IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003710

First-tier Tribunal No: HU/55191/2022
IA/07747/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7 November 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

SW
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Wilcox, Counsel instructed by Modern Solicitors LLP
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 23 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan who entered the UK as a student in 2011 and claimed asylum in 2014. In 2018 his asylum claim was refused, and his subsequent appeal was dismissed by Judge of the First-tier Tribunal O'Garro ("the previous judge") in a decision ("the previous decision") promulgated on 23 August 2018.

2. In 2020 the appellant made further submissions. These were refused by the respondent in a decision dated 1 August 2022. The appellant appealed against this decision to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Bart-Stewart ("the judge"). In a decision promulgated on 25 July 2023 ("the decision"), the judge dismissed the appeal. The appellant is now appealing against the decision.

The Appellant's Claim

3. The appellant is a Christian who claims to have faced persecution in Pakistan in the past on account of teaching a Muslim friend about Christianity and lending him a bible. He also claims that, were he to be returned, he would either engage in activities that would put him at risk or would refrain from doing so in order to avoid the risk.

4. The appellant's account of persecution in Pakistan is set out clearly in the previous decision and we have relied on this for the following summary.

    a. The appellant is from a small village where his father is the pastor of the local church.

    b. He had a friend from a strict Muslim family, called Tayab, who wanted to learn about Christianity. In June 2011 he taught Tayab about the bible for 2 or 3 weeks. Tayab asked to borrow the bible and the appellant allowed him to do so.

    c. Tayab's family discovered the bible. After this, Tayab's brother, who is a policeman, visited the appellant's home with 10 – 11 other men, attacked the appellant's father and brother, knocked the appellant unconscious, and took the appellant to an unknown location where he was kept for 4 days and stripped and tortured. The appellant was eventually released and spent 2/3 days in hospital.

    d. The appellant then returned to his normal life.

    e. Several months later, the appellant and his father encountered Tayab who expressed the wish to convert to Christianity. The next day Tayab came to the family home and the appellant's father baptised him in the church courtyard. This was seen by someone who informed Tayab's brother.

    f. Tayab's brother threatened the appellant and his father. In the light of this, the appellant's father went into hiding and the appellant travelled to the UK. The family continues to receive threats and in 2014 the appellant's brother was shot and killed by the appellant's father. An arrest warrant against the appellant and his father for the crime of blasphemy was issued.

5. In addition, the appellant claims that, since the previous decision, he has been convicted of blasphemy in Pakistan.

6. The appellant claims that whilst in the UK he has been a practising Christian who regularly preaches. In paragraph 15 of his witness statement dated 21 December 2022, he states that every Wednesday he preaches in Tooting to people of his ethnic background.

The Previous Decision

7. The previous judge accepted that the appellant allowed his friend Tayab to borrow a bible and that he was beaten and tortured as a consequence as claimed. The previous judge did not, however, find the rest of the appellant's account credible. In paragraph 45 the previous judge stated:

> [E]xcept for the incident relating to the attack following the loan of the Bible to Tayab, which I accept occurred, after which the appellant said life returned to normal, I reject the rest of the appellant's claim. I do not accept that the appellant's father baptised Tayab. I do not accept that blasphemy charges were laid against the appellant and his father or that his brother was killed as a result of those blasphemy charges"

8. The previous judge concluded that he was not satisfied, to the lower standard, either that the appellant was telling the truth about his fear of harm if returned to Pakistan or that he would face a risk on return.

The Decision

9. Applying *Devaseelan* [2002] UKIAT 00702, the judge treated the previous decision as his starting point. The judge considered new evidence adduced by the appellant to corroborate his account of events in Pakistan but found that the additional evidence did not justify going behind the findings of the previous judge.

10. The judge considered the appellant's account of evangelising in the UK. The judge found that since 2018 the appellant has, with Reverend Lee (who gave oral evidence), been standing in Tooting handing out leaflets. However, the judge found that the appellant's motivations were not genuine. The reasons given for this (in paragraph 26 of the decision) are that he began this activity after his asylum claim was refused and had not even visited Reverend Lee's church. The judge stated that the appellant had not given a credible explanation of why he goes on the street with Reverend Lee. In paragraph 27 the judge stated:

> "The appellant was not evangelising in Pakistan. Currently the appellant does no more than hand out leaflets outside a tube station. I find it to be self serving and am not satisfied on the evidence before me that he will choose to do so if he returns to live there. It is accepted that the appellant is a Roman Catholic. He currently attends an Anglican church. He is in contact with the church in Pakistan. The background evidence is that the authorities would not interfere with him practising his faith in Pakistan. He would also be able to go to the house of fellow church members and discuss the bible together should he wish."

Grounds of Appeal

11. Ground 1 argues that the judge failed to consider the implications of the appellant being subject to torture in accordance with paragraph 339K of the Immigration Rules. The grounds submit that both the previous judge and the judge made the same error of not considering paragraph 339K in the light of it being accepted that the appellant was tortured.

12. Ground 2 is in two parts. In the first part, which we will refer to as Ground 2a. the submission is made that the judge erred by finding that the appellant had not evangelised in Pakistan when it was accepted that he had shared his faith with his Muslim friend Tayab. It is submitted that the judge fell into error by treating evangelism as being limited to approaching strangers in the street (as the appellant has done in Tooting) and had not recognised that evangelising to friends (as the appellant did in Pakistan) is also evangelism.

13. The second part of ground 2, which we will refer to as Ground 2b, argues that the judge failed to apply the framework in *HJ (Iran)* [2010] UKSC 31 and *RT (Zimbabwe)* [2012] UKSC 38, as clarified in *WA (Pakistan)* [2019] EWCA Civ 302, which requires a judge to consider why a person would refrain from sharing his Christian faith with others. It is argued that the judge needed to make a finding on whether a material reason why the appellant would not evangelise (by, for example, sharing his religion with friends) in Pakistan would be to avoid persecution of the type he previously experienced.

14. Ground 3 submits that the judge failed to address the appellant's belief and his attitudes having regard to the evidence of the two clergymen who attended as witnesses. The grounds state that although the judge referred to the presence of the clergymen, and what they said about the appellant's activities, their evidence about his state of belief, motivation, and expression as a Christian was not referred to.

15. Mr Wilcox and Mr Terrell both made clear and succinct submissions, for which we are grateful. We have not set these out in full, but the analysis below reflects the arguments that they advanced.

Ground 1: Failure to Apply Paragraph 339K of the Immigration Rules

16. Paragraph 339K of the Immigration Rules states:

> The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

17. Neither the previous judge nor the judge referred to paragraph 339K and neither made an explicit finding that there was "good reasons to consider" that the torture and detention to which the appellant was subjected in 2011 would not be repeated. Mr Wilcox argued that this was a clear error. Mr Terrell submitted that there is no requirement to cite paragraph 339K and the judge did not lose sight of the question that needed to be addressed when assessing whether the appellant would face a risk on return. He argued that as the previous judge (and the judge) found that the appellant's life returned to normal after the single incident of serious harm, it was difficult to see how the appellant could succeed on the basis of paragraph 339K.

18. We agree with Mr Terrell. The previous judge found that after the appellant was subjected to 4 days of detention (where he was tortured) and spent several days in hospital, his life returned to normal. The judge found that everything that the appellant said about what occurred subsequently (such as Tayab being baptised and his brother being killed by Tayab's family) was not true. Accordingly, the factual circumstances to which paragraph 339K needed to be applied was that the appellant suffered serious harm at the hands of the family of his friend to whom he gave a bible but after the single (albeit very serious) incident his life returned to normal and there was no further adverse interest from the friend's family. The absence of any ongoing interest or negative actions from Tayab's family (or anyone else) is clearly a good reason to consider that the serious harm the appellant suffered would not be repeated. As Mr Terrell argued, given the finding of fact that the appellant's life went back to normal (which is not challenged in the grounds), it is difficult to see how any judge could have reached a different conclusion about the risk of the harm being repeated. We therefore do not accept that the judge materially erred by not referring to or explicitly applying paragraph 339K.

Ground 2a:. Taking Too Narrow a View of Evangelism

19. The judge found that the appellant did not evangelise in Pakistan. Mr Wilcox argued that this is inconsistent with it being accepted that the appellant loaned a bible to Tayab, which, he submitted, is a type of evangelising. He argued that this reflects a wider difficulty with the decision, which is that the judge treated "street-evangelism" as the only type of evangelism that is relevant. Mr Terrell's response to this submission was that (a) the extant country guidance case on Christians in Pakistan, *AK and SK (Christians: risk) Pakistan* CG [2014] UKUT 00569 (IAC), refers to evangelism in the context of people who seek to broadcast their faith to strangers; and (b) as is apparent from the appellant's skeleton argument before the First-tier Tribunal, the appellant advanced his case in the First-tier Tribunal as being that he engages in religious preaching to strangers, not that he evangelising by sharing bibles or information about Christianity with friends who have shown an interest in Christianity.

20. We are persuaded by Mr Terrell's submissions. In paragraphs 223-224 of *AK and SK*, the risk faced by evangelists is explained in the following way:

> 223. We have not drawn a distinction between evangelising and proselytising or preaching, following the approach in SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082. We consider that no useful purpose would be served and that in any event Muslims would not see any difference between these different activities. However, that is different to Ms Jegarajah's submission that Pakistani Muslims do not distinguish between Evangelical Christian and 'ordinary' Christians.
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> 224. We find that a Christian who speaks out in non Christian public places about Christianity is more likely to draw adverse attention to himself than those who do not. Although Ms Jahangir suggested this may not cause any serious difficulties in certain areas and amongst certain people, generally she considered, and we agree, that this would be risky behaviour which would create problems. The evidence largely suggests that there is, on the whole, a tolerance of Christianity but where it is taken out into the public arena and flouted, there is a serious risk of a blasphemy allegation being made. Those Christians who genuinely believe that it is an essential element of their Christianity to preach in public and to try and convert others to their faith would, we find, be reasonably likely to encounter serious problems.

21. As can be seen from these passages of *AK and SK*, and as is apparent from reading the case as a whole, the risk from evangelising considered in *AK and SK* arises from preaching in public places. In this context, where the only finding by the judge (and previous judge) about the appellant seeking to spread Christianity in Pakistan was that he allowed a friend to take a bible home, it was, in our view, open to the judge to find that the appellant had not in fact evangelised in Pakistan.

22. Moreover, it is well established that a Tribunal does not need to address issues not raised by a party, unless the issue was Robinson obvious. As explained in the headnote to *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC):

> 4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.
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> ....
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> 7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.

23. A similar observation was made in *WA (Pakistan),* where in paragraph 63 it is stated:

> "A Tribunal is not required to address unformulated alternatives on its own initiative".

24. The appellant framed his case before the First-tier Tribunal as that he would be at risk because he evangelises in the street in the UK and would wish to continue acting similarly in Pakistan. It is not surprising that the case was put this way given what is said in *AK and SK*. However, having advanced the case in this way, the appellant cannot now complain that the judge failed to address whether evangelism should be looked at in a wider sense to include loaning a bible to a friend, when this was not argued in the First-tier Tribunal and is far from an obvious – and certainly not a Robinson obvious – point.

Ground 2b: applying the *HJ (Iran)* Framework

25. Having found that the appellant would not act in a way that would attract persecution, it was necessary for the judge to address why that would be the case. As is made clear in *HJ (Iran)* and *RT (Zimbabwe),* if a material reason for the appellant avoiding the behaviour attracting persecution would be to avoid persecution, the appellant would have a valid protection claim.

26. Mr Wilcox argued that the judge erred by not asking, and therefore not answering, the "why question", i.e. what would be the appellant's motivation for not evangelising in Pakistan. Mr Terrell's response to this submission is that the judge did address the "why question" and answered it by finding that the appellant has no genuine desire to evangelise.

27. Once again, we were persuaded by Mr Terrell's submissions. Although the judge did not set out in a structured way the *HJ (Iran)* and *RT (Zimbabwe)* framework, it is tolerably clear that the judge addressed the required considerations. The judge found that the appellant would be able to practice Christianity as he would wish to in Pakistan (attending church and discussing the Bible with fellow church members) and would not a face a risk in so doing. A risk would arise if he evangelised in the sense evangelism is understood in *AK and SK* but it is apparent from the decision that the judge was satisfied that (a) the appellant would not do this; and (b) he has no genuine wish to evangelise. As the appellant was found to have no genuine wish to evangelise it follows that fear of persecution would not be a material reason for him not evangelising.

Ground 3: Evidence of the Appellant's Beliefs and Attitudes

28. The appellant's claim that evangelising is a part of his Christian belief and practice was supported by two clergymen who gave evidence at the hearing. The judge considered their evidence, which is summarised in paragraphs 18 and 19 of the decision. In paragraph 26 the judge explained why he was not satisfied that the appellant had a genuine motivation to evangelise. The reasons given are that: the appellant approached Reverend Lee shortly after his asylum claim was refused in 2018; he has not visited Reverend Lee's church; and he does not externally evangelise with the church he attends. As submitted in the grounds, the judge did not make an express finding on the clergymen's evidence about the appellant's state of belief and motivation.

29. We are not persuaded by this ground because although the judge did not make an explicit reference to the clergymen's evidence about the appellant's beliefs and motivation, it is clear that the judge did not doubt that the clergymen genuinely believed the appellant. The judge was not, however, obliged to reach the same view as the clergymen and the reasons given in paragraph 26 (which are summarised above), adequately explain why the judge reached a different view. Other judges might have found the opinions of the clergymen more persuasive but that does not mean the judge erred: the weight to give this evidence was a matter for the judge.

30. In considering this ground, we have kept in mind that the authorities are clear that caution must be exercised before finding that a judge erred because a different finding of fact (or conclusion on the facts) could have been reached. See, for example, *KM v SSHD* [2021] EWCA Civ 693 and *Lowe v SSHD* [2021] EWCA Civ 62. In *Lowe,* it is said that "*decisions of the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping*". In this case, the judge had the benefit of hearing oral evidence from the clergymen as well as the appellant, and of considering all of the documentary evidence as a whole; he had, to use the language in *Lowe*, the "whole sea of evidence presented to him". Having considered that "sea of evidence" it was open to the judge, for the reasons given in paragraph 26, to find that the appellant's evangelism in the UK was not a manifestation of a genuine belief even though he was believed by two clergymen who attended the hearing to give evidence and support him.

Notice of Decision

31. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Upper Tribunal Judge Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

30.10.2023