



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00997/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2015**

**Determination
Promulgated
On 2 February 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**BA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Emma King, Counsel, instructed by Dean Manson Sols.
For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 9 January 2015 refusing to grant him further leave to remain and to remove him to Pakistan.

Introduction

3. The appellant is a citizen of Pakistan born in 1978. He first entered the UK on 18 March 2013 having been issued with a visit visa following a successful appeal. He returned to Pakistan on 18 April 2013. He re-entered the UK on 27 June 2013 and claimed asylum at the airport.
4. The appellant claims that he is Ahmadi, has suffered problems in Pakistan since before 2008, and after he returned to Pakistan he was threatened and beaten and left nearly for dead by people after two of his co-workers considered converting as a result of conversations with him. After that he received written threats and the police would not protect him, instead threatening him not to preach and to stop following the Ahmadi religion. His family home was subsequently attacked and the president of the local Jamat advised him to leave Pakistan.
5. The appellant further claims that since arrival in the UK, he has been actively participating in Ahmadiyya activities including preaching programmes, peace conferences, the annual charity walk and security duties at the local prayer centre. He openly refers to the founder of the Ahmadi faith as a prophet. He does not wish to compromise his religious identity anymore and live like a hypocrite.
6. The respondent did not accept that the appellant was Ahmadi or that he was at risk of persecution due to his beliefs. His asylum claim was therefore refused.

The Appeal

7. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Birmingham on 9 March 2015. The judge accepted that the weight of the evidence (including letters from the AMA in the UK) established that the appellant was an Ahmadi but rejected his claim to have actively preached to thousands of people in Pakistan, around five per day. The judge found that the appellant had arranged for his passport not to identify him as an Ahmadi because he did not want any adverse attention and it was of no particular importance to his religious identity to practise and manifest his faith openly in Pakistan. The pictures of the appellant standing on the street in Peterborough holding books or standing by a stall at an Ahmadi meeting did not establish that he did proselytise in the UK. His past activities in Pakistan did not show any inclination to practise his faith openly and certainly not in anything other than the restricted basis described at paragraph 2(ii) of the headnote of MN and others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389; *"It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community*

with other Ahmadis, without infringing domestic Pakistan law". He would not need to modify his behaviour to avoid persecution.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal on 22 April 2015 on the basis that the judge failed to contemplate the uncontested evidence that the appellant referred to himself as a Muslim on his passport thereby committing a criminal offence under 298C of the penal code, failed to consider the relevant evidence submitted by the appellant and the AMA in relation to his UK preaching activities and failed to consider whether as a consequence of his enjoyment of his faith in the UK the threat of persecution would be a material factor (not the only factor) in his behaviour on return.
9. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 14 July 2015 on the basis that it was arguable that the judge erred in law, having put weight on the letter from the AMA dated 20 January 2015, in not taking into account what the AMA said about the appellant's preaching activities in the UK.
10. In a rule 24 response dated 19 August 2015, the respondent sought to uphold the judge's decision on the basis that the judge's finding that the appellant had not proselytised in Pakistan was open to him on the evidence before him. Adequate reasons were given.
11. Thus, the appeal came before me.

Discussion

12. Ms King submitted that the judge did not fully complete the task. The appellant identified himself as a Muslim when he was really Ahmadi; that is an offence and was not considered by the judge. The documents before the judge (pages 18-35 of the appellant's bundle) were not dealt with in terms of how the appellant presents himself in relation to his faith. Paragraph 35 of the decision is not adequate. Once a proper assessment had been carried out then it would only be at that stage that the judge could assess whether there had been a relevant change that would cause a risk on return. Looking at how someone did behave in the past does not go through all of the required steps.
13. Ms Willcocks-Briscoe submitted that the judge found that the appellant was still an Ahmadi. He came to the UK on the same passport as his previous trip and returned on that passport with no issues at the airport. That point was not taken before the judge and does not affect the material outcome of the appeal. There was no evidence that the appellant proselytised in Pakistan before coming to the UK and the judge did engage with this element of the claim. A lot needed to be said about how the author of the AMA letter came by the information. The letter appears to be based upon information from the appellant. There was a lack of specificity

in the letter about whom the appellant was preaching to. The letters contained nothing to assist the First-tier Tribunal. The judge considered all that was necessary and did not need to continually repeat all of the evidence that was before him. The conclusions cover all of the evidence. The letters do not assist because there is no indication as to how the reported activities have been verified. The judge did refer to the AMA letters at paragraphs 39 and 27 and in submissions at paragraphs 18-21. The AMA should be able to explain the source of the information given in the letters (paragraph 44 of AB (Ahmadiyya Association UK letters) Pakistan [2013] UKUT 00511 (IAC)).

14. Ms King submitted in reply that the judge did not make a finding as to the extent of the appellant's activities in the UK. The judge did give weight to the AMA letters but then did not go on to consider the contents of the letters relating to activities in the UK. The absence of a finding about that part of the letters displays the want of reasoning.
15. I have considered the evidence that appears at paragraphs 18-35 of the appellant's bundle that was before the judge. There is substantial and specific information in relation to the appellant's Ahmadi activities in the UK. Paragraph 44 of AB does state that; *"In a case such as the present where credibility is a significant issue, the more that a letter from the Ahmadiyya Association UK as to an individual's activities here can be supported by specific information the more likely they are to be given significant weight. We would expect the Association to be in a position to explain the source of such information contained in the letter, how the source is able to speak to such matters and what records are kept of the activities referred to in the letter"*. However, in order to assess the weight to be given to the letters it was necessary for the judge to refer to the evidence in appropriate detail.
16. That was not done. At paragraph 35 of the decision, the judge referred to photographs of the appellant but made no reference to the AMA letters. I am satisfied that the judge failed to consider and make findings in relation to all of the relevant evidence relating to the appellant's claimed Ahmadi activities in the UK. That is particularly significant because the judge placed weight upon the AMA letters at paragraph 27 of the decision and made no criticism of their evidential value or probity. I am satisfied that the failure to consider relevant evidence is a material error of law which infects the decision as a whole.
17. I have not found it necessary to make findings on the other grounds of appeal. They are matters which can be argued at the rehearing. In particular, ground one was not argued before the judge at all and will be a new issue to be considered by the First-tier Tribunal.
18. I have also seen a bundle of First-tier decisions submitted on behalf of the appellant on 26 May 2015. They are said to be relevant because he is from District Kotli, Azad Kashmir as were the targeted Ahmadis in those cases. It is said that no Ahmadi case from Kotli has ever previously reached the Upper Tribunal. I have not found it necessary to consider those decisions

but they can be submitted at the rehearing for consideration by the First-tier Tribunal.

19. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

20. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo (save as mentioned below) with all issues to be considered again by the First-tier Tribunal.
21. I preserve the finding at paragraph 28 of the decision that the weight of the evidence now establishes that the appellant genuinely is a follower of the Ahmadi faith.
22. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed 

Date 31 January 2016

Judge Archer

Deputy Judge of the Upper Tribunal