



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

Appeal Number: AA/00636/2014
AA/00643/2014
AA/00645/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2014**

**Determination
Promulgated
On 13 June 2014**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MARINA NAZIR + 2

Appellant

Respondents

Representation:

For the Appellant: Mr P Deller, Home Office Presenting Officer
For the Respondent: Mr R Halim of Counsel instructed by Virgo Solicitors

DETERMINATION AND REASONS

1. The appellant (hereafter the Secretary of State for the Home Department or SSHD) appeals with permission against the determination of First tier Tribunal Judge Ruth of 21 February 2014 allowing the appeal of the

respondents (hereafter the claimants) against a decision to remove them following refusal to grant them asylum.

2. There were four grounds relied upon by the SSHD. It is appropriate to take the last three first.
3. The second ground of appeal contends that the judge made contradictory findings with regard to the credibility and plausibility of the claim, and consequently also applied too low a standard of proof. I find this ground is not made out. The written grounds do make some valid criticisms of the judge's reasoning. It is also correct, as Mr Deller highlighted, that the judge appeared to be saying in self-contradiction that whilst he found the claimants untruthful he nevertheless believed them. However, I am satisfied that, read as a whole, the determination shows that the judge was fully aware of the fact that he had to apply a lower standard of proof and that the passages complained about were essentially meant only to differentiate the lower standard from the civil standard of balance of probabilities. It is sufficiently clear that the judge meant to establish credence rather than truthfulness and that is consistent with Karanakaran [2000] EWCA Civ 11 and other leading authorities.
4. Ground three contends that the judge placed too great a weight on the claimants' expert report when considering the risk to the appellants. However, as Mr Deller conceded, it is difficult to see that the judge had not considered the report and taken a balanced view as to its relevance to the outstanding issues and the weight he should attach to it. The fact that the expert relied on quotation of his own material as set out in the COIS report can scarcely be seen as perverse unless the contents of the quotation in the COIS report was considered unsound. The respondent does not suggest that it was to be so considered.
5. The fourth ground alleges that the judge misdirected himself in stating that there was no country guidance case specifically dealing with the issues when AJ(Pakistan CG (Christian Converts) [2005] UKIAT 00040 was in point and was still in force. That misses the point that AJ was a case dealing with those converting from Islam to Christianity and the risk attaching to apostates. In any event, the judge plainly had regard to recent COI and the respondent did not seek to argue at any stage during the hearing that this COI should have been read in conjunction with AJ.
6. That brings me to the first ground which argues that the judge misunderstood the submissions made by the Home Office Presenting Officer (HOPO) at the hearing regarding the claimants' claimed preaching activities ("He conceded that the [claimants] were Pentecostal Christians and that [they], particularly the first [claimant] had been speaking to others about the Pentecostal faith" (para 35)). The HOPO made no such concession, the grounds maintain, and indeed, as the judge himself recorded in the next paragraph, he had submitted that there were serious inconsistencies between the documents and the evidence given by the claimants which "continued to undermine the credibility of their alleged activities in Pakistan". Mr Deller submitted that the apparent

misunderstanding of the HOPO's concession was carried through into the rest of the determination in that at para 46 the judge stated that the "starting point for my assessment...must be the acceptance by the respondent that they are indeed Pentecostal Christians who do see evangelism as part of the duty of their faith..." and in a later reference in para 83 referred to the claimants as having been "accepted" as being Pentecostal Christians who had come to the adverse attention of a radical cleric who had issued a fatwa against them.

7. I am grateful to both parties for their oral submissions on this point and to Mr Halim for an extremely well-constructed Rule 24 Reply both in respect of this ground and the other three.
8. I have decided that the fourth ground is not made out. Whilst read in isolation it is possible to construe the judge as recording a concession beyond that which was made, I consider that when the determination is read as a whole and particular attention is paid to the judge's own enunciation in para 46 of the "starting point" of his own assessment it is clear that all the judge was accepting was that the claimants were persons who subjectively believed that evangelism was part of the duty of their faith. It is not in dispute, as I understand it, that this is a correct description of what the HOPO did in fact accept. Further, it is clear that from para 46 onwards the judge then embarks on a detailed assessment of the claimants' accounts which treats the issue of whether they had objectively shown that they had evangelised to others as something for him to decide on the evidence: see e.g. paras 49, 52, 62-66. I consider para 63 as being of particular importance because it underlines the fact that this was a case in which the judge at the hearing had not only the evidence that was considered by the SSHD at the time of the refusal decision but had the benefit of seeing the evidence of the claimants tested in cross-examination. It was clearly as a result of that process (not any concession) that he found them credible and stated that "The first [claimant] in particular came across in evidence as a dedicated Pentecostal Christian who was proud of her faith and committed to it". I would add the point fairly raised by Mr Deller himself that another aspect to this case was that the claimants were Pentecostal Christians and in that particular faith evangelising is incontrovertibly a very prominent part of the practice of the faith.
9. Given that I found the last three grounds to lack force, I am not persuaded that the first ground identifies any error of law vitiating the judge's findings of fact. Read as a whole the judge, despite very significant misgivings about various aspects of the claimants' evidence, was persuaded that these were outweighed by important positive factors. The judge assessed those positive factors for himself and did not in the course of setting out his reasons and findings (starting at para 43) rely on a concession that the claimants had been accepted as having preached or evangelised their Pentecostalism to persons of other faiths.

10. For the above reasons I conclude that the SSHD's grounds of appeal are not made out. Accordingly the decision of the First tier Tribunal judge must stand.

Signed
21.05.2014

Date

Judge of the Upper Tribunal