UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: HU/03663/2016**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 12 August 2019	**On: 02 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MRS DODO DADIANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: **Ms A Radford, counsel, instructed by Turpin and Miller LLP**
For the Respondent: **Ms S Jones, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The appellant is a national of Georgia, born on 7 February 1948. She appeals with permission against the decision of the First-tier Tribunal Judge, promulgated on 10 April 2019, dismissing her appeal against the decision of the respondent, dated 22 January 2016, refusing her human rights claim.

2. The appellant applied on 2 July 2015 for leave to remain on grounds outside the Immigration Rules. The application was considered in accordance with the appellant's right to respect for her private life under paragraph 276ADE(1)(i-vi) of the Rules [3].

3. In granting permission to appeal, First-tier Tribunal Judge Davies noted that the grounds have substance when taking into account that the hearing of the appeal

took place on 19 December 2018 but that the decision was only promulgated on 10 April 2019. No explanation was given by the Judge for the delay. Taking that into account, it is arguable that the Judge did not properly consider the evidence. He found that the grounds prepared by Ms Radford were arguable.

4. The First-tier Tribunal Judge found that the appellant's claim that in order to be able to practice and maintain her faith she must remain living in the same community with her church members, and that it is only the Pastor who can administer communion or anoint an individual, does not explain how she was able to continue to practise her religion in the years prior to 2009 when there was nobody in Georgia to administer such rites.

5. He found that this fundamentally undermined her claim that it is not possible for her to pursue her faith in Georgia, especially where he found that there is no evidence of harassment or discrimination suffered by her prior to her departure in 2009 [89].

6. He did not give weight to the conclusions of Professor Barker as he found the evidence of the appellant and her witnesses to be neither credible nor reliable. It is open to the appellant to return to Georgia and continue her religious practices there. On the balance of probabilities, given her past experiences, she will not face discrimination or harassment simply by following her faith.

7. Where there is no evidence of her proselytising her faith, and in this respect, it was not the case that she was openly preaching her faith on the streets of Georgia prior to coming to the UK, he found that this informed him that she will not face problems [90].

8. He stated that taking into account the decision in AR (Vasiginas Church) Lithuania [2003] UKAIT 0024, which considered this particular religion, there was clear reference to members of the church pursuing their faith through video links [91]. No evidence was put before him which would suggest that this could not be a means or method by which the appellant can maintain contact with her community who remain in the UK. They have no specific church building and in regard as to how they as a community profess their faith, he found that they have no focal point, and there is an ad hoc arrangement, and that being the case, it is possible for the appellant to maintain contact with her church members in the UK after she returns to Georgia, and can do so, at the very least through video conferencing or other modern methods of communication [91].

9. He found that the refusal of her application, considered in the public interest pursued by the respondent, is lawful and reasonable and is a proportionate response to the appellant's immigration circumstances. The refusal cannot amount to a breach of the UK's obligation under s.13 of the Human Rights Act 1998 or under Article 9 of the Human Rights Convention [92].

10. Ms Radford, who represented the appellant at the hearing before the First-tier Tribunal, relied on the grounds of appeal. She set out the contextual and factual

background to the appeal in some detail: The appellant is a member of a church, which believes that its leader, Pastor Edjibia is the prophet of the end of days. It is a small community of around 100 adults and 100 children who believe they have been chosen as a select few who must live close to their pastor and receive communication from him and him only. The genuineness of these beliefs has already been established in AR, supra. The Upper Tribunal accepted that Pastor Edjibia's congregation had no interest in remaining in the UK save for the purpose of being close to him. Were he to leave the UK, they would follow him.

11. Pastor Edjibia received his revelation in 1997. In 1999 the Lithuanian authorities refused to allow him to re-enter Lithuania. He and his congregation sought refuge in various countries and eventually arrived in the UK in 2000. They claimed asylum.

12. The Georgian congregation initially remained in Georgia under the ministry of their Deacon, Mr Kakhaberi Keburia, but then moved with him to the UK. The family started moving in 2003 and the appellant's family was one of the last families to follow suit, in 2009 after Mr Keburia. Their departure was also prompted by problems in Abkhazia and they claimed asylum on arrival in the UK.

13. The appellant's account of persecution was accepted as credible but it was concluded that she had internally relocated to Zugdini and was safe there. It was accepted that her family had suffered insults and "minor harassment" in Zugdini because of their non-conformist religion and Abkhazian heritage, but this on its own did not amount to persecution. Her son's evidence of targeted persecution in Zugdini on political grounds was rejected as incredible.

14. Mr Keburia left the LCJC and has not been replaced. The entire congregation live together in London, and all apart from the appellant's family, have lawful status in the UK on various grounds, including religious grounds. There is no LCJC in any other country.

15. The appellant, her family, Nona Khvichia and another family (the Javashvillis) were the last ones to seek leave to remain on Article 8/9 grounds in May 2015. Each was unsuccessful and each appealed. Their cases were separated. The Javashvillis family were granted leave to remain on Article 8 grounds after the refusal decision was withdrawn by the respondent.

16. Ms Khvichia's appeal was allowed by Judge Morron on 30 June 2017. He found that there would be very significant obstacles to her integration into Georgia as she would be unable to practice her religion in that country [35].

17. By contrast, the appellant's son and grandson lost their appeals on the same issue.

Submissions

18. Ms Radford submitted that the First-tier Tribunal Judge erred in his conclusion at [79] that it was not impossible for the appellant "to pursue" her faith without the

practices in question, namely, receiving the Eucharist and being directed in daily life by her pastor, seeing that she had been deprived of communion before.

19. That, she submitted, was not the relevant question for assessing the claim under Article 9: Hamat (Article 9 – freedom of religion) 2016] UKUT 00286 at [49]. Upper Tribunal Judge Jordan referred to a decision before the European Court of Human Rights in the case of Eweida and Others v UK [2013] ECHR 37. There the court referred to the fact that freedom of religion also encompasses the freedom to manifest one's belief, alone and in private, but also to practice in community with others and in public. In order to count as a "manifestation" within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. However, the manifestation of religion or belief is not limited to an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form, the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case.

20. Reference was made to an earlier case where the Court held that if a person is able to take steps to circumvent a limitation placed on his or her freedom to manifest religion or belief, there is no interference with the right under Article 9.

21. Ms Radford submitted that the Judge failed to ask the relevant question before assessing the claim under Article 9 as set out at [49] of Hamat. The appellant is the only member of her church who has been refused leave to remain. Her church believes that the Pastor is a prophet and is the only person who can provide communion. They live close together in London. The various acts of manifestation cannot be achieved by a video link. The relevant test is whether you can continue to manifest your religion with the close ties which are necessary for that religion. In the appellant's case, the question is whether receiving communion is a sufficiently closely connected act intimately linked to her religion, and if so, whether she can receive this in Georgia.

22. Ms Radford also contended that the Judge gave weight at [81-82] to previous determinations relating to Mr Arsen Bartia and the appellant, who is Mr Bartia's mother. Immigration Judge Dickson dismissed their appeal on 17 July 2009. However, she submitted that the Judge failed to have regard to the previous determination for Nona Khvichia where the Judge came to the opposite conclusion and allowed her appeal. He gave no reasons for preferring the 2009 decision over the successful appeal in Khvichia.

23. Further, the Judge erred in his conclusion at [83] that the congregation of the LCJC moved to the UK for reasons unconnected to their faith. However, the AIT accepted in AR, supra, that the congregation are in the UK because they wish to be with their Pastor and would leave the UK if he did.

24. She further submitted that the Judge erred at [86] when assessing Dr Barker's opinion which concluded that physical proximity to Pastor Edjibia, is of vital importance to the religious beliefs of LCJC. The Judge stated that her opinion is to

be viewed in the light of the evidence in this case and the appellant's claim that she fears she will face problems on return to Georgia on account of her religious beliefs.

25. The Judge concluded at [86], that aside from generalised and wholly unsubstantiated claims that she suffered discrimination on account of her religious beliefs in Georgia, she provided no specific evidence of any particular incident of harassment or discrimination, prior to coming to the UK. Her evidence in that regard was vague and completely unreliable. He found that on this core issue, the appellant failed to demonstrate on a balance of probabilities that in the first instance, as Judge Dickson found in 2009, she suffered discrimination and harassment in Georgia on account of her religious beliefs and that even in 2018 there is no evidence to support her claim that she is unlikely to face discrimination or harassment on return to Georgia.

26. Ms Radford submitted however that Judge Dickson had in fact accepted the appellant's general credibility and that included her account of suffering from harassment and insults in Georgia. That she maintained constitutes a material mistake of fact.

27. She also submitted that it is apparent from [80] that the Judge misunderstood the evidence as to whether LCJC is an evangelising church which in turn contributed to his concerns about the reliability of the witnesses. However, the written evidence from Jeremy Bachtin explained that the LCJC was established as an evangelising church and later abandoned evangelism for doctrinal reasons. That, she submitted, was an error of the Judge's own making.

28. Further, she submitted that the Judge gave irrational or inadequate reasons for placing no weight on the expert opinion of Dr Eileen Barker who had concluded that physical proximity to Pastor Edjibia was of vital importance to the religious belief of the LCJC. That was on the basis that Professor Barker relied on the evidence of the appellant and her witnesses as to what the beliefs of the LCJC were. Those witnesses the Judge found not to be reliable.

29. However, the Judge also recorded that Professor Barker spoke to a key member of the church, Mr Bachtin, regarding the beliefs of the LCJC. He made no criticisms of Mr Bachtin's evidence and did not describe him as unreliable.

30. Ms Radford also submitted that the Judge erroneously stated at [73] that she neither addressed him in her skeleton argument nor in her oral submissions, in relation to the appellant's Article 8 rights and that the submission concentrated solely upon issues pertaining to the appellant's Article 9 rights. He went on to state at [83] that it is understandable that the appellant was not seeking to pursue an Article 8 claim.

31. In fact, however, she stated that the appellant did pursue Article 8 claims both orally and in counsel's skeleton argument and this is in fact "alluded to" at the opening of the determination. Ms Radford contended that the Judge does not appear to have read the skeleton argument or alternatively had no proper regard to

her representations, at the time that he turned to make findings on the appeal, which was procedurally unfair.

32. She submitted that she informed the Judge at the commencement of the hearing as recorded at [15], that she relied on the skeleton argument prepared by counsel who had earlier represented the appellant before the Tribunal in February 2018. The submissions were identified in paragraph 1 of the skeleton. This included both the appellant's Article 8 as well as Article 9 rights under the Convention. (The skeleton argument referred to is in the Tribunal's bundle. It is signed and dated 8 February 2018).

33. Finally, Ms Radford submitted that the Judge at [92], applied s.117B of the Nationality, Immigration and Asylum Act 2002 to an Article 9 claim where it had no proper application.

34. There the Judge stated that he considered the appellant's circumstances in line with the guidance given in Hamat. He concluded that the refusal of her application cannot amount to a breach under s.13 of the Human Rights Act 1998 or under Article 9 of the 1950 Convention. He found that when considering the refusal of the application in the context of the public interest pursued by the respondent, that it was not only entirely lawful and reasonable but was a proportionate response to the appellant's immigration circumstances. He stated that the refusal of her application cannot amount to a breach of her rights under Article 8 or under Article 9.

35. In reply, Ms Jones submitted that in Hamat, the appellant was the leader but this appellant is not a leader. Judge Jordan has set out the activities performed by the appellant at [9]. This was referred to by the Judge at [75]. I pointed out to her that this was a submission made by the presenting officer on behalf of the respondent. The Judge noted in the same paragraph, that the appellant does not in any way profess to be a leader of her religion but in fact is someone who follows the faith and is part of a very small community.

36. Included in that community are some 200 people, as members of her church, including her son, daughter in law and grandson. At [79] the Judge noted that where it was said by Pastor Edjibia and Mr Bachtin that it was essential that only the Pastor administered communion, this did not explain how it was that the appellant was able to continue to pursue her religion in isolation in Georgia during those five years.

37. Ms Jones noted from [86], that what the appellant had to say regarding alleged discrimination and harassment prior to coming here was vague and unreliable. She provided no specific evidence of any particular incident of harassment or discrimination.

38. Ms Jones submitted that the decision must be assessed “holistically”. The decision was based on an acceptance that the appellant was not credible and that nobody assisted her in Georgia. The question therefore as to whether she can continue with

the manifestation of her religion would in the circumstances not matter, having regard to the credibility finding.

39. She submitted that at [39] of the decision of Immigration Judge Dickson, he stated that the appellants and their family "may" have suffered insults because they were evangelical Christians. He also noted at [40] that the appellants agreed that they were able to worship at their church.

40. She repeated that a holistic approach must be undertaken against the background as a whole, without 'picking out points'.

41. She contended that the reference at [83] to the fact that the majority of the members of the church present in the UK originate from countries within the European Union, shows that they have EU status. This is not a matter which is material to the outcome. It amounts to a disagreement and nothing more.

42. With regard to grounds (e) and (f), she submitted that Immigration Judge Dickson at [30] found that even if the appellant suffered harassment and insults regarding the family worshipping as evangelical Christians, they would not have established a well founded fear of persecution [29] and [30]. This however does not amount to an acceptance that the events in fact did happen.

43. With regard to ground [i] Ms Jones noted that the appellant pursued her appeal on private life grounds [20], as already noted.

44. She submitted that it is not correct that the Judge did not have regard to the skeleton submissions. She pointed out that this is expressly referred to at [92] where the Judge stated that he has considered everything in the context of the skeleton argument and submissions. There has been no procedural unfairness.

45. She submitted finally that the main thrust regarding Holy Communion and manifestation of her religion must be read in the context of the credibility points made in Judge Dickson's decision.

46. In reply, Ms Radford accepted that Judge Dickson did not accept the appellant's account, but her credibility was not challenged by the Home Office. The appellant's case is different from that in Hamat.

47. The proportionality assessment was affected by the misdirections of fact. The appellant's case is that it is not possible for her to conduct the practices in issue, including receiving the Eucharist and being directed in daily life by Pastor Edjibia. The issue was whether this went to the core of the religious belief in question.

Assessment

48. I have had regard to the detailed submissions made by the parties.

49. I find that the First-tier Tribunal Judge, in a very lengthy decision, did not distinguish between the right to maintain a faith on the one hand and the right to manifest it in specific practices. In particular, the practices identified in this case, were receiving the Eucharist and being directed in daily life by the Pastor.

50. At [79] he concluded that the contention that the only way someone can practice their faith is to be part of the community did not explain why the appellant spent the last five years in Georgia without anyone providing her with communion. As already noted, the genuineness of the LCJC beliefs had already been established in AR, supra. The Upper Tribunal noted that Pastor Edjibia's congregation had no interest in remaining in the UK save for the purpose of being close to him. They would follow him were he to leave the UK.

51. The relevant issue to be determined accordingly was not whether it was impossible for the appellant to pursue her faith without the practices in question, but the right to manifest that faith in specific practices. The Tribunal considered what counted as a manifestation in the meaning of Article 9. The act in question must be intimately linked to the religion or belief. The manifestation of religion is not limited to an act of worship or devotion which forms part of the practice of a religion, but the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. If a person is able to take steps to circumvent a limitation placed on her freedom to manifest religion, there is no interference with the right under Article 9.

52. In that respect, the Judge also failed to have regard to the presence and subsequent departure of the Deacon in Georgia who had previously administered communion. He has since left the LCJC.

53. It was also not correct that the congregation of the LCJC moved to the UK for reasons unconnected with their faith [83]. In AR, the Tribunal concluded that the congregation are in the UK because they wish to be with their Pastor and would leave the UK if he did. It appears that that is the inference that the Judge drew at [83] when referring to the relevance of the EEA nationality of the congregation.

54. The Judge incorrectly found that Judge Dickson had concluded in 2009 that the appellant failed to establish that she suffered from harassment and discrimination in Georgia on religious grounds. He in fact accepted the appellant's general credibility as well as her accounts of suffering from harassment and insults in Georgia. That included her assertions of suffering from harassment and insults. He concluded that even if the events had happened, they would not have established a well founded fear of persecution. Accordingly, the appellant's asylum claim was dismissed.

55. At [39] he accepted that the appellants before him, including Ms Dadiani and her family, may have suffered insults because they were evangelical Christians. This included insults and minor harassment from neighbours and the police.

56. I find that the Judge's rejection of the appellant's evidence as unreliable at [86], is a material error of law in the circumstances [86].

57. It is evident from the written evidence of Mr Bachtin, that he explained that the LCJC was established as an evangelising church which they later abandoned for doctrinal reasons. The Judge has not explained why no weight was given to the

opinion of Dr Barker who concluded that the physical proximity to their Pastor was of importance to their religious beliefs. Although stating that Dr Barker had relied on the evidence of the appellant and her witnesses in that regard, whom he did not find reliable, Dr Barker had also spoken to Mr Bachtin, a key member of the church. No criticisms were made of his evidence and the Judge did not find him to be unreliable.

58. I am accordingly satisfied that the decision of the First-tier Tribunal involved the making of errors on a point of law. The parties agreed that if that were the conclusion, the decision should be set aside. Further, both agreed that having regard to the credibility issues involved, it is appropriate for the matter to be remitted to the First-tier Tribunal for a fresh decision to be made.

59. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made is extensive. I find that it is appropriate in the circumstances to remit it.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed Date 23 August 2019

Deputy Upper Tribunal Judge Mailer