



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers:
AA/03571/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 23rd September 2014

On 5th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**FARRUKH HABIB ABBASI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Talacchi, Longfellow Solicitors
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 26th February 1981. He has permission¹ to appeal against the decision of the First-tier Tribunal (Judge Sweet) to dismiss his appeal² against the Respondent's decision to refuse to vary his leave to remain and to

¹ Permission granted by First-tier Tribunal Lever on the 30th July 2014

² Determination dated 2nd July 2014

remove him from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006³. That decision followed rejection of the Appellant's claim to international protection⁴.

2. It is the Appellant's claim that he faces a well-founded fear of persecution in Pakistan because he is of, or is perceived to be of, the Ahmadi faith. His account can be summarised as follows. Whilst in Pakistan he worked for GlaxoSmithKline and there met a Dr Abdul Manan Saddiqui who was the President of the Ahmadi community in Mirpur Khas. This gentleman, and another colleague, introduced the Appellant to the Ahmadi faith. Dr Saddiqui was assassinated in September 2008. The Appellant came to the UK as a student in 2009. He fell ill with tuberculosis, but became well again. He attributed his recovery to the fact that through work he had met a number of Ahmadis who had visited him when he was ill and discussed their faith with him. He believed that it was an indication from God that he should convert. In May 2013 he returned to Pakistan and discussed his new interest with a former colleague. He signed the *Jammat Bait* (adherence form) on the 12th June 2013 after returning to the UK and his initiation into the Ahmadi faith was overseen by his friend Anwar Zahid. He has subsequently been informed that his colleague's uncle lodged a FIR against him for being a "Qadiani". It alleges that he burned a Qur'an. The police raided his family house and a fatwa has been issued against him. Khatme Nabuwat have threatened him and members of his own family are threatening his father, urging him to disown the Appellant. The Appellant has begun the process of full conversion. This was the basis of his claim.
3. The Respondent did not accept that the Appellant had met or known Dr Mannan. Various discrepancies arose in his account such that the Respondent was not satisfied that the Appellant was in fact an Ahmadi or interested in joining that faith. Although two friends in the Ahmadi community wrote letters in support, these "could not be considered objective". It is noted that the Appellant has paid *Chana* (charitable contribution) since he came to the UK but since these payments coincided with the Appellant claiming asylum it was considered that they were made in order to bolster his claim. Overall it was not accepted that the Appellant is Ahmadi or that he is at any risk in Pakistan.
4. On appeal Judge Sweet heard oral evidence from the Appellant and from two witnesses from the Ahmadi community. The findings are all contained in paragraph 50 of the determination. The Judge finds discrepancy in the Appellant's evidence about when his interest in the Ahmadi faith began: 2006 or 2009. A number of other discrepancies arose in the evidence, leading the Judge to conclude: "in short, I agree with the Respondent that there is no substantial evidence that

³ Decision dated 27th May 2014

⁴ 'Reasons for refusal' letter dated 27th May 2014

the Appellant is indeed an Ahmadi". The Tribunal found "limited" evidence of the Appellant's involvement in the mosque here, save the evidence of the two witnesses, which had been changed in respect of how long they had known the Appellant. He further found "limited" evidence that the Appellant had been making religious contributions and accepted that the Appellant was, at interview, able to give evidence "as to the facets of Ahmadi". He concluded that he had not found the Appellant to be credible.

5. The grounds of appeal are that the First-tier Tribunal made the following errors:
 - i) Failing to make findings on material facts, including the entire account of events in Pakistan since May 2013 and the FIR;
 - ii) Importing the incorrect standard of proof in the use of the term "substantial";
 - iii) Failure to give reasons for rejecting the unchallenged evidence of witnesses.
6. The Respondent opposes the appeal on all grounds.

Error of Law

7. At paragraph 10 the determination makes reference to the applicable - lower - standard of proof in asylum appeals. At 50 the Tribunal uses the phrase "I agree with the Respondent that there is no substantial evidence that the Appellant is indeed an Ahmadi". Mr Talacchi argues that this was too high a standard. I do not agree. The term "substantial" is derived from the alternative formulation of the "reasonable likelihood test" found *inter alia* in the Qualification Directive⁵: "substantial grounds for believing that there is a real risk". Having considered paragraph 50 in context I do not find it shown that the Tribunal applied the wrong standard of proof.
8. I am nevertheless satisfied that the determination must be set aside. The Tribunal heard from two live witnesses who gave direct evidence about the Appellant's commitment to the Ahmadi faith. The grounds of appeal state - without contradiction by the Secretary of State - that their evidence had not been "materially challenged" by the Presenting Officer on the day. No clear findings are made about their evidence, paragraph 50 confining itself to observing that there was a change in the evidence about how long these witnesses had known

⁵ COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 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

the Appellant. Further there were a number of conflicts in the evidence which the determination fails to resolve. There are no findings about whether the Appellant was identified by people in Pakistan as having moved towards the Ahmadi faith, whether an FIR was in fact lodged against him or whether these matters are reasonably likely to give rise to a risk on return. These matters cannot be said to have been determined by the findings that have been made, particularly since the Tribunal appears to acknowledge that there is some evidence that the Appellant knows about the faith, has signed an initiation documents and has started making charitable contributions. Even if it was not accepted that he had in finally converted, on those facts there remained a question as to whether that was the perception of people in Pakistan.

9. The findings of fact in this appeal are limited to paragraph 50. As I note above, this failed to deal with much of the Appellant's case. Without a complete assessment of the evidence the findings, such as they are, cannot be considered safe. The decision is set aside in its entirety.

Decisions

10. The determination of the First-tier Tribunal contains an error of law and it is set aside.
11. The re-making of this appeal requires the oral evidence of the Appellant and two additional witnesses, all given through an interpreter. The parties agree a time estimate of 4 hours. In light of that, and the extent of judicial fact-finding required, it is appropriate that the decision be remade in the First-tier Tribunal.
12. There was no request for anonymity and on the facts before me I see no reason to make such a direction.

Deputy Upper Tribunal Judge Bruce
3rd November 2014