EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 54
XA22/18

Lady Clark of Calton

NOTE OF REASONS

delivered by LADY CLARK OF CALTON

in the application for leave to appeal
under section 13 of the Tribunals, Courts and Enforcement Act 2007

by

SR (AP)

Applicant

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Applicant: Winter; Drummond Miller LLP (for Jain, Neil & Ruddy, Solicitors, Glasgow)
Respondent: Maciver; Office of the Advocate General

7 August 2018

[1] I am grateful for the detailed written submissions and the assistance of counsel in their oral submissions. In the original decision letter on behalf of the Secretary of State dated 10 March 2015 it was accepted that the applicant was a Malaysian national who was a Christian. The applicant has always given a history which involved a history of violent incidents. In particular, as summarised in the decision letter dated 10 March 2015 in paragraph 10, her account was recorded:

> "In August 11 2014, a group of men forced themselves into your home, a knife was put to your throat, and the rest of your family were threatened. You were told that what you were doing was illegal, because your father was still considered a Muslim but was practicing Christianity and living with a non-Muslim family. Your father told these men that he would convert the whole family the next day…"

[2] The decision letter in paragraph 45 stated, "Due to the fact that you have no outstanding credibility issues regarding the incidents themselves, your claim that your house was forced into three times has been accepted." The difficulty for the applicant was that the decision maker did not accept that Imam Khalid and the men who were involved in the violent and threatening behaviour related to the practice of Christianity were "tied" to the Malaysian authorities.

[3] When the matter was considered before the First-tier Tribunal in June 2015, the applicant was one of three appellants. Her brother and father were the other appellants. The violence on 11 August 2014, the threats about conversion and the visit to the Islamic Office on 12 August 2014 to start the conversion process are all summarised in paragraph 14 of the First-tier Tribunal determination dated 6 November 2015. The Tribunal judge noted in paragraph 17 of the decision dated 4 November 2015 that:

> "…the respondent had accepted that the incidents as described by the first and second named appellants as having happened in 2010 and 2014 had happened and that concession was extended to the third appellant to also include the incident claimed in 2003."

[4] The factual dispute between the parties did not relate to the evidence described by the appellants about the incidents but as recorded in paragraph 18 "that the respondent did not accept that there was anything to tie the person whom the appellants claim to fear (Imam Khalid) to the authorities". The First-tier Tribunal judge considered whether Imam Khalid was part of the Malaysian authorities and the identities and links of the violent men who were involved in the incidents in 2003, 2010 and 2014. The decision was that the

violent men were criminal associates of Imam Khalid but that the Tribunal judge did not accept that the Malaysian authorities were responsible. Insofar as there were adverse credibility findings relating to the appellants, none of these related to the claims made by the three appellants before the First-tier Tribunal about the violent incidents.

[5] There was no concession by the respondent before the First-tier Tribunal (as there now is) to the effect that the mere starting of the conversion process, from the Christian to Muslim faith, even if not completed, was sufficient to make the applicant a perceived convert. Thus on the facts always described by the applicant in this case and supported by other witnesses, there seem to be two potential sources of a well-founded fear of persecution. The first source arose from the violent actions and threats if the people involved were accepted as a responsibility of the Malaysian authorities. That link was not accepted by the First-tier Tribunal. The second source arose because the applicant, as a result of violence and threats particularly as described in the incident of 11 August 2014 started the conversion process and may be identified as a perceived convert who remains a Christian and is not prepared to practice the Islamic religion.

[6] On 22 February 2017, solicitors for the applicant made a claim under paragraph 353 of the Immigration Rules, submitted further information and asked matters to be determined as a fresh claim. That information included medical evidence about injuries and psychological damage to the applicant's father, a report from an expert Professor Bluth and also information about problems for the applicant because she signed a form to start the conversion process. The expert report canvassed some of the problems for a person such as the applicant and concluded that there was a serious risk that the applicant (if she had signed the form to start the conversion process) would be identified as a Muslim and would be at risk of persecution and serious harm if forced to return to Malaysia. Thus the evidence

of the appellant in this case and her supporting witnesses as to whether on the day after the violence on 12 August 2014 they attended the Islamic office and signed papers to start the conversion process became critical. No adverse findings re credibility was made about this by the First-tier Tribunal. The violent history and especially the incident on 12 August 2014 must be considered as potentially relevant to the issue of whether on 13 August the appellant with other witnesses did attend the Islamic office and sign papers to commence the conversion process.

[7] The second First-tier Tribunal judge made the decision dated 11 July 2017. He heard evidence and identified the issue as "whether or not this appellant had signed a form to convert to Islam which would mean the Malaysian authorities would consider her to be a Muslim…" (paragraph 48). In paragraph 49 he listed reasons to conclude that the appellant had not signed such a form. In paragraph 50 he commented that when each of the "facts" narrated is looked at individually they could be said to be inconsequential. I would agree with that. When the reasoning is examined it seems obvious that there is no attempt to consider the issue in the context of the evidence about the violent incidents which the the First-tier Tribunal judge accepted. The appellant in this case and other witnesses were accepted as credible about their narration of events re the incidents. The individual reasons as I read the decision dated 4 November 2015 in paragraph 49(b) and (c) appeared to be based on the conclusion that the appellant and her witnesses were found to be totally incredible. Counsel for the respondent was unable to assist me in understanding paragraph 49(c) in the context of a case where it might be thought that there was very relevant evidence which had been accepted as credible. Further, in paragraph 49(d) the Tribunal judge appeared to misunderstand the expert report at paragraph 6.3 where the expert is explaining the words said at conversion. The criticisms made in paragraph 49(d) that none of the witnesses stated they were made to repeat these words is

misconceived. Paragraph 49(e) is of assistance to the appellant in that it gives an explanation why it has not been possible to obtain the signed form. The appellant is at present in the UK and not in a position to get the form herself. I do not consider that the reasons given in paragraphs 49(a), (g) and (h) bear scrutiny in relation to the issue of whether the appellant signed a form as she said and was supported by a number of witnesses.

[8] This is a case in which the applicant has always given evidence to the effect that the violent incidents provoked the forced visit to the Islamic office to start the conversion process. There was no criticism of her credibility in respect of this by the First-tier Tribunal. That might be thought to be in her favour. If it is not, the conclusion must be that she did not have a proper hearing before the First-tier Tribunal on this point as it was not specifically dealt with. My reading of the decision of the second First-tier Tribunal decision dated 1 July 2017 is that the evidence was not assessed in its full context and the reasoning given seems perverse. The Upper Tribunal failed to provide a remedy.

[9] In my opinion this is a case in which leave to appeal should be granted in terms of rule of court 41.57(2)(b).