

Introduction

1.1 My interest in these matters. Is that I am a practising Christian with close links with the Pakistani Community in the UK. I have taught children from the Pakistani community in Nottingham for some 20 years. I am also a member of the Muslim Institute which is a reform group made up of liberal intellectuals mainly from the Pakistani community in the UK. I have close friends in the Christian Community who have moved from Pakistan to the UK.

1.2 The focus of my submissions is the Home Office Report “ Pakistan - Christians and Christian Converts Feb 2015.” The report forms part of the Country Information and so is an important part of the consideration of Asylum claims; para 2.1.1 refers to claimants statements being “ externally credible (i.e. consistent with generally known facts and the country information).The Report considers the following issues

Is the person’s account a credible one?

Are Christians or Christian converts at risk of mistreatment or harm in Pakistan?

Are those at risk able to seek effective protection?

Are those at risk able to internally relocate within Pakistan?

1.3 The report draws most heavily on two legal legal cases

AK & SK (Christians: risk) Pakistan (CG) [2014] UKUT

569 (IAC) (15 December 2014)

AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC) (26

January 2011)

These two judgement draw on Bagdanavicius [2003] EWCA Civ 1605 which in turn draws on

Horvath v. Secretary of State For The Home Department HOUSE OF LORDS 2000

1.4 I have read these judgements and attach copies so that members of the group can look at them for themselves . I have no legal qualifications but as a planning consultant I have to assess legal judgements and expert opinions. I have also recently instructed counsel regarding two applications to the High Court for judicial review of planning decisions.

1.5 I understand reasonably clearly the issues, the reasoning and the conclusions of all of them except the AK and SK case which is the foundation of the Home Office Report. My lack of legal training may explain the difficulty I have with the legal context of the AK and SK case but I do not think it is an obstacle to me appraising of the “ fact finding” aspect of that case which in my opinion is flawed . The AK and SK case is not what I would have expected of a case that appears to be the foundation of Home Office policy towards Christians in Pakistan.

2. The legal context

2.1 Taking the AK SK judgement first the case is of an appeal from a First Tribunal judgement to the Upper Tribunal The conclusion of the First Tribunal judges that that the couple claiming asylum had fabricated their story was not or could not be appealed The Upper Tribunal accepted that conclusion but felt there was a legal point to be settled and “, the present appeals have been re-heard partly in order for the Upper Tribunal to give country guidance on the risk to Christians in Pakistan, by reference to substantially greater evidence and argument than was before the First-tier Tribunal Judge.

It appears from para 12 of the AK and SK judgement that the agenda for the appeal was set by the Home Office or possibly both the Home Office and the judges thought of the idea at the same time. The Court not only set itself a narrow legal task but also set about legal a fact finding mission of much broader scope.

2.2 The narrow legal point is dealt with in paras 248 to 263. We make no comment on these conclusions. The wider points relevant to country guidance are set out in paras 240 to 247 which themselves summarise a large body of evidence. We take issue with these and with their incorporation in the Home Office Report referred to above at key points such as 2.4.1 and 2.4.2; which deal with the issue of relocation. The AK SK case contrasts strongly with the case of AW v Sec of State heard before Lord Ballantyne. This seems to me an Upper Chamber Appeal dealing with major and tangible legal issues. It is reassuring to see the AW case referred to in the Home Office Report 2.3.3 and 2.4.4. It is also worth saying that the low quality of the original judgement in the AW case is truly shocking .

2.3 Our first point ion the AK SK case s that the circumstances of the appeal, which was not against the finding of the first tribunal that the story had been fabricated may well have influenced the contributions of some witnesses; notably two leading counsel in the field Zimran Samuel QC and Asma Jangahir a leading figure in the Human Rights Movement in Pakistan. One imagines they are both busy people and they were not instructed in this case.

2.4 The AW ??? case puts a question mark against the value of a Country of Origin document on the danger to Christians in Pakistan ;given the size of the country, the heterogeneous nature of the Christian community, the sporadic nature of violence and the speed with which the political context for Christians can deteriorate.

2.5 Mr Samuel at para 17 of his evidence in the AK SK case questions fair process by both the police and the courts in Pakistan. These points seem to have been lost. At para 19. he says “Relocation

often means that the threats and risk associated with the accusation travel with the accused. State authorities more often than not unwilling or unable to offer adequate protection and there is little prospect of matters improving in the foreseeable future.” Yet at 2.4.2 the Home Office says 2.4.1 that In general, relocation to an area where substantial Christian communities reside is viable.

2.6 I am more comfortable criticising the the fact gathering exercise because I have worked for ore than forty years in the planning process which is required by law to be evidence based. Facts and figures have been gathered from a variety of sources with no serious attempt at evaluation. It appears that the BBC evidence was given equal weight to that of the UNHCR. That cannot be right. There was no invitation to submit evidence and this is something the APPG now has an opportunity to put right. No evidence was gathered about the fate of those whose asylum application was refused and who were returned to Pakistan. There was no attempt to assess trends or provide for contingencies. It is clear that events in the world at ;arge influence violence levels against the Christian community. In some ways they are hostages. The conflict with ISIS may have an effect. It is arguable they will suffer if the West gains the upper hand and will suffer if ISIS are allowed to preach that Christians are a lower form of humanity. Most importantly although the case is heavily relied upon in the Home Office Report it was not able to be appealed ; and so situation appraisal regarding the position of Christians in Pakistan has acquired the force of law without any debate or right of appeal .

2.5 Turning to the evaluation of the large amount of material gathered there is no attempt to analyse violence to Christians by type and origin. To me it is very clear that the violence is at three levels

At the lowest level opportunistic accusations of blasphemy for reasons of revenge or of material gain ; most commonly among the poor and deprived population .

At a much higher there is much more systematic violence against Christians and those who defend them by Islamic Militants and members of the police and security services sympathetic to them. The evidence available in the AK SK case includes the Assassination of the Governor of Punjab, the Assassination of the Govt. Minister for Minorities and the public beating and humiliation of Ms Jahangir former President of the Supreme Court Bar Association and accusations of blasphemy against some sixty lawyers who spoke out against the blasphemy laws.

The Blasphemy Laws promulgated at the highest level and retained intact by the [present Government despite both internal and external pressure. The AK SK fact gathering exercise made no attempt to probe the reason for the blasphemy laws and they could have done so. I am no expert on this matter but an explanation that comes to mind is that the Blasphemy Laws are the price that Government and the Army pays for the support of a large and powerful body of conservative Muslims; although we note the condemnation by the Uleama of the bombing of the church in Peshawar.

At each of these level Christians and other potential victims of violence and / or false accusations of blasphemy are exposed to a level of risk over which they have no control. In my view the risk is likely to increase due to a growing sense of impunity among poor Muslims misusing the blasphemy laws and at a higher level the idea that revenge against the Christian Community is a legitimate response to perceived wrongs committed by the USA and Europe. There is a consensus in the West that ISIS must be eliminated and that process will worsen the position of Christians in Pakistan.

2.6 The report contains nothing related to the issue of bonded labour which I understand particularly affects poor Christians as well as Hindus. It does not deal with the conversion of young Christian girls through forced marriages estimated at 700 a year in para 140 of AK SK.

3. The Home Office Report

3.1 Section 3 - Policy which, is the most important part of the report so far as decision taking is concerned, largely relies on the AK SK case. There is no clear connection between section 3 and section 4 and indeed on important issues such as sufficiency of protection there seem to be conflicts between the two sections. Accusations of blasphemy seems to be treated as a self contained phenomenon whereas all the evidence in AK SK is that it is a general purpose weapon available to any individual or organisations wishing to suppress resistance to forced marriages and other forms of abuse by families and / or their lawyers

3.2 Paragraph 2.3.1 ,which assesses a person is not in danger until a formal charge of blasphemy has been made shows, a total lack of realism. It assumes a person against whom capital charges have been made by the Police can leave Pakistan in order to seek asylum.

3.3 Bullet point 3 of Section 3 does not follow from 2.3.4, nor from the general principles of sufficiency of protection set out in major cases such as AW, Bogdanavicius and Hovarth or from the evidence at paras 4.1.1 to 4.1.6 of the Home Office specifically relating to the Christian community in Pakistan. It also seems to conflict with the evidence from the Foreign and Commonwealth Office “ There is not much protection of religious minorities from the Government – there is a Ministry of Minorities, but it is felt that it engages in “fire fighting” rather than taking any proactive steps to protect the community.”

3.4 There is no justification for the assumption set out in para 3 bullet point 5 which suggests that any Asylum claim that is based on being a Christian that fails will normally be certifiable as “clearly unfounded “under section 94 of the Nationality, Immigration and Asylum Act 2002.

3.5 What we have is a the transfer of a court judgement on matters that were not strictly speaking before it and a Home Office Policy report. Clearly the legal judgement cannot be challenged but it seems to me good practice for Home Office reports of this type to be published in draft and then consulted upon. This is done as a matter of routine in the formulation of policies of far less consequence by other departments such as that of Local Government and Communities which I deal

with on a regular basis. I note the invitation for feedback in the preface of the Home Office Report but this is not the same thing as a comprehensive and structured consultation exercise. .

4. Individual circumstances

4.1 Given the unpredictable nature of violence and fabricated accusations of blasphemy against Christians in Pakistan it is very important that individual circumstances, referred to in para 2.1.1 of the Home Office Report , are taken into account in a robust and sensible way. I note a comment of the UNHCR on Home Office assessment “2.3.5 The tendency to reject or disbelieve every aspect of an applicant's claim discussed above, besides being a reflection of a misapplication of the law, suggests that there may be a culture of refusal amongst caseworkers. This may lead to claims not being considered on their individual merits.” In my view the Country Report contains flaws and so the fact that an individual's account is not in compliance with the Country Report should not of itself undermine the credibility of the person's account. It is also relevant that whilst membership of a particular church might provide clues as to the nature of a person's Christianity it is no more than that. Christianity in general stresses the need for an individual to respond to what God is calling them to do at a particular point in time.

4.2 There is a need to revise the Country Report and to consult on that revision. I have suggested that internal relocation would not seem a feasible option once the individual is facing a real and present threat such as an accusation of Blasphemy. On the other hand preventative relocation e.g. from areas close to Mosques may be an option and might be a suitable project for aid from the UK Govt to NGOs.