

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
on : 24 January 2003
Dictated : 6 February 2003

Determination Promulgated
.....15/07/2003.....

Before:

MR. H. J. E. LATTER (CHAIRMAN)
MISS K. ESHUN

between

DHAN BAHADUR GURUNG

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr. O. Ramlogan of Counsel, instructed by Alliance Solicitors.
For the Respondent: Mr. A. Sheikh, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal by Dhan Bahadur Gurung against the determination of an Adjudicator (Mrs. J. C. Olivier) who dismissed his appeal against the Respondent's decision giving directions for his removal to Bhutan.
2. The Appellant left Bhutan in April 1998 and then lived for about a year in India. He arrived by air in the United Kingdom on 2 April 1999 with a false passport. He claimed asylum on 7 April 1999.

3. His claim for asylum was based on two elements. The first was that he would be at risk of persecution in Bhutan because he was a Hindu. He also asserted that he was at risk of persecution as an ethnic Nepalese.
4. The background to this appeal is as follows. The Appellant is an ethnic Nepalese who follows the Hindu religion. He lived in Bhutan until his departure for India in April 1998. He lived in a village which had a mixed population of Hindus and Buddhists. It was his assertion that in 1985 there was a Citizenship Act which led to ethnic Nepalese who practised the Hindu religion not being listed as Bhutanese nationals. In 1987 the government issued an order requiring people only to speak the Jhong-Kha language and requiring people to follow the Buddhist religion. The claimant says that his mother died in March 1998. This required him to perform a Hindu funeral ceremony. The Bhutanese police intervened and he was warned to stop practising Hinduism. On 2 April 1998 his father died. He again performed the Hindu funeral ceremony. He was warned that the police were coming to arrest him. He escaped to the forest with his wife, staying there for about ten to fifteen days. On 15 April 1998 he and his wife went to India. He stayed there for a number of months but could not remain as the Indian authorities did not recognise refugees. He had never held a Bhutanese passport. An agent arranged for his passage to the United Kingdom.
5. The Adjudicator's findings are set out in paragraphs 11.5-6 of her determination. She did not find the Appellant to be a credible witness. According to the background evidence Hindus enjoyed freedom of worship but were not permitted to proselytise. There was no evidence before her to indicate that Hindus in Bhutan were prevented from performing Hindu funeral rights. She noted from the annual report on International Religious Freedom for 1999 that there were no reports of religious detainees or prisoners in Bhutan. She noted from the US Department of State Report that the King of Bhutan had declared major Hindu festivals to be national holidays and the Royal Family participated in them. She was not satisfied that the appellant had been persecuted for religious reasons nor that he would be of any adverse interest to the authorities. In these circumstances she dismissed the appeal.
6. In granting leave the Tribunal the Vice-President was satisfied that the Adjudicator gave sound reasons based squarely on the evidence for concluding that the claim based on religious belief was not credible. However, he granted leave in relation to the issue of the consequences of the Appellant not being accepted as a national of Bhutan because he was an ethnic Nepalese. It was arguable that an Adjudicator had not given any adequate consideration to the issue of whether difficulties facing ethnic Nepalese amounted to persecution in Bhutan.
7. Before the Tribunal Mr. Ramlogan argued that the Appellant was stateless because of the decrees issued in Bhutan which deprived him of citizenship. There was no elected government in Bhutan and no constitution. The position of Hindus was untenable. The Appellant would not be able to return there. He would not be regarded as a citizen and would have no right to return.
8. Mr. Sheikh submitted that the Adjudicator's findings were properly open to him. The evidence shows that he had citizenship before he left. He had never expressed disloyalty to the King of Bhutan. There was no reason to believe that he would not be regarded as a citizen. Mr. Sheikh referred to the judgment of the Court of Session in

Bradshaw [1994] Imm AR 359 and the judgment of the Court of Appeal in **Teclé** [2002] EWCA CIV 1358.

9. Bhutan is a Himalayan country bordering India and China. The population comprises 35% Nepalese. There is no written constitution. It is clear from the CIPU report of October 2002 that the ethnic Nepalese are discriminated against institutionally and individually. Ethnic identity is an over-arching issue. The Bhotes, the majority ethnic group, are encouraged by the King to defend their culture and Bhutan's uniqueness. There have been persistent attempts by the Bhutanese government to pressurise the Nepalese minority into assimilation. In 1985 the Government enacted a new Citizenship Act which required individuals to prove their existing citizenship. In the 1988 census tens of thousands of South Bhutanese of Nepalese ethnic origin were declared illegal residents. In 1990 ethnic unrest erupted in the south of Bhutan and refugees started flowing in two directions: non-Nepalese internally to North Bhutan and Nepalese south across the border into India and then on to eastern Nepal. After these expulsions the situation in south Bhutan has been described as one that is harsh towards new Nepali migrants.
10. This assessment is confirmed by the US Department of State Report 2001. Citizens face significant limitations on the freedom of religion. One-third of the population, the ethnic Nepalese most of whom are Hindus, live in the country's southern districts. Tens of thousands of ethnic Nepalese left Bhutan in 1991-92 many of whom were expelled forcibly. There are over 98,000 ethnic Nepalese in seven refugee camps in eastern Nepal. It is recorded that the King has declared major Hindu festivals to be national holidays. During the mid to late 1980s, citizenship became a highly contentious matter. The 1985 Citizenship Act provided for the revocation of the citizenship of any naturalised citizen who had shown by act or speech to be disloyal in any manner to the King, country, and people of Bhutan. The government has maintained that many of those who left the country in the early 1990s were Nepalese or Indian citizens who came after the enactment of the 1958 Citizenship Act but were not detected until a census in 1988. The government has begun a programme of resettling Buddhist Bhutanese from other regions in the southern part of the country vacated by ethnic Nepalese living in refugee camps in Nepal.
11. It is against this background that the claim made by the Appellant must be assessed. He did not leave Bhutan until April 1998. He lived in India until his arrival in the United Kingdom in April 1999. On the basis of the evidence before the Adjudicator, the Appellant fails to establish that he is stateless. The authorities of **Bradshaw** and **Teclé** deal with different issues which do not assist us in this appeal. We note that the Appellant has described himself as Bhutanese in his notice of appeal. He has substantially based his claim on a fear of persecution on religious grounds. The Adjudicator rejected this for reasons which are clear from her determination and with which the Tribunal agree. The remaining issue is whether the appellant would be at risk of persecution because of his Nepalese ethnic identity.
12. The Tribunal accept from the background evidence that there has been considerable tension between the Bhote majority and the Nepalese minority. However, we are not satisfied that the appellant is able to show that he would be at risk of persecution on return. In our view it cannot be argued that the Nepalese minority are persecuted by reason of their Nepalese origins alone. Each case must be looked at on its own

individual circumstances. If the Appellant is permitted to re-enter Bhutan, we are not satisfied that he will be treated in any different way from any other member of the Nepalese minority. We are not satisfied the Appellant would not be recognised as a citizen of Bhutan. If he had been deprived of his citizenship we do not understand why he would continue to describe himself as a citizen of Bhutan. In our view the discrimination faced by those of Nepalese ethnic origin does not amount to persecution. There is nothing in the Appellant's own particular circumstances which would put him at risk of persecution.

13. In these circumstances in our view the Adjudicator's conclusions were correct for the reasons which she has given.
14. It follows that this appeal must be dismissed.

H. J. E. Latter
Vice President