



IAC-AH-CO-V1

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

Appeal Number: PA/02742/2017

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**On 13 December 2019**

**Decision & Reasons  
Promulgated**

**On 16 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**S R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Winter, instructed by Jain, Neil & Ruddy Solicitors  
For the Respondent: Mr Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hands, promulgated on 11 July 2017. The appellant successfully challenged that decision and was granted leave to the Upper Tribunal. In a decision promulgated on 20 December 2017, the Upper Tribunal found no error of law, upholding the decision of Judge Hands. That decision was in turn challenged by way of an application for permission to appeal to the Court of Session which was granted. The

matter was then remitted by the Court of Session to the Upper Tribunal, its decision having been set aside. It was agreed there was an error of law in the decision of Judge Hands and the appeal proceeded on that basis.

2. It is necessary to set out in some detail the history both of what happened to the appellant in Malaysia, a large part of it is now accepted by the Secretary of State, and the procedural history.
3. The appellant was born in 1986. She is a citizen of Malaysia and, although a Hindu by birth (as were her parents) she later converted to Christianity. The appellant's father although born a Hindu, stated that he had converted to Islam when the company in which he worked was bought by Imam Khalid who asked him to convert to Islam which he did. Imam Khalid also wanted him to abandon his Hindu wife and marry his niece instead and, when the father refused, he was in 2003 beaten by two of Imam Khalid's associates. There was a further incident when an associate in 2010 when associates of Imam Khalid entered the home attacking the appellant's mother; a further incident occurred later in June 2010 when two Malay Muslim men entered the appellant's father's factory and went after him with a knife.
4. In addition to these incidents, on 11 August 2014, five Malay Muslim men entered the family home holding them at gun and knife point, accusing the father of cheating Imam Khalid.
5. The case, as is put, is that the family were able to avoid further ill-treatment on the basis that they should they all convert to Islam. The process of doing so was commenced the following day when the family attended the Islamic office and started the conversion process, signing the relevant papers. Fearing that this would not make them safe, they fled from Kuala Lumpur to Penang and then overland to Thailand, flying from Bangkok to Glasgow via Dubai.
6. The appellant's case is that she is at risk from JAKIM (an Islamic office within Malaysia) and Imam Khalid; and, her signature on a form to convert to Islam would mean that the Malaysian authorities were considered to be as Muslim, requiring her to follow their traditions contrary to her beliefs as a Christian.
7. The appellant's initial application for asylum was refused on 10 March 2015 and the appeal against that decision was dismissed on 6 November 2015. An appeal to the Upper Tribunal against that decision was ultimately unsuccessful.
8. Further submissions were made to the Home Office in particular an expert report from Dr Christoph Bluth and a letter from D M Rao & Company, Advocates and Solicitors in Malaysia who had made enquiries seeking confirmation from the Department of Islamic Affairs as to whether the family had started the conversion process.

9. In the refusal letter of 3 March 2017 the Secretary of State took note of the first immigration appeal decision noting the findings that it had not been established that there was any connection between Imam Khalid and JAKIM and that whilst it was accepted that the incidents referred to had occurred, it was not accepted there was any connection with the state. It was also noted that there was no credible evidence that the family had been subjected to ill-treatment by the Malaysian authorities on account of their religion or that they had signed the forms stating they intended to convert. The Secretary of State accepted that those who signed the relevant documents to convert to Islam at the Department of Islamic Affairs would be likely to be considered as Muslim, but did not accept that this had occurred.
10. The issue has now become narrower, it being accepted that if the Appellant had signed the form, she would be at risk on return to Malaysia.
11. The first appeal was a joint appeal in which the appellant, her brother, and her father were appellants. In respect of the second appeal, this concerned only the appellant although the appellant's father, brother and sister gave evidence in her support.
12. Judge Hands did not accept the appellant's account of having been compelled to sign the relevant forms, taking the First-tier Tribunal decision by Judge McGavin as her starting point. She considered that the only evidence in addition to that before Judge McGavin [34] is a letter from D M Rao & Co. The judge concluded at [49] to [52] that:
  - (i) it was unlikely that the appellant would have been able to look at the contents of the documents she signed if she did in fact sign it as she was an educated woman who has ran her own business;
  - (ii) the questions in respect of Imam Khalid and JAKIM are irrelevant to the appeal despite the report of Christoph Bluth as they were really the subject of findings of fact made by Judge McGavin in which the appellant's account and that of her family was found not to be credible;
  - (iii) that none of the witnesses were made to repeat the words identified by the expert as being sufficient to convert to Islam; that the letter from the lawyers did not confirm that the form has been signed that it was unlikely that the photographs said to have been taken at the office where they intended to sign the forms were not taken by the brother as it was unlikely if, as it was taken on a phone, that he had not taken a photograph of himself if as he had said it was such an important day for them noting that there were no officials on the photographs and the only person wearing any form of identity badge is the father who did not need to sign any of the documents, the photographs showing only that they were in a waiting room with a sign that says just the "Islamic Office";

- (iv) while these points looked at individually could be said to be inconsequential, viewed as a whole, the accounts of what happened on 12 August 2014 and thereafter are not consistent with what happened in connection with the appellant's father; and, that she has fabricated her account in being forced to convert to Islam by signing a form.
13. Given the terms of the agreement between the parties, I then proceeded to hear evidence.
  14. The appellant adopted her witness statements and was cross-examined. She confirmed that the photographs provided were of her, her mother, her father and her sister. She said her brother took the photographs but did not know why. She confirmed that none of the photographs shown to her are of signing a form and could not recall whether the photographs were taken before or after they were called to give thumb prints and for their photographs to be taken.
  15. The appellant said that she had glanced at the form and had not read it in detail as they were forced to attend. She said she just wanted to sign it and get out.
  16. She said she did not have a copy of the document with her when she left.
  17. The appellant confirmed that the letter from D M Rao & Co was from the solicitors in Malaysia and that, after the family had come to the United Kingdom, they had asked him to seek the document. She said they had not taken legal advice before signing it as they had to go the next day and had no time to do so.
  18. The appellant was referred to a supplementary bundle annexed which had contained an exchange of e-mails. It was to the effect that these she would have to attend personally to obtain a copy of the documents.
  19. Asked if she had tried contacting the Islamic office in the UK. She said that because she had been told she needed to go there in person she was afraid to contact them. She did not know if that would worsen her situation or that of any of her family who are still there. She said that she fears JAKIM and the people who had attacked them had identified themselves as JAKIM.
  20. I asked the appellant why she thought that her making enquiries would cause problems for her family. She said that she had actually phoned them to request the forms and that the lady who spoke to her was unable to give any information over the phone because they could not verify her identity. She e-mailed them and told them that she would need to refer to a specific office. She said that she had contacted them with hesitation and feared that asking them for that information and putting pressure on them it might infuriate them. She knew she was safe here and she tried her best to get the documents.

21. I asked the appellant to describe the document she had been asked to sign. She said it was like a booklet that it was A4 in size. It contained all her personal details for her work, where she works and so on and at the back was the declaration that Allah is the only God.
22. I then heard evidence from the appellant's sister who adopted her witness statements and confirmed her presence in the photographs. She said she did not know why her brother was not in any of them and did not recall if they were taken before or after signing the form. She said she had not read the form before signing it as she was just too nervous. She said that her sister (the appellant) had not contacted had not discussed contacting the office but they had signed the form.
23. The appellant's brother then gave evidence adopting his witness statements confirming that he took the photographs and that he had done so because he felt it was important to him as it was against their will. He said it was important because they were forced to be there. He said he had his phone with him and wanted pictures of that, that being the purpose of them. He said that he was the one taking photographs and could not do so but was suffering so much trauma that he did not think of asking his father to take one of him.
24. The appellant's brother said that he did look at the form and that he was not sure if his sisters had looked at the form as he had not discussed it with them. He said the form he remembered had his name and date of birth written on it but he did not, given the trauma he had suffered, actually notice what was written on it. He just glanced at it and signed it. He said he did not know if his elder sister had attempted to contact the office to get a copy of the form and it was more than two years since he had lived with them.

### **Submissions**

25. Mr Clarke for the respondent said that it was accepted that the incidents took place but it was not conceded that the attacks were carried out by JAKIM or by persons related to the Malaysian government. He submitted that the appellant had not discharged the burden of showing that the process was carried out; that the photographs added little; they did not show them signing or the timescale.
26. Mr Clarke submitted that the appellant's brother had not provided a proper, reasonable explanation for taking the photographs, simply saying that they were important, thus suggesting that these photographs were taken to embellish the claim.
27. It was submitted further that the reasons for signing the form do not ring true. It was submitted further the appellant had only now said that she had attempted to contact the Islamic office directly when she had said she had not and had failed properly to say why she thought that these enquiries would infuriate them.

28. Mr Winter submitted the evidence I had heard was consistent with that given to Judge McGavin as set out in paragraphs 13 and 14 of her decision. He submitted that the further evidence showed that Imam Khalid was connected to the government; that the photographs provided some support the witnesses confirmed that they had signed the forms. He submitted that had there been an attempt to embellish the claim, the photographs would have been done of them signing forms. He submitted that the evidence from the appellant as the contact was consistent with the letter from D M Rao had added nothing and that the judge had erred in her assessment of Dr Bluth's report.

## **Findings**

29. It is for the appellant to establish her case to a lower standard applicable in asylum appeals. In reaching my conclusions I have taken into account all of the evidence and in particular the decisions both of Judge Hands and Judge McGavin albeit that the decision of Judge Hands has been set aside.
30. I bear in mind the principles set out in **Devaseelan**, bearing in mind that some of the points Judge McGavin rejected such as the connection between Imam Khalid, JAKIM and the state are addressed.
31. In assessing the evidence of what happened on 12 August 2014, I bear in mind the acceptance that the events of the previous day are not in dispute. On any view an armed gang breaking into the family home and holding people at gun and knife point would inevitably have been a traumatic event. It is in that context that I view evidence of what is said to have happened the next day.
32. I do not discern any material discrepancy between the accounts given by the appellants and the witnesses. There are some differences between their recollection about what the form looked like and what they were to sign but in the context of an event now some 5 years ago, if it took place, and as people perceived things differently and recalled things differently.
33. With the exception of the inconsistency in the appellant's evidence as to whether she had been in contact with the authorities in Malaysia, the accounts given by the other witnesses are consistent allowing for different recollections of the same event. They are also consistent on these points with the appellant.
34. I do not consider in the context of the violent assault the previous day that there is anything implausible in the appellant's brother not taking a photograph of himself nor of the absence of any photographs of the forms being signed. There is little merit in the submission that these photographs may have been taken to embellish the claim; after all, if you were going to embellish a claim one might think this would at least have had photographs taken of people signing documents. It would also have

required a considerable degree of planning and foresight, it being evident that the photographs were taken before the family left Malaysia.

35. There is good reason to think that the photographs were taken in the Islamic office and whilst I note, as did Judge Hands, that only the father is wearing an ID card, no questions were put about that and I do not consider that any inferences can be drawn from that. It could be that as head of the family in a patriarchal society he had to wear identity but as it is not from the form based on any questioning I do not consider it is material.
36. There is an inconsistency in the appellant's account whether she had been in contact with the authorities in Malaysia. Initially she said she had not as she did not wish to infuriate them. In response to my question she confirmed that she had contacted them but could not explain why she thought they would be infuriated in any rational way. The account she gave of the offices refusing to hand over authorities as a result of her telephone call they could not verify her identity rings true. That is consistent with the letter from the lawyers in Malaysia and it makes sense that the appellant who is after all an educated woman thought that she might be able to contact the authorities and speak to them directly which would have a better result. I do not consider that this evidence is an after the fact embellishment and I consider it is little more than a clarification. I do not consider that it detracts in any meaningful way from the evidence.
37. Turning to the decision in **Devaseelan**, the basic principle is that there had to be good reason to depart from the credibility finding made by the First-tier Tribunal. But the context of **Devaseelan** is a situation where there had not been a fresh asylum decision made by the Secretary of State after the submission of additional material.
38. Much of Judge McGavin's reasoning and analysis is taken up with the evidence of the father on which I received no submissions. None of the other material before me addresses in detail the position of JAKIM other than the report of Mr Bluth which indicated that it is closely connected to the state. It is however instructive to read the refusal letter at paragraph 45 whereby it is not accepted that the Malaysian authorities had persecuted the appellant. That, with respect, is not the point; the issue is risk on return. Again, at [63] the issue is the fear of return is considered persecution from non-state agents.
39. The evidence of Dr Bluth is that JAKIM is associated with the Malaysian state. He states at 6.2 as follows

"The Department of Islamic Advancement of Malaysia (JAKIM) is extremely important and powerful in Malaysia. It carries out the systematic persecution of violators of Islamic laws and engages in raids on churches, hotels and the policing of Islamic law throughout Malaysia in meting out punishment against offenders. It is not possible to disappear in Malaysia as any person can be traced through their identity card (MyKad) which is compulsory. Consequently JAKIM would be able to identify and locate the applicants if they returned to Malaysia. An Imam working with the JAKIM

would be able to use the organisation to act against the applicants as he did previously. Judge McGavin elaborated in considerable detail the question of Imam Khalid's relationship to the JAKIM and whether or not he had any position of authority. However, this is not necessarily relevant given that the circumstances of the situation of the applicant would engage the interest of the JAKIM and Imam Khalid would just need to report it to them. It is not possible for (the appellant) and the other family members to internally relocate in Malaysia and be safe from the sources they feared there."

40. Looking at the evidence in the round, I conclude that JAKIM is in effect part of the state and certainly has a role within it insofar as it relates to Muslims. Its role and functions vary from state to state within Malaysia and some Imams may or may not be more or less involved with it. That is not to say that I accept that Imam Khalid would be part of the state; it is really to observe that what is or is not the authorities state in particular territory is not always easy to discern and I bear that in mind in analysing the evidence put before me.
41. Taking all of these factors into account and viewing the evidence as a whole, bearing in mind the previous findings and applying Devaseelan; and, having observed the appellant and her siblings give evidence, I am satisfied that they had provided me with an accurate and truthful account of what occurred on 12 August 2014. I am satisfied that they were compelled to sign the relevant forms and had accordingly, given the concessions made by the Secretary of State, they are at risk on return to Malaysia. Accordingly, for these reasons I allow the appeal on asylum grounds. Given also the concession by the Secretary of State that anything following from this would be in breach of Article 3 of the Human Rights Convention, I allow the appeal on human rights grounds.
42. It follows, given that the appellant is entitled to be treated as a refugee, that the appeal on humanitarian protection grounds must formally be dismissed.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the decision by allowing the appeal on asylum and human rights grounds.
- (3) I make an anonymity order.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 their family. This direction applies both to the appellant



and to the respondent but does not prevent the appellant from supplying a copy to her father, mother or siblings for use in other proceedings.

Signed

Date 30 January 2020

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul