



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

Appeal Numbers: AA/04207/2014  
AA/04210/2014  
AA/04211/2014  
AA/04213/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 April 2015**

**Determination  
Promulgated  
On 30 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**F T A K S (FIRST APPELLANT)  
R T (SECOND APPELLANT)  
T A K S (THIRD APPELLANT)  
A T (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms S Iqbal, Counsel, instructed by Wimbledon Solicitors  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are a Pakistani family, a couple and their two children, who applied for asylum on the grounds of their Ahmadi faith. Their applications

were refused, and their appeals were dismissed by First-tier Tribunal Judge Stott, following a hearing in Birmingham on 17 September 2014.

2. Permission to appeal was granted by Upper Tribunal Judge Allen on 5 February 2014. Permission had initially been refused by First-tier Tribunal Judge Simpson, on 15 October 2014. In granting permission Upper Tribunal Judge Allen gave the following reasons:

“It is arguable that the judge erred in not addressing the evidence of the second appellant in concluding as he did about the credibility of the claims. This has potential implications for the other two grounds although by themselves they are significantly weaker. However for the above reasons I do not rule them out.”

3. There had in fact been four grounds on which permission was sought. The first concerned the assessment of the best interests of the children; the second the point about the failure to address the evidence of the second appellant (the first appellant’s wife); the third the treatment of a letter from the Ahmadiyye Muslim Association (AMA) in the UK; and the fourth concerned the treatment of a First Information Report (FIR) and a document verification report (DVR) that had indicated that this was not genuine.

## **Submissions**

4. In her submissions Ms Iqbal, for the appellants, concentrated on ground 3 (the AMA letter), and ground 2 (the second appellant’s evidence). She did not pursue ground 1, but she did make submissions in relation to ground 4 (the FIR and DVR point). Her main points in relation to the AMA letter were that the judge had misapplied the test in the relevant country guidance case of **MN and others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)**. The judge, in applying little weight to the AMA letter, had made no mention of the positive view taken of the quality of AMA evidence in the **MN** case. The judge had also misapplied the test in **MN**, at headnotes 5 and 6, with reference to 2(i).
5. In relation to the second ground the second appellant’s witness statement was specific about the first appellant’s preaching activities, amongst other things, and it had the ability to lend support to his account.
6. Ms Everett’s submissions can be summarised as follows. In relation to the AMA letter this had been properly considered by the judge, who had found that it had not shown headnote 2(i) behaviour. There was force to the finding that the letter was vague. The point about the misapplication of the country guidance case had not been made out because he was taking the letter at face value. His critique was of the lack of detail in the letter. His finding on the AMA letter was one that was open to him, and was not perverse. In relation to ground 2 the lack of discrete findings about the second appellant’s evidence could not have made a difference to the

outcome, because of the AMA letter findings, and the FIR/DVR point. In relation to ground 4 it had been open to the judge to reach the finding that he did on that aspect.

7. In response to Ms Iqbal referred to evidence that had been before the judge, in the country guidance case, about police inaction in relation to Ahmadi complaints; about unfair treatment of Ahmadis by the police and the courts; about an attitude within the Pakistan government of a refusal to confront or interfere with KN and other extremist groups; and the fact that harassment by KN had been seen to lead to police action against Ahmadis, rather than police action combating the harassment.

### **Error of Law**

8. As I indicated at the hearing I have decided that there was an error of law in the judge's decision. The second ground appears to me to be made out.
9. The Rule 24 response attempted to refer to a number of passing references to the second appellant in the judge's decision, but in reality it appears to me that there is no escape from the conclusion that the second appellant, who produced a detailed witness statement and also gave oral evidence, is entirely absent from the judge's decision. There is no mention of her evidence at any point. As a result there is no assessment as to whether she was or was not credible in her evidence, and there is no consideration of whether her evidence, which was clearly relevant to a number of the contested issues, could support the evidence of the first appellant. In short, the judge has concentrated exclusively on the first appellant's evidence and has omitted to give any consideration to that of the second appellant, who was directly involved in the matters that formed the basis of the asylum applications. I understand the point made by Ms Everett that a consideration of this evidence might have made no difference, in view of the position that the judge took in relation to the other matters. I have decided, however, that the omission is not one that can properly be said to be of immaterial. The second appellant's evidence required consideration. It is possible that proper consideration of her evidence could have made a difference to the outcome.
10. The other grounds, by contrast, did not appear to me to be made out. The judge's approach to the AMA letter does appear to be surprising. As an organisation the AMA was assessed in the **MN** country guidance case in such a way that most judges would give such letters considerable weight. It appears surprising that the judge would have regarded the point about the absence of further details as to the location of the first appellant's proselytising activities as being significant enough to reduce that weight. Having said both of those things, however, this does appear to me to fall within the factual realm. The judge's approach to the letter may be surprising, but I accept the submission made that his finding on the letter was one that was open to him, and was not perverse.

11. I did have some concerns about the approach to the FIR and DVR. The difficulty here was that the information from the police, that formed the basis of the DVR, was information from a body that are known to pursue prosecutions against Ahmadis. The overall picture that emerges from the background evidence summarised in the country guidance case of **MN** is that the police in Pakistan are very far from neutral in their dealings with Ahmadis, and with those extremist groups that target them. On the contrary, the police are actors of persecution, not only in their enforcement of anti-Ahmadi laws, but also in their dealings with situations in which Ahmadis are facing harassment or persecution from non-state actors. Having said all of that, however, this appears to me to be a challenge where the outcome is somewhat similar to that in relation to the AMA letter. The first appellant suggested that the police were only denying the existence of the FIR because they were in league with the KN group, but the judge was entitled to reject that argument, and to point out that it was not supported by background evidence. Even if the boldness of the judge's statement to this effect may raise some concern about whether he had in mind the general background evidence referred to above, nevertheless it again appears to me that this was a matter that fell within the factual arena, and the judge's finding was one that was open to him on the evidence.
12. There was some discussion at the hearing of the consequences of my error of law decision. After some discussion it became an agreed position between the parties that the appeal should be remitted for a fresh hearing at the First-tier, with no findings preserved.
13. In some ways the point at issue is relatively narrow, because it is accepted that the appellants are Ahmadis. It also appears unlikely that it would not be accepted that the first appellant was active in the Ahmadi communities both in Pakistan and in the UK. The only points at issue will be whether the appellants have established, as reasonably likely to be true, the specific account that they have given of the persecution that they faced in Pakistan; and whether it is of particular importance to these appellants, in terms of their religious identity as Ahmadis, to engage in behaviour mentioned in the first part of paragraph 2 of the headnote in **MN**. These matters include preaching and other forms of proselytising; holding open discourse about religion with non-Ahmadis; openly referring to one's place of worship as a mosque and to one's religious leader as an imam; calling themselves Muslims or referring to their faith as Islam; or referring to the call to prayer as azan.
14. What will be required, on a rehearing at the First-tier, will be an overall assessment of the evidence of both appellants, in the context of the background evidence, along with an assessment of the AMA letter, the other documentary evidence, and the FIR and DVR. It will also be necessary, if the FIR is found not to be genuine, to assess whether the appellants are genuine claimants who have submitted a false document,

or whether the falsity of the document has wider implications for the overall credibility of the accounts given.

15. Neither side made any reference to anonymity, but I have decided that an anonymity direction is justified in view of the nature of the claims. There was no mention of fee awards.

### **Notice of Decision**

The appeals to the Upper Tribunal are allowed.

A material error of law having been established, the decisions dismissing the appeals are set aside.

As agreed the appeals are remitted to the First-tier for fresh hearings, with no findings preserved.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of the family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Gibb