



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

Appeal Number: PA/03010/2017

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice
Centre
On: 23rd November 2018**

Decision & Reasons Promulgated
On: 12th February 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**DT
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Atuegbe, Solicitor, R&A Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Nepal who seeks protection in the United Kingdom. In its determination dated the 25th January 2018 the First-tier Tribunal (Judge Knowles) dismissed his appeal. Judge Knowles rejected the Appellant's claim to be (alternatively) at risk from Maoists and the government. The fact that the Appellant's home might have been destroyed in the earthquake was not a

sufficient basis to grant leave. The Tribunal further rejected the Appellant's claim to have converted from Buddhism to Christianity.

2. The Appellant appealed to this Tribunal. On the 12th January 2018 the matter came before Deputy Upper Tribunal Judge Birrell. Judge Birrell upheld the First-tier Tribunal decision in all respects but one: in finding that the Appellant had not converted to Christianity the Tribunal had erred in going behind a concession of fact made by the Respondent, and in so doing had failed to conduct a risk assessment of the possible dangers the Appellant faced as a convert. Judge Birrell set the findings on Christianity aside and ordered that the matter remain in the Upper Tribunal, so that further submissions and findings could be made on any possible risk arising from the Appellant's conversion.
3. Unfortunately it has not been possible to have the matter relisted before Judge Birrell, and this has resulted in some delay. Upper Tribunal Judge O'Connor signed a Transfer Order on the 30th August 2018 and the matter was then relisted before me. At the short hearing on the 23rd November 2018 it was agreed between the parties that the Respondent's concession as to the Appellant's Christian faith stood; it was further agreed that I could conduct my risk assessment on the basis of the country background material and submissions made by the parties in writing. I would not need to hear further evidence from the Appellant. I am very grateful to both Mr Atuegbe and Mr McVeety for their helpful and succinct written submissions.
4. The agreed facts personal to the Appellant are that he has was born and raised a Buddhist but in 2015, in the United Kingdom, he started attending church. He was baptised on Easter Sunday, in 2016. He is a regular member of the Anglican congregation at St Pauls Church in Withington, South Manchester;

The Appellant's Case

5. The Appellant's bundle contains several articles by 'Open Doors USA', an American organisation which describes itself as providing "the world's largest outreach to persecuted Christians in the most high-risk places". In February 2018 'Open Doors' placed Nepal as number 25 on its 'watch list' list of countries where Christians face the most persecution for their faith. The articles contain references to Christians facing criminal sanction for promoting their faith. In June 2016 seven people were arrested for handing out bibles, and a woman who was 'looking after poor children' was sent to prison for three months after being convicted of attempting to evangelise. Her sentence has subsequently been increased to three years. The background to these arrests is the October 2017 amendment to the criminal code, in which religious conversion was outlawed. Similar incidents are reported by 'christianitytoday.com', a

Christian news website. In another incident in April 2017 arsonists set fire to the Catholic Cathedral in Kathmandu. The articles report that many of the most recent converts to Christianity are Hindus from the 'Dalit' underclass, and that many of those objecting to the spread of Christianity are extremist Hindu nationalists who seek closer union with India.

6. Mr Atuegbe's written submissions make reference to those aspects of Nepalese law which, he says, place converts such as the Appellant at risk. Although I have not been given a direct translation of the law in question it is summarised in the US State Department *International Religious Freedom Report* for 2017:

'The constitution stipulates every person has the right to profess, practice, and protect his or her religion. While exercising this right, the constitution bans individuals from engaging in any acts "contrary to public health, decency, and morality" or which "disturb the public law and order situation." It also prohibits persons from converting other persons from one religion to another or disturbing the religion of others, and states violations are punishable by law.

On August 8, the parliament passed a new criminal code, signed into law by the president on October 16, which reduces the punishment for converting - or encouraging the conversion of - another person or for engaging in any act, including the propagating of religion, that undermines the religion, faith, or belief of any caste, ethnic group, or community, from six years to five years' imprisonment. The law is scheduled to take effect in August 2018. It also stipulates a fine of up to Nepali Rupees (NPR) 50,000 (\$490) and subjects foreign nationals convicted of these crimes to deportation. The new criminal code also imposes punishments of up to two years' imprisonment and a fine of up to NPR 20,000 (\$200) for harming the religious sentiment of any caste, ethnic community, or class, either in speech or writing.'

The Respondent's Case

7. The Respondent accepts that the Appellant is Christian, and that Christians are a minority in Nepal, constituting at best 7% of the population, but for the reasons set out in his refusal letter does not accept that he would face a real risk of harm. The Respondent acknowledges the evidence provided by the US State Department to the effect that Christian organisations and institutions such as schools can face difficulty in registering and operating, but notes:

'The government has not enforced the ban on converting others, according to Christian groups and legal experts. Christian groups have interpreted this ban as including a ban on proselytizing. Human rights lawyers and leaders of religious minorities expressed concern that the constitution's ban on conversion could make religious minorities vulnerable to persecution for preaching or public displays of faith.

Media reports stated some Christian social welfare organizations engaged in proselytizing while distributing relief supplies to communities affected by the April 25 earthquake. According to Christian groups, foreign missionaries did not declare to the government any intent to proselytize publicly. The government reportedly did not expel any foreign workers for proselytizing. There were no arrests for violating the anti-conversion law, according to the Office of the Attorney General, but Catholic and Protestant leaders said foreign and local missionaries attempted to keep their activities discreet to avoid this possibility.

Christian groups reported encountering difficulties in registering as NGOs or nonprofits. A human rights lawyer stated the government had initially rejected the application of his client, a Christian organization, for registration as a nonprofit on the grounds the organization preached Christianity. When the lawyer submitted a revised application, the government approved it, but did not approve some of the “objectives” of the organization indicated in the application, including preaching, establishing churches, and helping the poor.

Christian leaders and human rights lawyers said a constitutional provision establishing the government’s authority to “make law to operate and protect a religious place or religious trust and to manage trust property and regulate land management” could allow the government to formulate legislation for the registration of Christian churches, and possibly of other organizations of religious minorities, as religious institutions.

Christian missionary hospitals, welfare organizations, and schools continued to operate without government interference, according to Christian leaders. Many foreign Christian organizations had direct ties to local churches and sponsored clergy for religious training abroad.

Leaders of religious minorities stated most converts to other religions, including Hindus who converted to Christianity, were willing and able to state publicly their new religious affiliation without fear of retribution. Christian leaders stated a small, decreasing number of converts to Christianity tried to conceal their faith from their families and local communities, mainly in rural areas.

Christian leaders stated Hindu nationalist politicians, as part of the movement to declared Nepal a Hindu state during the constitution drafting process, made speeches threatening to “drive out” Christians if they did not convert to Hinduism. According to the Christian leaders reporting these incidents, the politicians were not prominent, and there were no reports of attempted forced conversions to Hinduism. Some media outlets reported that Christian groups engaged in “forced” conversion through promises of material gain or trickery.’

8. The Respondent submits that it is open to the Appellant and his family to return to Nepal and continue to practice as a Christian along with the estimated 1.5 million other Christians in the country. Whilst the articles produced by the Appellant are alarmist in tone they are not objective sources.

Discussion and Findings

9. The country background material suggests that Christians in Nepal – in particular those who have converted to Christianity from Hinduism – have on occasion been targeted by Hindu nationalists who believe that Nepal should be an officially Hindu state. Two features of these cases stand out. The first is that many such converts were formerly Dalits, a fact which would appear to have increased the animosity shown towards them by Hindu extremists. The second is that in the vast majority of the incidents cited in the Appellant’s bundle, those targeted have been engaged in proselytising, or behaviour perceived as such. It is that kind of activity with which the law cited by the Appellant is concerned with.
10. The Respondent points out that the Appellant is not, and has never been, a Hindu. He was raised a Buddhist. I have not been able to identify, in the material before me, any examples of Buddhist converts to Christianity being targeted in any way.
11. Nor is there any evidence before me that the Appellant considers evangelism to be an important element – or indeed any element – of his faith. Letters from the church warden, members of the congregation and the church council secretary all speak to his personal devotion and attendance at church, but none mention any evangelical role. The Appellant has been involved in raising money for charity, and volunteers at a community kitchen, but there is nothing to suggest that he is active in ‘spreading the word’.
12. With those two factors in mind, I am unable, even applying the lower standard of proof, to find that the Appellant faces a real risk of persecution in Nepal for reasons of his religious belief.
13. The law which prohibits “disturbing the faith of others” appears to be exclusively directed at those who are actively proselytising. I could find no evidence to suggest that it has been directed at Christians engaged in private worship, an activity specifically protected by the constitution. The articles in the Appellant’s bundle express concern that such a law *could* be used in a discriminatory manner to target members of minority faiths. Comparison is drawn with the blasphemy laws in Pakistan. I accept that for organisations engaged with the defence of Christianity worldwide that it is a legitimate concern: such groups have good

reason to campaign against such legislation. It is not however, on the evidence before me, a concern which is yet borne out by reality. Nor is there any reason to believe that the Appellant would be targeted by a malicious allegation because of his faith. In addition the attacks and prosecutions that have taken place have been very few in number. Even if the population size of Nepalese Christians is as small as 350,000 (other estimates are as high as 1.7 million) the percentage of Christians experiencing difficulty is tiny. Again, there is no reason to believe that the Appellant would be vulnerable to attack or arrest.

Anonymity

14. Having regard to the fact that this is a protection claim I am prepared to make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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”.

Decision

15. The decision of the First-tier Tribunal contains an error of law and the decision has been set aside.
16. I remake the decision in the appeal as follows: the appeal is dismissed on protection grounds.
17. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th December 2018