argued by the appellant that the judge failed to considered material facts relevant to Articles 8 and 9 ECHR. It is argued that the First-tier Tribunal did not consider evidence from the appellants that separation from their pastor and deputy had detrimentally affected the practice of their faith, and incidentally that the second appellant is the sister of the pastor. The First-tier Tribunal also referred to the LCJC

as a cult when it was clear from letters that they are registered charity. It was not for the state or Tribunal to define whether it was a religion, see decision of the European Court of Human Rights in Genov v Bulgaria (application no 40524/08), where it was held that it was wrong for the Bulgarian authorities to refuse to register a new religious association. The evidence was also that the LCJC was largely stable with few joining or leaving, and that there was no public interest in preventing large numbers of people coming to the UK to join it as it was not a growing religion. There was also a failure to acknowledge that the group, although now in part British citizens by naturalisation, mostly emigrated with the pastor to this country, and to give weight to the rights of the community as a whole as well as the appellants.

7. Thirdly it is argued by the appellant that the First-tier Tribunal did not take into consideration background evidence regarding discrimination in Georgia. The LCJC does not regard itself as a Christian church although it has some common ground with Christianity, and the First-tier Tribunal failed to look properly at evidence of discrimination against minority religions in Georgia, and wrongly discounted it as the targets of such discrimination had been Jehovah's witnesses and Islamic groups in the background reports. There was evidence that one Georgian asylum claim had been successful from the LCJC. The decision of Mr DR Garratt, Adjudicator, promulgated on 24th June 2004 allowing an asylum appeal on behalf of Miss L K is appended at page 204 of the appellant's First-tier Tribunal bundle. In this case there was evidence, and a finding at paragraph 28 of the decision, that non-traditional faiths were not allowed to practice their religion and that the appellant had a well founded fear of persecution,

8. Fourthly it is said that the First-tier Tribunal erred in law by refusing to permit the appellant to rely upon previous determinations in accordance with AS and AA Somalia [2006] UKAIT 52.

9. In a Rule 24 notice and in oral submissions by Mr Nath the respondent argues that in fact the First-tier Tribunal did consider the problems the appellant may have on return to Georgia, including practising their faith and how they coped when their leader was not present. It was an inherent contradiction in the appellants' case that they required to be in close regular communion with their pastor but that they had followed that same faith for a number of years after he left Georgia, and for a period of time whilst the first appellant was in prison in the UK. The First-tier Tribunal also looked at the relevant background information which did not support there being any Article 3 ECHR risk, and applied the decision in Hamat. It was open lawfully for the First-tier Tribunal not to allow reliance upon the unreported decisions, which in any case were related to Lithuania and Ethiopia, and given that the grounds give no reasoning as to how they would have materially affected the outcome of the decision had they been admitted.

10. At the end of the hearing I informed the parties that I did not find that the First-tier Tribunal had erred in law for the reasons argued but that I would put my decision in writing. These as are now set out below.

Conclusions – Error of Law

11. With respect to Ground 4 the appellant has not provided any explanation as to why the First-tier Tribunal erred in law in misapplying the Practice Direction at 11.2(c) in refusing to admit the unreported decisions as set out at paragraph 10 of the decision, or why if admitted these decisions would have material affected the outcome of the appeal particularly given that in fact note was taken of the one case in which a Georgian national following the LCJC faith was successful in an asylum appeal. I do not therefore find that this was a material error.

12. The First-tier Tribunal does consider whether the LCJC should be seen as a cult rather than a religion but accepts in any case that Article 9 ECHR covers a belief and not just a religion, see paragraph 12 of the decision, and consideration is given to the appeal under Articles 8 and 9 outside of the Immigration Rules at paragraph 21 -28 of the decision.

13. S.117B of the Nationality, Immigration and Asylum Act 2002 is only relevant to Article 8 ECHR proportionality considerations. There is no evidence that this was wrongly applied to the Article 9 ECHR consideration at paragraph 24 of the decision, as this clearly is a conclusion to the Article 8 ECHR consideration in this paragraph. There is mistaken reference to s.117B of the 2002 Act at paragraph 27 of the decision, when Article 9 ECHR was being considered, however this does not constitute a material error in law considering that the issues (the importance of immigration control, and evidence relating to finance and ability in English language) are all ones which were entitled to be given weight in a Razgar analysis which is correctly found to be relevant to assessing the proportionality of a contended Article 9, as well as an Article 8, violation.

14. The consideration of the Article 9 ECHR appeal outside of the Immigration Rules is informed by Hamat at paragraphs 26 -28 of the decision, and also reveals no legal errors whatsoever. In the assessment cogent reasons are given as to why any interference with the practice of faith of the appellants and their religious community is proportionate with reference to the country of origin background materials showing no evidence of penalties or discrimination to minority religions, and in light of the other European Court of Human Rights cases drawn to the First-tier Tribunal's attention.

15. The First-tier Tribunal clearly records, at paragraph 3 of the decision, the key aspects of the case as argued for in the grounds by the

appellants: the reliance on Articles 8 and 9 ECHR, and the importance of remaining with the LCJC congregation, which is seen by the appellants as a core aspect of their religion, and the argued for likelihood of discrimination in Georgia. It is clear that the First-tier Tribunal understood the case put to it by the appellants.

16. Acceptance is given by the First-tier Tribunal to the importance that LCJC gives to leadership from the pastor and regular and frequent congregational worship, see paragraph 14 of the decision. However, there is not an acceptance that these can be seen as core, vital, aspects of this religion as the appellants both survived for many years without the pastor and their group worship between 2003/2004 and 2009 when they entered the UK, as the First-tier Tribunal finds at paragraphs 11 and 17, and this is inconsistent with the appellants' contention that separation from the congregation and pastor would "suffocate" their faith. Further the First-tier Tribunal finds that they are not assisted by the lack of any external objective evidence about the church and by a lack of relevant detail in the church letters, as noted at paragraph 13 of the decision.

17. Consideration was given to the background country of origin evidence at paragraphs 18 -20. The conclusion that it did not evidence a contention of discrimination generally against minority religions I find to be entirely rational in light of the content of that evidence. This country of origin evidence is specifically referred to when considering Article 9 ECHR at paragraph 27 of the decision. It is accepted that there was one grant of asylum to a Georgian national with a LCJC background at paragraph 14 of the decision, but as this decision was made in 2004, and therefore 12 years prior to the date of decision for these appellants, I do not find that it was a material error not to consider the detail of that decision and the evidence on which it relied, particularly given the lapse of time and the fact that these appellants do not contend that they face any persecutory risks if returned to Georgia.

18. Consideration was given by the First-tier Tribunal to the fact that the appellants contribute to their religious community, and thus to this community's Article 9 ECHR rights at paragraph 26 of the decision, in the context of the proportionality of the appellants' removal. It was noted however that there was no evidence that the community suffered when the first appellant was imprisoned for a few months, and thus was not part of the LCJC, and once again I find that this aspect has been dealt with in a lawful and proportionate fashion.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I uphold the decision of the First-tier Tribunal dismissing the appeal.

Signed: Fiona Lindsley Date: 27th June 2017
Upper Tribunal Judge Lindsley