Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02742/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 19 December 2017	**On 20 December 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SHARLUJAR RAJENDRAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Ximena Vengeochea, Advocate, instructed by Jain, Neil, & Ruddy, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:

   (i) Determination by FtT Judge McGavin, AA/05374/2015, promulgated on 6 November 2015.

   (ii) Respondent's decision, dated 3 March 2017.

(iii) Decision by FtT Judge Hands, promulgated on 11 July 2017.

(iv) The appellant's grounds of appeal to the UT, stated in the application for permission dated 25 July 2017.

2. Ms Vengeochea referred to the extent to which the appellant's account had been accepted by the respondent, up to and including the incident of 11 August 2014, but not including claimed events on 12 August 2014, when the appellant said that she and other family members attended the Islamic Office in connection with paperwork to register and begin the process of conversion to Islam. The submission for the appellant then followed these lines:

(i) There were two errors arising from ¶48 of the decision of Judge Hands.

(ii) The narration that from 2004 until they left Malaysia the family "did not encounter difficulties in practising their Christian faith" took no account of the accepted facts. The judge went on from there to reach a conclusion not reasonably open to her on the evidence.

(iii) It was accepted that the appellant's father converted to Islam. That compromised the religious freedom of the other family members. One example was that his marriage was considered to be against Sharia law.

(iv) The other error at ¶48 was in saying, "The issue before me is whether or not this appellant has signed a form to convert to Islam …". The correct issue was whether the appellant was liable to forced conversion. In resolving that issue, there were three possible scenarios.

(v) Firstly, the appellant had completed the forms, including signature, and the taking of a thumbprint and photographs, as shown by the evidence she relied upon in the FtT. In that case, she would be officially considered Muslim, but it is accepted that she is Christian. The background evidence (references given) showed that to have consequences amounting to persecution. If accepted to have signed the forms, the appellant was entitled to protection.

(vi) Secondly, if no form was signed, the appellant is the Christian daughter of a Muslim convert father, and as such, by reference to similar background evidence, at risk of persecution.

(vii) Thirdly, if the form was filled in but not signed, and the appellant failed to follow through on her conversion as expected, she would be seen as having renounced Islam or become an apostate, with drastic consequences.

(viii) The issue was not signature or non-signature, but the likelihood of persecution as a Christian in an Islamic country.

(ix) The submission was not that all Christians from Malaysia are entitled to protection, but that even on the accepted facts up to 11 August 2014, put in context of the background evidence, the appellant had made out her case.

(x) Those submissions were based on ground 1. The other grounds were adopted but there was nothing to add.

3. The main points of the submission for the respondent were as follows.

(i) The line between facts accepted and not accepted was agreed.

(ii) The claimed incident of 12 August 2014 had been part of the appellant's case before Judge McGavin. That case failed because it was not shown that the alleged persecutor was, as belatedly claimed, prominent among the Malaysian authorities or in the Muslim community. Thus, there was no risk from government or official sources, and both legal sufficiency of protection and internal flight were available (see ¶18, 19, and 35).

(iii) The appellant before Judge Hands had not tried to show that the alleged persecutor has any higher profile than as found by Judge McGavin, and had not shown that any other conclusion should have been reached on sufficiency of protection.

(iv) Judge McGavin did not appear to have made a specific finding about the incident of 12 August 2014, but that was because the parties had taken the crucial issue to be the position and influence of the persecutor, on which the appellant failed.

(v) The phrase in ¶48 about not encountering difficulties had to be read in context. The decision as a whole made it clear that the prior incidents were well known to the judge. They had not been accepted as incidents of persecution by the authorities on religious grounds. There was no misunderstanding.

(vi) Judge Hands took up her task from the point where Judge McGavin left the case, and correctly focused on what remained for her to decide - a question of fact, whether there had been an attempt at forced conversion on 12 August 2014, in the resolution of which no error was shown.

(vii) The rest of the appellant's submissions had no basis either in ground 1 or in the rest of the grounds, and were in substance only re-argument of the case put to the FtT.

(viii) Grounds 2 – 8 were all only complaints about the FtT's resolution of the facts. None of them disclosed anything of substance.

4. Ms Vengeochea in reply submitted that the judge had fallen into the error of looking at the incident of 12 August 2014 independently of the previous incidents, and so

misunderstood the real issue, and failed to factor in the accepted facts which led the appellant to flee from Malaysia.

5. I reserved my decision.

6. Read fairly and in context, Judge Hands at ¶48 was not saying that the appellant and her family never had any problems. Previous incidents were clearly before her, but they had not been proved to be instances of persecution on religious grounds or from official sources – see the conclusions of Judge McGavin at ¶35.

7. The facts prior to 12 August 2014 did not entitle the appellant to protection – as found by Judge McGavin.

8. The appellant's submissions were clearly developed, but they had no anchor point of error by Judge Hands. In substance, they are only re-argument of a case which has been successively rejected, for reasons in which no error on a point of law has been shown.

9. There was no error in the identification by Judge Hands of the issue before her. That exactly reflected the presentation of the case by both sides. Nor is any error shown in her resolution of that issue. The grounds in that respect are no more than insistence, through a series of immaterial quibbles.

10. The decision of the First-tier Tribunal shall stand.

11. No anonymity direction has been requested or made.

20 December 2017
Upper Tribunal Judge Macleman