

JH
Heard at Field House
On 13 August 2002

APPEAL NO HX/48836/2001
WF (Internal Relocation -
Christian) India CG [2002]
UKIAT 04874

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
15th October 2002
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Before:

**PROFESSOR D B CASSON
MR C A N EDINBORO**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

Winston Farrer

RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the determination of an Adjudicator (Mr W D Mark-Bell) allowing on asylum grounds an appeal by Mr Winston Farrer, a citizen of India, against the decision of the respondent on 2 July 2001 to give directions for removal to India as an illegal entrant. Before us the Secretary of State was represented by Mr M Davidson, Home Office Presenting Officer. Mr Farrer was represented by Mr A Stedman instructed by Asghar & Co.
2. There is no record of Mr Farrer's lawful arrival in the United Kingdom. At his asylum interview he said that he, his wife and daughter, had left their home in India and gone into hiding in Gujarat, where they stayed with a friend. He said he did not have his own passport but his friend made all the arrangements when they paid him a sum of money. He said he had left India by air from New Delhi but had no idea where the flight was heading. His friend accompanied them and eventually he was in the United Kingdom but he never knew where he was going.

He claimed asylum on 26 February 2001, with his wife and daughter as his dependants, and said he had arrived in the United Kingdom five days earlier. Mr Davidson told us that no passport had ever been produced.

3. Mr Farrer said he was a Christian and as a result had experienced attacks from an un-named anti-Christian group who had also come to look for him at his house. He and his family were Roman Catholic Christians who lived in Gujarat where he and his wife were employed as teachers at a Roman Catholic school called St Xaviers. He told the Adjudicator that on 11 December 2000 a mob, which he described as anti-Christian terrorists, attacked the school. He, his wife and colleagues were physically attacked and witnessed the murder of the school priest Patrick Eaton. The mob destroyed Christian images in the church. He and his colleagues reported the incident to the police and made statements. On 14 December 2000 the family were away from their home. His cousin brother was in their house when it was attacked by the same mob. They beat his cousin brother so badly that he died shortly after having been taken to hospital; before he died he told Mr Farrer the identity of his assailants and said they had threatened to kill him and his family. He and his family then hid in various places in extreme secrecy and employed the agent to effect their departure from India. Mr Farrer said it was a condition of the contract with the agent that he did know his destination and he insisted that he did not know the United Kingdom would be the family's destination. He asserted that the Indian authorities were unable or unwilling to offer him protection after he reported the attack on the church and the murder of the priest. He told the Adjudicator that he believed the anti-Christian group that attacked him were members of the ruling party who alleged that Christians were attempting to convert Hindus. He said that in fact Christians were being persecuted all over India. He agreed that he had had no problems in Gujarat before the incidents he had described. Having considered the background material, the Adjudicator found Mr Farrer to be a credible witness and accepted his account in full. The Adjudicator noted that Christians in India accounted for between two and three percent of the population. Christianity had existed in India for many centuries, perhaps since the fourth century. Relations between Christians and other religious groups had in recent history been almost entirely cordial, but this had changed for the worse very recently. The Adjudicator found that attacks on Christian churches had increased at an enormous rate; the increases coincided "in perfect synchronicity" with the rise to power of the BJP, a Hindu nationalist party. The Adjudicator described the BJP as apparently between on the one hand acting in the truly national interest but on the other hand on occasions acting in response to its Hindu nationalist roots.
4. The Secretary of State had submitted that Mr Farrer could live in a different area of India where there would be no well founded fear of persecution: it was suggested at the hearing that India was a big

place, and that Gujarat was not typical of a nationwide problem. The Adjudicator said at paragraph 37: “Neither the respondent in his refusal letter nor (the Presenting Officer) at the hearing actually told me where in India there would be no real risk of the persecution feared by (Mr Farrer). It is not for me to do the respondent’s homework and these proceedings are essentially adversarial.” The Adjudicator said that he had read the objective material and, while it was clear that certain areas, Gujarat in particular, have a higher incidence of anti-Christian activity than others, nevertheless this activity appeared to occur throughout India. The Adjudicator referred to a report apparently taken from the internet which showed that anti-Christian attacks had occurred in many states across India. The Adjudicator concluded his consideration at paragraph 37 as follows:

“The objective material seems to suggest that Hindu nationalists’ violent anti-Christian activities is (*sic*) a response to an actively pursued policy of Hindu conversion to Christianity promoted by United States Evangelical Christian organisations. The objective material suggests that these US organisations concentrate their conversion policy in poor rural areas. There are many such areas throughout India – I am therefore satisfied that there is a real risk that (Mr Farrer) could be persecuted for his religious beliefs anywhere in India.”

5. We admitted in evidence background documentation including the US State Department report released 26 October 2001 on internal religious freedom in India. In his submissions, Mr Davidson for the Secretary of State relied on two main aspects of the grounds of appeal: first the Adjudicator’s statement at paragraph 34 of his determination that he had read not only the material put before him but “more widely”. Mr Davidson submitted that it was clearly wrong for the Adjudicator to fail to give both representatives an opportunity to comment on material which had not been put before him. Mr Stedman, for Mr Farrer, acknowledged the difficulty posed by the Adjudicator’s approach but he submitted that the Adjudicator was not to be criticised because all the information was available to the Secretary of State. We do not with respect consider that to be an appropriate reaction to the Adjudicator’s approach, which we consider to be wrong and which must plainly call into question the validity of his conclusions.
6. Mr Davidson’s second submission was that the Adjudicator had been wrong in his approach to the question of internal flight. His statement at paragraph 37 that neither the Secretary of State nor the Presenting Officer at the hearing had told him where in India there would be no risk of persecution was simply incorrect. At paragraph 7 of the refusal letter the Secretary of State had expressly said that there were no reports of increases in attacks against Christians in parts of India other than Gujarat, Maharashtra, Madhya Pradesh and Uttar Pradesh. At the hearing the Presenting Officer had pressed the argument that the appellant would not be at risk in the southern states of India.

Moreover, the Adjudicator seemed to require the Secretary of State to say where Mr Farrer would be safe. The evidence was that he had moved from Delhi to Gujarat, but the evidence did not disclose his reason for doing so. Mr Davidson submitted that while the BJP controlled Gujarat, the southern states of India had a history of support for religious minorities. Mr Stedman in response submitted that Mr Farrer feared persecution throughout India and that acts of violence against Christians were widespread.

7. We have considered the helpful submissions by both representatives in the light of the background material before us. There is no challenge to the credibility of the account of his experiences in Gujarat given by Mr Farrer. The Adjudicator accepted his story in its entirety. We proceed on the basis that the account of his experience in India given by Mr Farrer was truthful. The sole basis of his claim is that he has been persecuted, and fears persecution because he is a Roman Catholic Christian. He says that the government is unable or unwilling to protect him from Hindu nationalist anti-Christian groups and that there is nowhere in India where he would be safe. It is common ground that the question before us is whether the option of internal flight is available to him. That question must be considered in the light of the decision of the Court of Appeal in Karanakaran [2000] Imm AR271, where the Court of Appeal held that, in considering whether it would be unduly harsh for an asylum seeker to relocate to another part of his country of nationality, no question of burden or standard of proof arose. It is a question of looking at the evidence as a whole and asking whether in the light of all the circumstances, it would be unduly harsh for the appellant to relocate. Insofar as the Adjudicator in this appeal appeared to place the burden of indicating precisely where Mr Farrer would be safe, his approach was incorrect.
8. We acknowledge the difficulty posed by the decision of the Court of Appeal, but we are bound to follow it. The absence of a burden of proof does not facilitate the decision-making process. We have considered the background evidence before us. We bear in mind that there is a very long history of good relations between Christians and other religious groups in India. The US State Department report gives illustrations of attacks against Christians, including explosions in the southern states of Karnataka and Andhra Pradesh, which caused minor damage and in which no one was killed. The report notes at page 6 that the outbreak of societal violence against Christians that occurred during the previous reporting period and was apparently sparked by rumours of forced conversions of Hindus to Christianity, was not repeated during the period covered by the report. However, tensions persist and the underlying resentment of Christians by Hindus sometimes leads to violent confrontation. In our judgment, neither the State Department report nor the other documents before us give any reason to believe that Mr Farrer, as a practising Roman Catholic Christian, would find it unduly harsh to relocate from Gujarat to other areas of India where sentiment against Christians is not strong. He is

entitled to international protection only if the country of his nationality is unable or unwilling to provide protection for him. We disagree with the Adjudicator's conclusion. We find that the option of internal relocation is available to Mr Farrer.

9. The appeal by the Secretary of State is allowed.

D B Casson
Acting Vice President