CUREDI013UK002

Question(s) at stake:

1) Whether Christians in Pakistan face serious discrimination that amounts to persecution under the Refugee Convention or the ECHR. 2) What risk that Evangelical Christians face in Pakistan. 3) What particular discrimination Christian women face in Pakistan.

Outcome of the ruling:

In general, "Christians in Pakistan are a religious minority" and "suffer discrimination", but this does not "amount to a real risk of persecution" under the Refugee Convention or the ECHR. (p. 1) Furthermore, "evangelical Christians face a greater risk than those Christians who are not publicly active." (p. 2)

Christian women, like all women, "face discrimination and may be at a heightened risk but this falls short of a" generalized real risk. (p. 2) An analysis of the facts is necessary in each situation in which women or Christian women are involved. "Factors such as their age, place of residence, and socio-economic" background are to be taken into consideration "when assessing the risk of abduction, conversions, and forced marriages." (p. 2)

The appeal was dismissed in light of the country guidance (CG).

Topic(s):

- Immigration and Asylum

Keywords:

- Applicant's credibility
- Assessment
- Asylum seeker

- Failure of State protection
- Internal relocation alternative
- Persecution
- Real Risk of persecution
- Refugee status
- Religion or belief

Tag(s):

- Christians
- Evangelical Christians
- Christian woman

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Country:

United Kingdom

Official citation:

AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569 (IAC)

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2014-ukut-569

ECLI:

No ECLI number / ECLI number unknown

Date:

15 December 2014

Jurisdiction / Court / Chamber:

Upper Tribunal (Immigration and Asylum Chamber)

Remedy / Procedural stage:

Appeal from the First Tier Tribunal (Immigration and Asylum)

Previous stages:

- Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 27 September 2011
- The First-tier Tribunal dismissed the appeals on 7 September 2011
- The Secretary of State refused the asylum applications on 7 July 2011

No official citations of the previous stages are available

Subsequent stages:

None.

Branches / Areas of law:

Administrative law; Asylum law

Facts:

“The appellants are both Christians by birth. They are brother (AK) and sister (SK) born in Karachi in 1983 and 1987 respectively. AK is married to another Pakistani Christian; his wife and son remain in Pakistan with his in-laws. SK is single. The appellants’ parents, older brother, and older sister continue to live in Pakistan.” (para. 5) The appellants “claim that the parents live in a ‘safe house’ provided by the church.” (para. 5)

“The appellants arrived” in the UK “on 26 March 2011 with” student visas “valid until 28 June 2012.” (para. 6) They claimed asylum on 20 May 2011. (para. 6)

They maintained that in Pakistan they had been teaching “at a school founded by their parents. According to the appellants, on 21 October 2010 […] AK entered into a discussion about Jesus and Prophet Mohammed with” the students “while he was teaching.” (para. 6) The students became angry and “reported” AK “to their parents.” (para. 6) On the same evening, some parents, “including some extremists from the Sipah-i-Sahaba, visited” AK’s family home. (para. 6) “AK was

out but his parents and SK were present and were verbally and physically attacked. Threats were made against AK. Neighbours intervened to end the attack." AK's father told him "on the telephone not to return home and he stayed at his grandmother's house." (para. 6)

Both appellants explained they went into hiding after this incident but occasionally left their place. During such outings, they were both attacked by groups of individuals, including Sipah-i-Sahaba members, but were able to escape and go into hiding again.

Both appellants then returned to Karachi for a few months, after which they left Pakistan once they had obtained their UK visas.

Shortly after their arrival in the UK, the appellants "were informed by their father that on 27 March 2011, First Information Reports (FIRs) had been lodged, accusing them of blasphemy." (para. 9) On 28 March 2011, " a Fatwa had been issued by militants calling for their deaths and, on 29 March, the police had raided their family home." (para. 9) In light of these events, the appellants claimed asylum.

In the UK, "both appellants have continued to practise their faith. AK is a member of Stockton on Tees Baptist Church and SK has joined Golding's Church in Loughton." (para. 10)

The appellants applied for asylum on 20 May 2011 and their asylum applications were refused on 7 July 2011 because the Home Office (HO) "did not believe their accounts of what had happened to them." (para. 11)

Ruling:

After hearing extensive evidence from country experts and analysing considerable background information, the Upper Tribunal found that the decisions of the First Tier Tribunal contained errors of law. As such, they were set aside and remade.

The ruling can be divided in two main parts, the first of which provides the country guidance and the second one deals with the two appeals.

Country Guidance

Regarding the risk of persecution for Christians:

1. “Christians in Pakistan are a religious minority who, in general, suffer discrimination but this is not sufficient to amount to a real risk of persecution” under the Refugee Convention. (p. 1)
2. “Unlike the position of the Ahmadis, Christians in general are permitted to practise their faith, can attend church, participate in religious activities and have their own schools and hospitals.” (p. 1)
3. Following the guidance in *SZ and JM (Christians – FS confirmed) Iran, CG [2008]* UKAIT 00082, the Upper Tribunal did not draw a distinction between evangelising and proselytizing or preaching, as it found no useful purpose in doing so.
4. Evangelism “involves some obligation to proselytise. Someone who seeks to” disseminate their belief to encourage others to convert may face the charge of blasphemy. (p. 1) Because of this “evangelical Christians face a greater risk than” other “Christians who are not publicly active. It will be for the judicial fact-finder to” evaluate each claim individually and to assess whether “it is important to the individual to behave in evangelical ways that may lead to a real risk of persecution.” (p. 2)
5. “The risk of” facing “a blasphemy allegation will depend upon a number of factors and must be assessed on a case by case basis. Relevant factors will include the place of residence, whether it is an urban or rural area, and the individual’s level of education, financial and employment status and level of public religious activity such as preaching.” (p. 2) This is not a complete list.
6. “Non-state agents who use blasphemy laws against Christians are often motivated by spite, personal or business disputes, arguments over land or property.” A blasphemy allegation has to be proactively pursued either “by the authorities in the form of charges” or by individuals lodging the

complaint. In such a case “an applicant may be able to establish a real risk of harm in the home area and an insufficiency of state protection.” (p. 2) But the Upper tribunal did not specify how this can be proved.

7. Regarding Christian women, and women in general, they “face discrimination and may be at a heightened risk but this falls short of a generalized real risk.” (p. 2) An individual analysis of each case is critical. “Age, place of residence, and socio-economic milieu are all relevant factors when assessing the risk of abduction, conversions, and forced marriages.” (p. 2)

Regarding state protection:

8. “It is a well-established principle that a well-founded fear of persecution will not exist if there is a sufficiency of protection against serious harm”, as set out in *Horvath* [2000] UKHL 37. (para. 225) “The situation of Christians is such that […] where an individual can establish a real risk of serious harm by virtue of a blasphemy charge being brought against him or her, it is in general unlikely that he or she will enjoy” state “protection.” (para. 225)

Regarding internal relocation:

9. Following *Januzi* [2006] UKHL 5, the Upper Tribunal ruled that the correct approach is to consider “whether an individual can reasonably be expected to relocate or whether it would be unduly harsh to expect him to do so.” (para. 228)

10. Individuals seriously pursued by armed militant groups “will generally not be safe in Punjab where these groups are based. They may also be unsafe elsewhere due to the wide geographical reach of these groups.” When assessing the level of safety, relevant considerations are “[t]he nature of the threats received, the individual’s personal circumstances and availability of support from influential connections.” (para. 230) “[O]rdinary community members will not have the resources or the inclination to pursue their

victims outside the local area." (para. 230) Therefore, those facing harm from local "groups or individuals will generally be able to relocate to [...] large cities. (para. 230) Nevertheless, "individuals subject to criminal prosecution under the blasphemy laws will not generally be able to relocate." (para 230)

11. If "an FIR has been issued", internal relocation may be possible in some circumstances. (para. 231) The, fact finder will have to assess the seriousness of the lodged and pursued FIR, "along with the individual's personal circumstances, the existence of traditional support mechanisms such as friends and relatives in the area of relocation, and whether the individual would be readily identifiable there." (para. 231)

Regarding the situation of women:

12. Violence against women may be a form of persecution when the state "is unwilling or unable to provide protection." (para. 102) Christian females face a "particular risk of sexual and gender-based violence, forced conversion to Islam, and forced marriage to Muslim men." (para. 102)
13. Christian women "living alone without a male relative" or guardian "in rural areas may well be at risk of gender based persecution exacerbated by their position as members of a minority group", as well as features such as "[y]outh, illiteracy, and poverty". (para. 239)

Determination of the appeals:

In considering the position of the appellants, the Upper Tribunal found that they had not demonstrated a real risk of persecution or serious harm contrary to Article 3 of the ECHR or the Refugee Convention.

The Upper Tribunal, upholding the finding of facts made by the First-tier Tribunal, found that the appellants were lacking in credibility with regard to their account of events in Pakistan; the decision explains in detail the inconsistencies in the testimonies as well as unreliable or irrelevant evidence presented. In addition, the

appellants' activities had been limited as far evangelizing is concerned. No evidence was provided concerning the persecution against Evangelists per se. (para. 261)

The Upper Tribunal concluded that the appellants came" from an educated and well-off family." (para. 261) "Both appellants" had "university degrees and employment experience." (para. 261) They did not "fall within the illiterate and vulnerable categories of Christians who are forced into menial labour." (para. 261) In addition, "[t}hey did not come from Punjab or from a rural background" where young Christian girls face some risk of abduction and forced conversion. "Before their arrival" in the UK, "they were able to practise their faith" freely and were engaged in several religious activities. (para. 261)

Regarding SK, she would not be "a lone female without" any male guardians. "She has a father and brothers." (para. 262) She is not of a social class that "would make her vulnerable to abduction/forced marriage or conversion." (para. 262) "The appellants have a home and family to return to." (para. 262)

Main quotations on cultural or religious diversity:

Given the copiously detailed summary of the country condition, only a few of the quotations on religious diversity are reported here:

- "There is agreement in the evidence that extremist religious groups present the largest obstacle to freedom of belief in Pakistan. The risk of blasphemy allegations emanate almost entirely from, or at the instigation of, extremist groups. Much of the violence carried out by militants does not distinguish between the faiths of the civilians targeted." (para. 74)
- "The HRCP, UNHCR and other sources report that since the amendment in 1986, cases have risen steadily. Ahmadis and other religious minorities initially felt the brunt of these accusations but Pakistanis of any faith are now potential victims with reportedly half of the blasphemy cases registered being against the majority Sunni Muslim population." (para. 75)

- “Attempts by successive governments to reform or repeal the blasphemy laws have failed under the pressure of hard-line religious groups.” (para. 76)
- “Several reports…record that the Christian minority is subject to discrimination and harassment as well as acts of religiously motivated violence at the hands of militant groups and fundamentalist elements. Criminal provisions, particularly the blasphemy laws, are said to be used by militant organisations and members of some Muslim communities to intimidate and harass Christians as well as to exact revenge or settle personal or business disputes. Interfaith marriages may attract reprisals from the Muslim community but these are more likely where a Muslim woman marries a non Muslim [sic] man. Muslim men are permitted to marry women outside their faith [21], the assumption being that the woman will convert to Islam.” (para. 78)
- “The Austrian Fact Finding [sic] Mission report (AFFM) concludes from interviews they carried out that in daily life communication between different faiths is relatively unproblematic. Mixed marriage is frequent and members of different religions largely live together peacefully. Peace is, however, unstable because an incident like a blasphemy accusation can incite people and lead to riots. Although there are scattered riots against Christian settlements, Ahmadis are targeted time and time again. The report suggests more tension amongst Muslims and Muslim related minorities (Ahmadis and Shi'as) than between Muslims and the other minorities.” (para. 86)
- “The UNHCR considers that members of the Christian community, including those targeted by Islamic extremist elements or charged with criminal offences under the blasphemy provisions, victims of bonded labour, severe discrimination, forced conversion and forced marriage, as well as Christians perceived as contravening social mores, may, depending on the individual circumstances of the case, be in need of international protection on account of their religion or membership of a particular social group.” (para. 104)

- “The report concludes that there are profoundly important economic, caste and class elements in the persecution of religious minorities and that members who tend to be relatively affluent, well-educated and largely confined to urban areas find themselves left alone provided they do not challenge the Muslim majority. It appears that their status offers them much protection from problems suffered by others who are not so fortunate in their status. Prominent Christians provide important evidence for the Pakistani state of religious pluralism and tolerance and thus are useful to the state and are ceded privileges accordingly. Those who suffer the most and are the most acutely vulnerable to the vagaries of their Muslim neighbours and the oppression or indifference of local law enforcement and judiciary, are the rural and urban poor.” (para. 117)
- “There is undoubtedly societal and state discrimination against Christians who are described as poor, illiterate and marginalised. The appellants and the experts referred to derogatory remarks in school text books which, they maintained, supported the view of teachers and Muslim students that Christians are inferior. The reports before us indicate that derogatory remarks in school books are aimed particularly against Hindus where Hindu beliefs and practices are contrasted negatively with those of Islam.” (para. 119)
- “In other areas of life, Christians also face discrimination. Due to their illiteracy and the perception of being unclean, they find it difficult to obtain anything other than menial work. Many work as domestic servants and there are large numbers in Punjab who are bonded labourers. Even so, there are Christians who are affluent and well educated.” (para. 222)
- “It is difficult to assess the frequency of abductions and rape of females from minorities without a comparison of figures for those involving Muslim women. Additionally, due to the significant fluctuation in the figures, they cannot be relied upon. We therefore conclude that although there is some risk of abduction and forced conversion of young Christian girls, largely in

rural areas and in Punjab, it does not amount to a serious risk in itself." (para. 238)

Main legal texts quoted in the decision:

International Law

- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
- The Refugee and Persons in Need of International Protection (Qualification) Regulations 2006 which implement EU Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Pakistani Law

- Pakistan Constitution
- Pakistan Penal Code

Cases cited in the decision:

- *AJ (Risk - Christian Convert) Pakistan v. Secretary of State for the Home Department, CG* [2003] UKIAT 00040
- *Horvath v. Secretary of State for the Home Department* [2001] 1AC 489; [2000] UKHL 37; [2000] 3 WRL 379; [2000]3 AII ER 577; [2000] Immr AR552; [2000] INLR 239
- *Januzi v Secretary of State for the Home Department* [2006] UKHL 5; [2006] 2 AC 426; [2006] UKHL 05; [2006] UKHL 5, [2006]; 2 WLR 397
- *MN and others,* Pakistan *v. Secretary of State for the Home Department* (Ahmadis - country conditions - risk), CG [2012] UKUT 00289 (IAC)

- *SZ and JM (Christians – FS confirmed) Iran v. Secretary of State for the Home Department, CG* [2008] UKAIT 00082

Commentary

Refugee Status for Christians Facing Blasphemy Charges in Pakistan

International law (e.g., Article 18 of the UDHR, Article 18 of the ICCPR) recognizes the right to freedom of thought, conscience, and religion, including the freedom to manifest religion or belief (Goodwin-Gill and McAdam 2007).

Asylum claims based on religious persecution, however, pose challenges both for applicants and decision makers. (*ibid.*) This is due partly to the fact that the content of the right to freedom of religion is contested. It is also because of the difficulties inherent in proving one's religious activities in the country of origin, as exemplified by *AK & SK*. In this regard, some authors discuss that some states, preoccupied to keep low the number of asylum applicants they accept, have attempted adopt a narrow definition of religious persecution and recognize only those who can prove active involvement in their religion in the country of origin (Šorytė 2018: 83). Furthermore, one study has highlighted a pattern in asylum claims based on religious persecution in Pakistan: refugee status is refused unless it can be established that an applicant had a religious identity. (Madziva and Lowndes: 85)

In line with these studies, the decision makers in *AK & SK* accepted after the different proceedings that the applicants had been members of the Evangelical church, but they found that the applicants' religious activities did not expose them to a real risk of persecution. In addition, a number of other facts in the applicants' accounts were found not to be credible.

Regarding the scope of *AK & SK,* it has been noted that, more generally, it mainly deals with the risk faced by Christians from extremist groups through blasphemy charges brought by a militant Islamic group. In so doing, *AK & SK* focuses on persecution by non-state agents and fails to properly address the broader issue of persecution by hands of the state through persecutory laws. Pakistani law

provides for a punishment which amounts to persecution because the offences target religious minorities. (All Party Parliamentary Group for International Freedom of Religion and Belief 2016) Should the court have considered this aspect, it may have reached the conclusion that internal relocation is always unsafe for Christians charged with blasphemy.

In addition, *AK & SK* does not engage with direct non-blasphemy persecution experienced by Christians despite the fact that Christians are known for suffering widespread discrimination, prejudice, and violence. (Madziva 2018)

It should be noted that this case relied on previous decisions involving the persecution of religious minorities in Pakistan. Specifically, the Upper Tribunal referred to *MN and others (Ahmadis - country conditions - risk) Pakistan v. Secretary of State for the Home Department, CG* [2012] UKUT 00389 (IAC)), a decision on the Ahmadi religious minority. The ruling recognized that Ahmadis are severely repressed, but the provision of the Pakistan Penal Code restricting their religious practice (that is, forbidding them from identifying as Muslims, referring to their faith as Islam, and preaching or proselytizing in any way) was not considered persecutory *per se* since it did not put *all* Ahmadis at a real risk. Generally, for asylum applicants to deserve international protection, they must demonstrate that they engage in behaviour that breaches anti-Ahmadi laws. See Katia Bianchini, 'Religious Persecution of Ahmadis in Pakistan **-** *MN and others (Ahmadis – country conditions – risk) Pakistan CG* [2012] UKUT 00389 (IAC)' CUREDI22UK008.

The Upper Tribunal also referred to *AJ (Risk - Christian Convert) Pakistan v. Secretary of State for the Home Department, CG* [2003] UKIAT 00040, which found "that the situation of Christians" is "less dramatic than that of Ahmadis." (p. 102) It also "noted that although there was no law against conversion from Islam to Christianity, those" who "converted may encounter problems from some" people "in society who did not accept the practice." (p. 102) In addition, those who attempted to evangelize "were believed to be at risk of encountering serious difficulties." (p. 102) The Upper Tribunal "assessed the instances of attacks against the background" evidence "and concluded that the evidence fell far short

of showing that a convert faced a real risk of" persecution. (p. 102) It also found that the appellant had the option of relocating "to a major city with a significant Christian population." (p. 102)

Following *AK and SK*, the Home Office's Country Information and Guidance document (September 2018) recognizes that Christians in Pakistan generally experience discrimination. It distinguishes among different groups of Christians and in particular between persons who were born Christian, those who converted, and those who are evangelic. The situation seems to place those who convert and evangelical Christians more at risk than Christian-born persons (Home Office 2018). However, these distinctions among different types of Christians raise the question of whether they are useful when considering the persecution that Pakistani Christians face in their everyday lives, in particular because the state may be the agent of persecution.

Literature related to the main issue(s) at stake:

- UNHCR. 14 May 2012. "Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan".
- Christian Solidarity Worldwide. June 2011. "Briefing on Pakistan: Religious Freedom in the Shadow of Extremism".
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- Human Rights Watch. 2014. "Report on Pakistan".
- Immigration and Refugee Board of Canada. 14 January 2013. "Pakistan: Situation of Christians in Pakistan Including Social and Government Attitudes, Treatment and Rights 2010-2012".
- US Commission for International Religious Freedom. 2013. "Report".
- The Federal Republic of Austria, Federal Asylum Agency. June 2013. "Fact Finding Mission report on Pakistan".
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- Australian Government Refugee Review Tribunal. January 2013. "Issues Paper: Pakistan Militant Groups".
- Radio Free Europe. 24 September 2013. "Pakistan Religious Leaders Declare Attack on Christians un-Islamic".
- BBC News. 13 May 2014. "Report".

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- UK Home Office. August 2013. "Office Country of Origin Information Service, Pakistan Report".

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- All Party Parliamentary Group for International Freedom of Religion and Belief. 2016. "Pakistan Inquiry Report", available at < <https://appgfreedomofreligionorbelief.org/media/APPG-Abridged-Report-Pakistan-Inquiry.pdf>> accessed 22 October 2021.
- UK Home Office. v.3.0 September 2018. “Country Policy and Information Note. Pakistan: Christians and Christian Converts”. Accessed 20 June 2021.

General legal literature on the topic that may not be directly connected with the case

- Goodwin-Gill, Guy S. and Jane McAdam. 2007. *The Refugee in International Law*. Oxford: Oxford University Press.
- Madziva, Roda. 2018. “‘Your Name Does Not Tick the Box’: The Intertwining of Names, Bodies, Religion and Nationality in the Construction of Identity within the UK Asylum System”. *Ethnic and Racial Studies* 41 (5): 938–957.

- Madziva, Roda and Vivien Lowndes. 2018. “What Counts as Evidence in Adjudicating Asylum Claims?”. In Brigitte Nerlich, Sarah Hartley, Sujatha Raman and Alexander Smith (eds), *Science and the Politics of Openness*, 75–93. Manchester: Manchester University Press.
- Šorytė, Rosita. 2018. “Religious Persecution, Refugees, and Right of Asylum: The Case of The Church of Almighty God”. *The Journal of CESNUR* 2 (1): 78–99.

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