Upper Tribunal
(Immigration and Asylum Chamber)

Appeal numbers: HU/24118/2018
& HU/24121/2018
& HU/24124/2018
& HU/24129/2018

THE IMMIGRATION ACTS

Heard at:	Field House	Decision & Reason promulgated
On:	27 November 2019	10 December 2019

Before

Upper Tribunal Judge Gill

Between

Mrs J K
Mr S S B
Master M S B
Master N S B
(ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants. No report of these proceedings shall directly or indirectly identify them. This direction applies to both the appellants and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because two of the appellants are children. The parties at liberty to apply to discharge this order, with reasons.

Representation:
For the appellants: Mr D Bazini, of Counsel, instructed by E2W (UK) Ltd.
For the respondent: Mr L Tarlow, Senior Presenting Officer.

DECISION AND DIRECTIONS

1. The appellants are nationals of India, born (respectively) on 22 October 1974, 7 October 1968, 31 January 2007 and 21 July 2010. The first appellant is the wife of the second appellant. The thirds and fourth appellants are their minor sons. The appellants appeal against the decision of Judge of the First-tier Tribunal S J Clarke who (in a determination promulgated on 9 July 2019 following a hearing on 25 June 2019) dismissed their appeals against the decision of the respondent of 14 November 2018 to refuse the private and family life claims of 29 September 2017.

2. As the judge said at para 2 of her decision, the thrust of the appellants' Article 8 claims was that they are Christian converts, they have settled in the United Kingdom and the children would be adversely affected if required to leave the United Kingdom. As at the date of the judge's decision, the children had not lived in the United Kingdom continuously for a period of at least 7 years.

3. The first appellant arrived in the United Kingdom on 4 November 2011 with entry clearance as a Tier 4 (General) Student. The second, third and fourth appellants arrived on 18 December 2012 with entry clearance as the first appellant's dependants. On arrival, the appellants were aged (respectively) 36 years, 44 years, 5 (nearly 6) years and 2 1/2 years old.

4. All the appellants had their leave extended on the same basis until 28 July 2019. However, the first applicant's leave was subsequently curtailed to expire on 2 October 2017 because her employer had terminated her employment on account of the fact that she could not meet the standard required of her in the IELTS examination. She had not scored level 7 as was required by the General Nursing and Midwifery Council. The other appellants had their leave as dependants curtailed in line.

The grounds

5. The grounds advanced on the appellants' behalf, set out at length in the written grounds dated 22 July 2019 and reformulated by Mr Bazini in his hand-written note prepared at my request and submitted at the commencement of the hearing, were essentially as follows:

   i) (Ground 1) (para 5 of the reformulated grounds) The judge's consideration (at paras 8-13 of her decision) of the background material before her relating to the difficulties experienced by Christians in India failed to take into account more recent evidence which showed an escalation of incidents and which also showed that the situation was worse for Christian converts.

   ii) (Ground 2) (para 2 of the reformulated grounds) The judge misapprehended the evidence when she said, at para 15 of her decision, that, upon return to India, the appellants could live at first with the first appellant's mother who was also a practising

Christian, albeit in cramped conditions. To the contrary, the evidence before the judge was that that they could not live with the first appellant's mother.

iii) (Ground 3) (para 4 of the reformulated grounds) The judge misapprehended the evidence when she said, at para 15 of her decision, that she found that, if the appellants preferred, they could find alternative accommodation to reside in when they first arrive in the India because there was no evidence to suggest that they are completely without funds. To the contrary, the second appellant had said in his witness statement (at K2 of the appellants' bundles) that "*we cannot afford English school in India without any job and saving*".

iv) (Ground 4) (para 3 of the reformulated grounds) The judge had erred in her consideration of the expert report from Mr Peter Horrocks, an independent social worker (hereafter the "*expert*"). At para 16, the judge had said that the expert had "*failed to consider the impact upon [the minor appellants] of re-uniting with family members such as grandparents and cousins in their own country."* However, given that the judge had misapprehended the evidence when she said that the appellants could at first live with the first appellant's mother and (in Mr Bazini's submission) that the judge had not otherwise assessed the expert's report, the judge had effectively failed to consider the expert's report concerning the best interests of the children and the impact upon them of leaving the United Kingdom and going to India.

v) (Ground 5) (para 6 of the reformulated grounds) The judge had failed to consider the wishes of the minor appellants which they had expressed in their letters at A7-A13 of the appellant's bundles, contrary to the approach required pursuant to the judgment of the Supreme Court in ZH (Tanzania) [2011] UKSC 4.

6. In the event that I decided that the judge had materially erred in law, Mr Bazini informed me that, on 18 December 2019, the minor appellants will have lived in the United Kingdom continuously for a period of at least 7 years. He submitted that this would not constitute a "*new matter*" requiring the respondent's consent pursuant to section 85(6) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") and that, in any event, the Upper Tribunal would be bound to apply section 117B(6) of the 2002 Act.

7. Although I have concluded, having considered the grounds and the submissions, that the judge did not materially err in law, I should record that Mr Tarlow informed me that, in the event that I decided to set aside the judge's decision, he consented to the Upper Tribunal considering whether the minor appellants satisfy s.117B(6) even if this did constitute "*new matter*".

The judge's decision

8. The judge found that the appellants had not shown that there were very significant obstacles to their reintegration in India. At paras 8-13 of her decision, she summarised background material relating to the situation of Christians in India and concluded, at para 13, that "*I do not find that there are very significant difficulties per se for being converted Christians".* Paras 8-13 read:

> "8. The Appellants have not shown that there are very significant obstacles to their integration to India. I was referred to the Home Office Country Guidance; India: Religious Minorities May 2018 which reads at paragraph 2.3.3 there is discrimination against Muslims and Christians for the officially reserved jobs or school placements. It reads at 2.3.4 how there have been incidents of public officials including politicians instigating communal

violence against religious minorities and isolated reports of Christians facing arrests, fines, beatings, extortion, imprisonment and restrictions on public expressions of their faith.

9. It goes on to read at 2.3.8 how Christians enjoy religious freedom in much of India, and are able to express their faith freely and openly. However, they face some abuses by Hindu nationalists, including the interruption of church services or worship; vandalism; physical violence; and threats and harassment, most typically accusing Christians of forcibly converting Hindus.

10. The report refers to the USCIRF Annual Reports 2016 and 2017 which read that the groups most frequently targeted were Muslims and Christians and Muslims are 14 per cent and Christians 2 per cent of the population and India in 2017 was ranked 11 worldwide and now 10 worldwide on the World Watch rankings.

11. At 6.1.1. it refers to the report prepared by the Church in Chains, and *[sic]* independent charity supporting Christians worldwide, which noted in India, Christians face persecution from state authorities in the form of arrests, fines, beatings and imprisonment as well as prohibitions on meetings and public expressions of faith. The police rarely arrested perpetrators of attacks against Christians but it also cited examples of the police providing state protection. It goes on to note that Christians enjoy freedom in much of India, but in some areas they face persecution. In recent years with the rise of Hindu nationalism religious intolerance has grown, with attacks on people and property, and false charges of forcible conversion.

12. There is also reference to the USCIRF Annual Report 2017 repeating the above and including anecdotal evidence. When looking at the figures provided by The Church in Chains and the Evangelical Fellowship of India, even if they consider the number of incidents to be far greater, the figures given are low, with 410 reported for the first half of 2017 and 351.

13. Given India has a population of some 1.3 billion, and Christians account for 1 per cent, it is clear that the numbers cited are small. I do not find that there are very significant difficulties per se for being converted Christians."

9. Having noted, at para 14, that the first appellant was a practising Christian in India "*albeit she said somewhat clandestinely*" and that it appeared that the Christian college and hospital where she worked employed all denominations, the judge said, at para 15:

> "15. The first Appellant's mother is Christian by convert, and lives in the same building as the brother, but is described as self-sufficient, although the brother's children have been told to distance themselves from her. I find there has been some embellishment here, but in any event, the Appellant and family can at first live with her mother albeit in somewhat cramped surroundings before they find their own home, and this would benefit the children and the grandmother to resume their relationship again, and being practising Christians the grandmother can assist in continuing the integration of the children. If they prefer, I find they can find alternative accommodation to reside in when they first arrive in their country because there is no evidence to suggest they are completely without funds."

10. The judge referred specifically to the expert's report at paras 16, 17 and 20. At para 18, she said, inter alia, that *"I have read carefully the description of the full and active*

lives both boys have in the UK, …", a phrase which Mr Tarlow relied upon in his submission that this phrase showed that the judge had considered the expert's report as a whole as well as the supporting letters.

11. Paras 16 - 24 of the judge's decision read:

> "16. The expert evidence in the report by the social worker instructed by the Appellants called Mr Horrocks is lacking because this area was never explored at all. He focused on the lives of the children in the UK, and failed to consider the impact upon them of re-uniting with family members such as grandparents and cousins in their own country.
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> 17. The report focussed *[sic]* upon the impact of the children by being separated from the first Appellant when she moved to the UK, and how they should not have another disruption in their lives. But the whole family unit would be relocating rather than separation from a parent.
>
> 18. I have read carefully the description of the full and active lives both boys have in the UK, and it is clear that they have formed relationships outside the family, but also in their Church, and also their activities which are many including scouts/cubs, sports, and hobbies, and friends. However, should the boys return to India with their parents, they have similar opportunities to continue their sports and hobbies, and to become part of a new Church and its family in India, and whilst there would be some disruption to them, they would be doing fully with the support of both parents, and with the additional support of a grandmother as well. Based on the evidence of how well the boys are faring in the UK, I find the Appellant parents are particularly diligent in providing for the welfare of the children at all levels and would continue so to do in India.
>
> 19. I was told that they would not enjoy the same standard of education, but I find that the boys can attend school, and if the first Appellant was paying for private nursery in India where he was taught in English, there remains a possibility of a similar private education continuing. However, these are young children who spoke Punjabi, and have some familiarity with the language, and their father occasionally speaks to them in it, and I find that they can learn again the language and how to read and write as well. Whilst there may well be a setback in their education, this is not permanent, and with proper support and encouragement they can learn at school in India.
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> 20. The expert himself noted how the parents are very capable of meeting all aspects of the boys' needs and the practical and emotional care provided is of a very high quality, and considered it a very close and living *[sic]* family unit with the priorities of the parents being focussed on the best interests of their sons. He emphasised how a notable aspect of this assessment was the extent of the support for the family in the local community, but as I mentioned earlier, having failed to consider the family and potential new community through Church in India, the expert has not fully assessed the impact and ability on the children by closing his mind to what opportunities lie ahead for them in India.
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> 21. The best interests of the children are to remain with their parents in a family unit and whilst remaining in the UK where they have the school, Church and friends would provide the least disruption, they would be returning to India with their parents who have their best interests at heart.
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> 22. The parents have shown resilience and fortitude relocating to the UK, and I find that they will find equal strength finding a new Church to practise in,

and form a new community with, and this will assist greatly to the integration of the family into India. I find the parents will ensure their children are properly looked after upon return to their country, in much the same way they have done to date.

23. The parents have both worked in the UK, and the second Appellant was once a professional singer in India, but I do not accept his estimate of requiring £50,000 to start up again in his country. In any event, he is working as a kitchen assistant and I find that there are employment options for him in this field. The first Appellant has made no attempt to find out what her employment options are, and given she bears the burden of proof I find she has not discharged the burden that she has not *[sic]* employment options in her chosen field or nursing, or caring, and in any event, she can work in less skilful work if she so chooses.

24. The Appellants have been in the UK since 2011 and 2012, and the children are not qualifying children, having not resided in the UK for over 7 years. The first Appellant speaks English well, the second Appellant has limited ability to talk basis *[sic]* sentences about food and what the children can do, but I do not find he would be able to have any more significant conversation with them in English, and a mix of Punjabi and English is most likely spoken at home when needed. The Appellants have worked, and paid taxes, and the application was made before the curtailment of the leave to remain. However, having only had Tier 4 or Tier 2 leave is only precarious, and there can be *[sic]* expectation of long term settlement. Drawing the strands together, and noting both the positive and negative features of the case, I find that the public interest lies in the removal of the family, who have no particular features requiring them to remain in the UK. Whilst there will be some setbacks to the boys, these can be overcome, given the supporting parents they have, and noting neither is a qualifying child, but also how they have resided in the UK for 6 years, I conclude that it is proportionate for them to be removed as a family unit and I dismiss the appeal."

Assessment

12. In relation to ground 1, Mr Bazini took me through the background material that was before the judge. The thrust of his submissions was that the background material at Annex C of the appellants' bundle was more recent than the evidence mentioned by the judge at paras 8-13 of her decision; that the more recent evidence showed that there has been an escalation of attacks against Christians, in that, it referred to attacks in the "*thousands*" whereas the judge relied upon older material stating that there had been 410 attacks reported in the first half of 2017 and therefore, Mr Bazini submitted, the situation was far more serious than the judge had considered; and, further, that Christian converts are at greater risk.

13. I have carefully considered all of the material relied upon by Mr Bazini and paras 8-13 of the judge's decision.

14. It is correct to say that the document at page C of the appellants' bundle refers to there having been "*thousands of attacks taking place every year"*, whereas the judge referred to 410 attacks having been reported in the first half of 2017.

15. However, there was no evidence before the judge about the reliability of the sources of the documents at Annex C and, importantly, of the data mentioned in the

documents. The data was not consistent. For example, in relation to the size of the Christian population in India:

i) the document at page C, the date of posting of which is not clear and which is from "*Open Doors*", states that there are 64 million Christians living in India out of a total population of 1.3 billion;

whereas

ii) the document at C15, the date of which is (again) not clear and which is from "*The Voice of the Martyrs*", states that there are an estimated 27 million Christians who live in India and that this represents only 2.1 per cent of the population.

16. If the figure of 27 million Christians equates to 2.1 per cent of the total population of India, it follows that the total population according to "*The Voice of the Martyrs*" at the time the article in question was posted was 1.28 billion, which is similar to the estimate of 1.3 billion for the total population according to the "*Open Doors*" article at page C. It is therefore surprising that the two articles give vastly different estimates of the number of Christians living in India, with one stating that there are 64 million Christians and the other stating that there are 27 million Christians. In addition to this apparent inconsistency rendering it difficult to place reliance on the content of the articles, any proper evaluation of the two articles on this particular point is rendered more difficult by reason of the fact that it is not possible to say when these two documents were posted on the internet

17. More importantly, in relation to the number of attacks, the undated "*Open Doors*" article at page C refers to there having been "*thousands of attacks taking place every year*". However:

i) the article at page C4, which is dated 3 August 2019 and is entitled "*Pastors knocked out, Christians killed as persecution spikes dramatically in India*" states, referring to attacks in 2019, that, according to the Evangelical Fellowship of India, a total of 77 incidents were documented against Christians between January and February; and

ii) the document at page C28, which is from *"Open Doors"* and is dated 23 May 2019, states that "*Open Doors' local partners"* recorded 216 violent incidents in India in the first quarter of 2019.

18. In view of these difficulties, it would not be surprising if the judge made a conscious decision to summarise the situation for Christians in India in broad terms but quote specifically from the material that she mentioned at paras 8-12 of her decision. I do not accept that the mere fact that she did not refer *in terms* to the material in Annex C of the appellants' bundles means that she did not take account of the evidence, given that it is clear that the judge recognised and took on board the fact that religious intolerance and Hindu nationalism had grown and that the problems that Christians in India face had increased. That was the picture that one obtains from the material at Annex C of the appellants' bundle on the question of the number of incidents against Christians, it not being possible to be place reliance upon the *actual* numbers of incidents mentioned in the various documents at Annex C, for the reasons I have given above. It is plain that the judge recognised this and took it on board.

19. Accordingly, I do not accept that the judge failed to take into account the material at Annex C of the appellants' bundle, for the reasons I have given. In my judgment, her

summary at paras 80-12 of the background material before her was an adequate summary of all of the documents she had. However, even if I am wrong about this, the documents at Annex C could not have made a material difference, in view of the difficulties with the documents in Annex C as I have explained and the fact that the judge was aware of and took into account the fact that religious intolerance and Hindu nationalism had grown and that Christians in India faced increased problems.

20. Mr Bazini also submitted that the judge had not taken into account the fact that the more recent material to which he referred me shows that Christian converts face increased problems. I do not accept this submission, for the following reasons:

    i) The article at page C9 dated 26 April 2018 from "*AsiaNews.it*" entitled "*Persecution against Christian schools in India continues*" refers to teachers being accused of forced conversions and that the anger of attackers was triggered by false accusations against 14 teachers of trying to convert pupils to Christianity.

However, in the final sentence of para 9 of her decision, the judge referred to *"threats and harassment, most typically accusing Christians of forcibly converting Hindus"* and, in the final sentence of para 11, the judge specifically referred to *"false charges of forcible conversions"* in the sentence that reads: *"In recent years with the rise of Hindu nationalism religious intolerance has grown, with attacks on people and property, and false charges of forcible conversion."* Accordingly, her summary of the background material from Home Office Country Guidance, at para 9 of her decision, and the USCIRF Annual Reports 2016 and 2017 at para 11 of her decision adequately encompassed the material Mr Bazini said she had overlooked.

    ii) The article at page C23, which is from "*Open Doors*" (the date of which is unclear albeit that it appears to be dated some time in 2019 because it refers to the "*2019 World Watch List*" in the top line), states *"Additionally, in some regions of the country, converts to Christianity from Hinduism experience extreme persecution, discrimination and violence*".

However, this evidence was irrelevant, because the appellants are not converts from Hinduism and there was no evidence before the judge that they are engaged in trying to convert people to Christianity and/or will do so on return to India. In any event, the judge specifically referred to the problems faced by Christians of being accused of forcibly converting Hindus, as I have already stated.

21. For all of the reasons given above, I am satisfied that, given the difficulties with the documents at Annex C, the judge's summary of the background material at paras 8-13 of her decision was an adequate summary of *all* of the background material before her. I am further satisfied that, even if the judge had overlooked the documents in Annex C (which I do not accept), they could not have made a material difference given the difficulties as I have explained above and the fact that the judge was aware of and took into account the fact that religious intolerance and Hindu nationalism had grown and that Christians in India faced increased problems.

22. I therefore reject ground 1.

23. In relation to ground 2, Mr Bazini referred me to the following evidence:

    i) the first appellant had said in her witness statement dated 21 June 2019 (at A3 of the appellants' bundles) that the appellants could not live with her mother because her

mother lived with the first appellant's brother who did not accept their conversion to Christianity and who would not allow them to live there; and

ii) the expert had said at para 3.11 of his report that "*the [first appellant's] mother doesn't have space for them. She lives with her brother and his wife and two children in a two roomed house*".

24. The judge did not say that she rejected this evidence, nor did she assess this evidence. I therefore accept that the judge misapprehended the evidence because it is clear that she said that the appellants could return to India to live, at least initially, with the first appellant's mother whereas the first appellant's evidence was that that was not an option.

25. I will consider the materiality of the judge's misapprehension of this aspect of the evidence when I have considered the remaining grounds.

26. Turning to ground 3, Mr Bazini referred me to the second appellant's witness statement dated 24 June 2019 at page K2 of the appellants' bundles where he said: *"There are English school in India, but education is totally different than England, moreover we cannot afford English school in India without any job and saving".*

27. Mr Bazini submitted that the evidence before the judge was therefore the opposite of the judge's finding at para 16 that *"If they prefer, I find they can find alternative accommodation to reside in when they first arrive in their country because there is no evidence to suggest they are completely without funds."*

28. Whilst it is true that the second appellant had said that the appellants could not afford to send the minor appellants to English schools in India without a job and savings, it is clear from para 23 of her decision that the judge did not accept that his evidence was sufficient to show that he would not have employment opportunities in India. Likewise, the mere fact that the second appellant had said that the appellants have no savings was not sufficient in itself to discharge the burden of proof on the standard of the balance of probabilities.

29. In order to decide whether the judge did in fact err in law when she said that she found that it would be open to the appellants to find alternative accommodation because "*there was no evidence to suggest that they are completely without funds*", it is necessary to consider the evidence that was before her and what was missing from the evidence before her.

30. The first appellant had submitted her wage slips, P45, P60, her employment contract and bank statements. The banks statements she submitted were for the periods from 13 February 2017 (page 174 of the appellants' bundle 1) to 12 September 2017 (page 159 of the appellant's bundle 1).

31. There was evidence of employment for the second appellant up to 2017. The bank statements he submitted were for the periods from 3 February 2017 (page 232 of the appellants' bundle 1) to 2 September 2017 (page 208 of the appellants' bundle 1).

32. Accordingly, the bank statements that were submitted to the judge by the first and second appellants ended 1 year 9 months before the hearing before the judge on 25 June 2019. I appreciate that the first and second appellants had their leave curtailed

so that their leave ended on 2 October 2017. However, that does not explain the lacuna in the evidence they submitted to the judge. It is simply not enough to leave the judge to infer, from the fact that their leave had been curtailed, that it must follow that they have not been working and/or that it must follow that their financial circumstances remained the same as may have been indicated by their banks statements for the period from 3 February 2017 to 12 September 2017.

33. Given that the bank statements before the judge ended 1 year 9 months before the hearing date and bearing in mind the burden and standard of proof, the judge was fully entitled to find that "*there was no evidence to suggest that they are completely without funds".*

34. I therefore reject ground 3 and turn to ground 4.

35. Ground 4 is that the judge erred in her consideration of the expert report of Mr Horrocks. In view of my conclusion on ground 2, I accept Mr Bazini's submission that, in assessing the expert report, the judge had erred when she said at para 16 that the expert had "*failed to consider the impact upon [the minor appellants] of re-uniting with family members such as grandparents and cousins in their own country."*

36. However, I do not accept Mr Bazini's submission that the judge had not otherwise assessed the expert's report, for the following reasons:

    i) At para 16, the judge said that the expert had focused on the lives of the children in the United Kingdom, and, at para 17, that he had focused on the impact of the children of being separated from the first appellant when she moved to the United Kingdom and how the children should not have another disruption in their lives.

I have carefully read the expert's report. I entirely agree with the judge's observation. The expert had emphasised very strongly, as it was a recurrent theme of his report, that the minor appellants, in particular the older child, had been much affected by their separation from their mother when she travelled to the United Kingdom in November 2011 ahead of them and that they should not have to endure another disruption in their lives.

    ii) At para 18, the judge said: "*I have read carefully the description of the full and active lives both boys have in the UK…".* Mr Tarlow sought to suggest that this shows that the judge had considered the remainder of the expert's report. On the other hand, Mr Bazini sought to suggest that this was consistent with the judge's assessment of the letters of support, of which they were several, in the appellants' bundle.

I have read the letters of support and, as I have said already, I have read the expert's report very carefully. The phrase I have just quoted from para 18 of the judge's decision is consistent with the judge having considered not only the letters of support but also the remainder of the expert's report.

    iii) Likewise, the content of the remainder of para 18 as well as the whole of para 19 of the judge's decision.

    iv) At para 20, the judge again mentioned the expert's report in terms, stating that the expert had noted how the parents are every capable of meeting all aspects of the boys' needs. Indeed, the whole of para 20 of her decision plainly relates to the expert's report.

    v) Likewise, the first part of para 21, where the judge said that "*[t]he best interests of the children are to remain with their parents in a family unit and whilst remaining in the UK where they have the school, Church and friends would provide the least*

> *disruption…"* is plainly based upon the expert's report. As Mr Bazini submitted, the expert's report was "*highly material*" evidence relating to the best interests of the children and it is difficult to see what else the judge could have based her view of the best interests of the children upon if not the expert's report.

37. There is therefore simply no basis for saying that the judge failed to consider the remainder of the expert's report. In my judgment, it is clear that the judge *had* considered the expert's report and that she did so adequately.

38. I therefore reject ground 4 and turn to ground 5.

39. I accept that the judge did not mention, in terms, the letters from the minor appellants wherein they expressed their feelings and their wish to remain in the United Kingdom. However, their wishes were also relayed by the expert in his report, at paras 4.2 and 4.3 (page 56 of the appellants' bundle 1). As I have said above in relation to ground 4, it is not the case that the judge had effectively failed to consider the expert's report. She referred to the expert's report, in terms, at paras 16, 17 and 20 and, in addition, the content of para 18 is consistent with the evidence in the expert's report as well as the supporting letters from friends and other individuals.

40. I have concluded that ground 3 is not established and that the judge had considered the expert's report adequately. Since the expert relayed the wishes and feelings of the minor appellants, there is no basis for concluding that the judge had erred by failing to take into account the wishes and feelings of the minor appellants simply because she did not mention their wishes and feelings in terms. It is not necessary, as judges have been repeatedly reminded by the Court of Appeal, for judges' decisions to deal with all aspects of the evidence before them.

41. I turn now to consider whether or not the error I have identified in relation to ground 2 is material. As I said, I accept that the judge had misapprehended the evidence when she said at para 15 of her decision that the appellants could live initially with the first appellant's mother on return to India, given that she failed to say that she rejected the evidence of the first appellant and given the evidence at para 3.11 of the expert's report to the effect that it would not be open to the appellants to live with the first appellant's mother.

42. Insofar as this was an error in relation to the judge's finding concerning the accommodation for the appellants in India, the judge's misapprehension of the evidence is plainly not material. This is because she made the alternative finding, that, if the appellants preferred, they could obtain alternative accommodation because they had not established that they were entirely without funds. As I have rejected ground 3, it follows that the appellants have not discharged the burden of proof upon them to show, on the balance of probabilities, that they would not be able to obtain alternative accommodation.

43. However, in addition, the judge relied upon her finding that the appellants could return to live with the first appellant's mother in order to find, in essence, that, by living with their grandmother, the minor appellants would be able to resume their relationship with her and they would also have her support in reintegrating in India (for example, at paras 15, 16 and 18 of her decision) and, at para 16, that the expert

had failed to take into account the possibility of the minor appellants being able to resume their relationship with their grandmother.

44. I have concluded that the judge's reliance upon the minor appellants being able to resume their relationship with their maternal grandmother and the possibility that she could assist in their reintegration is not material to her decision, given that she placed reliance upon the fact that the minor appellants would have the support of their parents, that the parents were very capable of meeting all aspects of the needs of the minor appellants as the expert had noted, and that this was a very close and loving family unit. In these circumstances, the fact that the minor appellants will not have the support of their maternal grandmother is immaterial, in my view, to the judge's conclusion that the respondent's decision is proportionate. In addition, I am satisfied that it does not materially undermine her assessment of the expert's report.

45. Mr Bazini submitted that there was no evidence before the judge to support her view that the appellants have the potential to become part of a new community through the church in India. The judge said, at para 20 of her decision, that the expert had failed to consider this possibility and, at para 22, that the parents will be able to find a new church and form a new community.

46. This aspect of the judge's reasoning was not part of the grounds, although I accept that it falls for consideration by me as part of my duty to assess whether the judge's misapprehension of the evidence (as established by ground 2) is material.

47. However, I do not accept that the judge erred in this respect. What the judge was saying at para 22 was that the parents, having shown resilience and fortitude in relocating to the United Kingdom, "*will find equal strength finding a new Church to practise in, and form a new community with…".* In reaching this finding, the judge was making an assessment of the qualities of the parents and their ability to form new links with a new church in India. The background material that was before her plainly showed that there were Christian churches in India. Furthermore, the evidence was that the first appellant was a practising Christian in India "*albeit she said somewhat clandestinely*" (para 14 of the judge's decision). In all of these circumstances, it is nonsense to suggest that, in the absence of evidence that *specifically* showed that these appellants could form new links with church communities in India or a specific church community in India, the judge was speculating. I am satisfied that the judge was fully entitled to draw her finding from all of the evidence that was before her, that the appellants have the opportunity to find a new church and become part of the community of another church in India.

48. In the typed grounds as lodged with the application of permission, it is said that the judge had failed to assess the fact that the second appellant had suffered serious injury at the hands of his family. Mr Bazini submitted that it would therefore be dangerous for the appellants to return to live with the second appellant's family. However, the fact is that the judge did not rely upon the appellants being able to live with the second appellant's family or having contact with them.

49. The remainder of the typed grounds, in the main, do not amount to anything more than a disagreement about the weight attached to particular aspects of the evidence or with the judge's reasoning.

50. For all of the reasons given above, the appellants have failed to show that the judge materially erred in law in reaching her decision to dismiss their appeals.

Decision

The decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside. Accordingly, the decision of the First-tier Tribunal to dismiss the appellants' appeals stands.

The appellants' appeals to the Upper Tribunal are dismissed.

Signed Date: 7 December 2019
Upper Tribunal Judge Gill