



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

Appeal Number: AA037802015

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 17<sup>th</sup> May 2016**

**Decision & Reasons  
Promulgated  
On 26<sup>th</sup> May 2016**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**[B B]  
(~~Anonymity order not made~~)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Burrett, counsel, instructed by Malik Law Chambers  
For the Respondent: Mr C Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant was granted permission to appeal a decision of the First-tier Tribunal dismissing her appeal on asylum grounds.
2. The appellant, a Pakistani national, claimed asylum on the grounds, in essence that she was a Christian convert and that she would be at serious risk of being persecuted if removed to Pakistan. Her appeal was dismissed on asylum,

humanitarian protection and human rights grounds in a decision promulgated on 9<sup>th</sup> September 2015 following a hearing before the First-tier Tribunal on 10<sup>th</sup> August 2015.

3. Permission to appeal was granted on the grounds that it was arguable that in the light of the finding that there had been threats against the appellant, the enforced clandestine nature of her family members' Christianity and the guidance in *AK and SK (Christians: risk) Pakistan CG* [2014] UKUT 00569 (IAC), the judge had erred in law in dismissing the appeal. The appellant had also sought permission on the grounds that the FIR was wrongly rejected through reliance upon an unsigned DVR produced at the hearing, given the overall credibility of the appellant's claim; that there had been a conflation of conversion with forced marriage and a failure to consider the issue of the children being considered as Christians.

### **Error of law**

4. The respondent produced an unsigned DVR at the commencement of the First-tier Tribunal hearing. The appellant did not request an adjournment but submitted that little or no weight should be attached to it. The judge records that although troubled by the DVR: it was produced very late and postdates the respondent's reasons for refusal of asylum letter, he concluded overall that he could attach weight to it.
5. Before me Mr Burrett submitted that it was difficult to understand why the FIR had been rejected on the basis of the DVR: the DVR was unsigned, the information apparently given to the police officer about the FIR was incorrect (an incorrect date was given when matched with the actual reference number), the DVR was produced late with no reasonable explanation. There had been no consideration by the judge of the requirement to consider the document in the context of the evidence as a whole and the appellant had been found to have given a generally credible account. The judge had failed to consider the document in line with the *Tanveer Ahmed* principles.
6. Nonetheless, Mr Burnett submitted that given the findings of the First-tier Tribunal judge overall, the finding in relation to the DVR was not substantially significant. The findings were such that the appeal should have been allowed in any event.
7. He pointed to the following findings:
  - The appellant was threatened on 11<sup>th</sup> November 2007 after she attended a local church;
  - She was threatened in December 2007;
  - She was threatened in Dubai in August 2013;
  - The appellant's mother is a Christian; her father is Muslim but he did not force her mother to convert;
  - The appellant was brought up as a Christian;
  - The appellant was baptised aged 11;

- The appellant is married to a Muslim who knows she is a Christian and agreed to keep this secret;
  - the appellant and her siblings were brought up in Pakistan as Christians but were considered to be Muslims; their passports state their religion is Islam;
  - The appellant's eldest daughter's birth certificate records her religion as Islam;
  - The children did not attend church in Pakistan
  - The appellant's father's family and Pakistani society generally will consider the appellant as a Christian convert;
  - The appellant has never claimed to broadcast her faith or proselytise.
  - The evidence of the blasphemy charge is unsatisfactory and is rejected.
  - Any threat to the appellant is localised and she and her family can reasonably be expected to relocate to another part of Pakistan.
8. On the basis of those findings – none of which were the subject of challenge by the respondent- the judge concluded that there was no real risk of her being persecuted because of her Christian faith.
9. The respondent, in her Rule 24 response and orally submitted that the view taken by the judge on the DVR was open to him on the evidence before him, that there were some 3 million Christians living in Pakistan and that generally internal relocation was a viable option if a Christian faces difficulties in their local area; that as a family they were considered to be Muslims; they had been brought up as Muslims and would be able to live elsewhere. These submissions do not, unfortunately, engage with the findings of the First-tier Tribunal, that the appellant would be perceived as a Christian Convert and that there had been threats levelled against her because of her Christianity not only in Pakistan but also in Dubai where the family had gone to avoid the earlier threats.
10. Both representatives referred me to the COI Pakistan: Christians and Christian converts. At the hearing before the First-tier Tribunal the Home Office guidance was set out in the COI dated February 2015. I was not given a copy of that guidance but both representatives agreed that although the guidance was re-issued in May 2016 the relevant guidance remained the same, albeit with different paragraph numbering.
11. The May 2016 guidance reads as follows, in so far as is relevant:
- 2.3 Assessment of risk: Christian converts
- 2.3.1 The situation is far more difficult for a person **who is known** to have converted from Islam to Christianity, than for a person who was born a Christian. However it is rare, in Pakistan, for a person to convert to Christianity, especially openly. It is likely that the fact of a person's conversion will be well known within the community, with potential repercussions.
- 2.3.2 ..... people who are known to have converted to Christianity suffer acts of violence, intimidation and serious discrimination from non-State actors, which can in individual cases amount to persecution. Such treatment is prevalent throughout Pakistan.
- ....
- 2.5.2 As such, Christian converts would not generally be able to seek and obtain effective protection from the state against acts perpetrated against them by non-state actors.

.....

2.7.1 Where a persons fear is of ill-treatment/ persecution at the hands of the state or non-state actors on the basis that they are a Christian convert, they will not be able to relocate to escape that risk.

2.7.2 Given that ill-treatment towards Christian converts is prevalent throughout Pakistan, internal relocation to escape such treatment is unlikely to be a viable option, particularly where the person is known to have converted to Christianity.

.....

3.1.2 In general, Christians are able to practice their faith, attend church, participate in religious activities and have their own schools and hospitals. Although Christians, as with other faiths, may be at risk of blasphemy allegations, this in itself is not generally enough to make out a claim under the Refugee Convention unless there is evidence that the charge is pursued.

3.1.3 Some Christians in Pakistan face discrimination and attacks targeted against them by non-state actors and there are reports of a general failure by the police to investigate, arrest, or prosecute those responsible for societal abuses against religious minorities. Christian women may be at risk of forced conversion and marriage. There is also some evidence of measures taken by the authorities to protect Christians against incidents of violence.

3.1.4 Internal relocation may be a viable option, where it would not be unreasonable or unduly harsh to expect them to do so, unless a person faces an accusation of blasphemy which is being seriously pursued.

3.1.5 A person who fears persecution in Pakistan purely on the basis of their Christian faith is unlikely to qualify for a grant of asylum or humanitarian protection although full account must be taken of the individual circumstances of each case.

3.1.6 People who are known to have converted to Christianity are likely to face and be at real risk of attacks by non-state actors. Effective protection and internal relocation will generally not be available. Christian converts, depending on their particular circumstances, i.e. if they are known to have converted to Christianity, are likely to be at real risk of persecution on return.

12. The headnote of *AK and SK* is referred to by the First-tier Tribunal judge but it seems that he has only considered this in the context of the claimed blasphemy charge, which he has found not credible. The judge refers to the COI but only in the context of whether the appellant would be considered a Muslim or a Christian. It is on the basis of that information and the appellant's evidence that he concludes that the appellant would be considered a Christian Convert. The judge has not gone on to consider the position of the appellant as a Christian convert as opposed to a recognised Christian. Whether this was because his attention was not drawn to the relevant passages in the COI is not apparent.

13. It is however plain that the judge should have considered this in reaching his final conclusions and failed to do so.

14. I am satisfied that there has been a material error of law by the judge failing to take adequate notice of material evidence, irrespective of the position on the DVR.

15. I set aside the decision of the First-tier Tribunal to be remade.

### **Remaking of the decision**

16. Ms Johnstone submitted that the appeal should be remitted to the First-tier Tribunal for full re-hearing, no findings to be preserved. She submitted that there was a conflict between paragraphs 56 and 58 of the First-tier Tribunal decision:

56. In any event, I am satisfied that, although the appellant and her siblings were brought up in Pakistan as Christians, they were considered Muslims. In particular I note that the original Pakistani passports state that their religion is Islam.

57. Further I note that the appellant's eldest daughter's birth certificate records her religion as Islam. In my view, if the views of the British Embassy were accurate, then the birth certificate would have recorded the appellant's daughter's religion as Christianity.

58. On the totality of the evidence and applying the lower standard of proof, I am satisfied that the appellant's father's family and Pakistani society generally will consider her as a Christian convert.

17. I do not consider there is a conflict between [56] and [58]. Apart from the fact that the respondent has not disputed any of the findings made by the judge, paragraph 56 states matters of fact with which there is no dispute. The decision records the accepted evidence of threats received, attendance at church and that she is a Christian. That the appellant's official documentation (and that of her daughter) records her as being Muslim and yet she practices her religion is plainly evidence that would be seen as indicative of conversion. The judge took the whole of the evidence into account including the disputed DVR and FIR and reached the findings he reached that were plainly and uncontrovertibly open to him.
18. I consider the issue of remittal to the First-tier Tribunal does not fall within the Practice Direction. There is no requirement for findings of fact to be made – the findings of fact have been made and there was no evidence or reason to dislodge those findings.
19. I informed the parties that I would re-make the decision. Mr Burrett confirmed he did not intend to call any further evidence and both parties made submissions.
20. Ms Johnstone submitted that the appellant willingly married a Muslim and is still married to him, she was raised by a Christian mother who was not a convert. The appellant and her husband can continue to live together and seek employment. She submitted that any threat was localised in any event and they could relocate elsewhere in Pakistan. Although *AK and SK* considered the issue of evangelical Christians and forced conversion to Islam it was not concerned with the issue of converts to Christianity (see for example [202]).
21. Mr Burrett submitted that despite the judge having erred, in his view, in his findings as regards the FIR and the DVR, there had been no challenge to the findings of the First-tier Tribunal judge by the respondent. The finding that the appellant is a Christian convert is not disputed in the Rule 24 response. Although the respondent's case is that the conclusions drawn by the judge were open to him, Mr Burrett submitted that this is not a case about evidence but the consideration of undisputed findings of fact in the context of the background material. He submitted that the background material was clear: Christian converts – which is what this appellant is – are at serious risk of being persecuted for a Convention reason and internal relocation is not generally available. He submitted that not only is this appellant perceived to be a convert, she has given evidence which has been accepted of threats being made not

only in Pakistan but also in Dubai where the family had initially gone to seek safety.

22. This appellant is not evangelical and she was brought up a Christian despite the norm being that children follow their father's religion. Her documentation indicates that she is a Muslim when she is not. She has been found to be a person who is and will be perceived to be a convert.

23. The factual matrix for this appellant in the context of the background material before me and in particular the COI is such that, applying the appropriate burden and standard of proof, this appellant is at risk of being persecuted for a Convention reason if returned to Pakistan and internal relocation is not a viable option. For the avoidance of doubt I do not overturn the finding of the First-tier Tribunal judge that the FIR could not be relied upon but, given the overall findings and the background material, this is of no relevance to the outcome of this appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it.



Date 23<sup>rd</sup> May 2016

Upper Tribunal Judge Coker