



IAC-AH-KEW-V1

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

Appeal Number: AA/04413/2015

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Tribunal Promulgated
On 11th March 2016 On 13th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR HUSBAN AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Muman of Counsel
For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS FOR FINDING NO ERROR OF LAW

Introduction

1. The appellant applied for entry clearance to the UK for the purposes of marrying an EEA national. His application was granted on 5 November 2013 and he entered the UK, he claims, on 30 November 2013. On 11

March 2014, shortly before his leave to enter was due to expire, he made a claim for asylum.

2. The basis for the appellant's claim was that he was an Ahmadi Muslim from Pakistan. His date of birth was 28 February 1991. Although he had a Pakistani passport and valid entry clearance to join his wife, I N Rana, he nevertheless claimed that as an Ahmadi Muslim Pakistan was not a safe country for him to live in. the appellant claimed that he was a member of an elite squad within the Pakistani police, and that he had been singled out for blame for an incident involving a fellow officer for which he was not responsible.
3. The respondent, having considered the background and the appellant's immigration history, including his failure to claim asylum on arrival, decided that the appellant had failed to meet the conditions required for such a claim. His claim was essentially unsubstantiated. In particular, the respondent did not accept that his dispute with a fellow officer, Khurram Saeed, was indicative of his being persecuted as an Ahmadi Muslim. The respondent had regard to the case law, including the leading case of **CG NN [2012] UKUT 00389**, which suggested that legislation restricted the ability of Ahmadis to openly practise their faith but it has long been possible for Ahmadis to do so on a restricted basis either in private or in community with other Ahmadis. The appellant had not established that he would wish to take part in any activities which would give rise to a reasonable degree of likelihood of persecution, inhuman treatment or treatment requiring international humanitarian protection. Accordingly, the respondent refused to vary his leave to enter or remain in the UK and decided to remove him pursuant to directions under Section 47 (Removal: Person with Statutorily Extended Leave) of the Immigration, Asylum and Nationality Act 2006. The appellant was advised of his right to appeal this decision. He duly did so.
4. The grounds state that the appellant meets the requirements of paragraph 339L of the Immigration Rules and as such should at least be granted humanitarian protection. The decision of the respondent was unreasonable and harsh. Absolutely no detail is provided in form ICD1041 (IAFT-1).
5. The appeal against the respondent's decisions came before Judge of First-tier Tribunal R A O'Hagan (the Immigration Judge) sitting at Sheldon Court, Birmingham on 3 June 2015. The Immigration Judge decided that the appellant accepted that his liability to arrest on return to Pakistan was created by his failure to follow police discipline by going absent without leave. The appellant had also given a "highly exaggerated" account and whilst, the Immigration Judge accepted, the appellant had been subject to "persecutory acts" these did not establish to the requisite standard an insufficiency of state protection within Pakistan. He rejected the account and dismissed the appeal on all grounds. No anonymity direction was

made and no fee award was payable and there was therefore no fee award.

The Upper Tribunal Proceedings

6. An application was made to the First-tier Tribunal (FTT) to appeal to the Upper Tribunal (the UT). It was suggested that the Immigration Judge's finding that Mr Saeed deliberately shot himself in the hope of implicating the appellant was perverse. The suggestion that the appellant's superiors would have protected the appellant because he was an Ahmadi was against the weight of the evidence. In fact, the Immigration Judge ought to have found that Mr Saeed mistakenly shot himself but attempted to blame the appellant to cover his own mistake. The Immigration Judge had been wrong to conclude that the appellant's credibility was harmed.
7. These grounds received favourable consideration by Designated Judge of the First-tier Tribunal Appleyard on 24 July 2015. Judge Appleyard considered that the judge's findings on the "totality of the credibility assessment" needed to be considered again and he found that there was an arguable error of law.

The Hearing

8. At the hearing I was able to hear submissions by both representatives and come to a decision with full reasons reserved.
9. Mr Muman took me to the guidance case of **CG**, pointing out that an Ahmadi is in general not at risk on return to Pakistan but that judicial fact-finders may in certain circumstances conclude that he is reasonably likely to be targeted by non-state actors. Mr Muman submitted at length that Mr Saeed was a non-state actor who had targeted the appellant for his faith. Nevertheless, this had not come to the attention of the authorities. When the disciplinary proceedings against Mr Saeed were considered (at Section (d) of the respondent's bundle before the FTT) it transpired that no reference was made to the appellant's religion. Mr Saeed (at D6) had complained that the appellant had discharged an SMG gun. No reference was made to the appellant's faith. I was taken in detail through the various stages of the investigation and the conclusions reached by those investigating the matter. Mr Muman submitted that the Immigration Judge seems to have concluded that the appellant's Ahmadi faith must have come to the attention of those investigating the incident involving Mr Saeed. Therefore, the Immigration Judge had mistakenly concluded that the decision not to blame the appellant for the incident was indicative of the fact that adequate protection was available to him. This was plainly wrong. The real situation revealed by the investigation into the Saeed incident showed that Mr Saeed had discharged his rifle and blamed the

appellant but the investigation had then revealed that Mr Saeed was entirely to blame. Mr Saeed's witness statement explained why he had acted as he did. Mr Saeed's real motivation was that he was a rival of the appellant and wished to blame him for anything he could.

10. Mr Muman then turned to the Immigration Judge's findings. He said that paragraph 47 had contained an unwarranted finding over the appellant's superior's desire to protect the appellant as a member of the Ahmadi community. In fact, there was no evidence that the decision of the appellant's superiors to absolve the appellant for any blame for the Saeed incident was not motivated by his Ahmadi faith.
11. The Immigration Judge went on in paragraph 48 of his decision to explain that the appellant's superiors did not know that the appellant was a member of the Ahmadi community when he joined the force which makes the assertion in the previous paragraph plainly erroneous. The Immigration Judge appears to have gone on to assume that when the appellant became a member of an "elite police force" his superiors must have acquired knowledge of his Ahmadi faith. Certainly, there was no evidence that his Ahmadi faith had come out in the Saeed investigation.
12. Mr Muman went on to describe the suspension of Mr Saeed and the order made against the appellant (at D28-29). However, as I pointed out to Mr Muman, the suspension from the force came about as a result of the appellant making himself absent without leave and was nothing to do with the incident involving Mr Saeed or the appellant's Ahmadi faith. Nevertheless, Mr Muman submitted that there would be a heightened risk to the appellant arising out of his "absence without leave," the fact that the authorities were, by the date of the hearing, aware of his faith as well as his post "arrival activities." The combined effect of these things would be to put the appellant at risk on return to Pakistan.
13. Mr Muman then referred me to paragraph 19 of his client's witness statement dated 24 April 2014 (at B6 in the respondent's bundle). There, the appellant expresses a fear that if his "pursuers" found out about his long-term departure from Pakistan he would be at risk there. It appears from that paragraph that his marriage to an EEA national was a sham in order to enable him to leave the country. He claims that subsequently his wife "treated me badly" and they are no longer living together.
14. Finally, Mr Muman accepted that a concession had been made by his predecessor, Mr Madanhi at the hearing before the FTT, that the appellant would not be at risk of persecution by virtue of his likely arrest for being absent without leave. If such concession had been made, it had been wrong in Mr Muman's view. He therefore wished to withdraw it.
15. The respondent submitted that the decision was sound and that the criticisms were wholly unjustified. It was quite clear from the context that the reference to the words "persecutory acts" in paragraph 58 of the

decision was an error. Given that the complaint by Saeed was nothing to do with the appellant's religion, had been thoroughly investigated and the appellant exonerated there was no basis for concluding that he was subject even to discrimination yet alone persecution. The harassment from Mr Saeed was down to the appellant's religion, according to the Immigration Judge, and therefore if Saeed knew about the appellant's religion the appellant's superiors would have known. The appellant's own witness statement (at B4-5 of the respondent's bundle) states in paragraph 10 that the appellant's colleagues enquired about his religious beliefs as early as 2010. It was therefore perfectly reasonable for the Immigration Judge to conclude (as he did at paragraphs 46-47 of his decision) that the persecutory acts at the hands of Saeed must have been motivated by the appellant's religion but that the appellant's superiors had accepted the appellant's side of the story.

16. However, the key point was that the appellant had been exonerated as a result of the investigation. That investigation had been exemplary.
17. The Immigration Judge also dealt with an incident in 2013 in which the appellant claims that whilst on his way home from work a combination of Mr Saeed, members of the Khatme Nabuwat and colleagues from the elite police force ambushed him. This was dealt with at paragraph 51 of the decision. It was described as "highly exaggerated." In any event, this was two years after the incident involving Mr Saeed, which had been in 2011.
18. The appellant had been able to stay in Pakistan for many months after the incidents and had not experienced problems. He had not explained adequately why he took so long to leave Pakistan or why he took so long to claim asylum in the UK. It was a "text book" case, in Mr Wilding's submission, of Section 8 of the Asylum (Treatment of Claimants, etc.) 2004 being correctly relied on by the respondent.
19. The Immigration Judge had been right to refuse to attach weight to the fact that the appellant's mother and sister had claimed asylum in Germany.
20. As far as the "concession" was concerned, given that this was a concession of fact rather than law it was perfectly proper to allow it to stand. But in any event it would not make a difference to the outcome.
21. In conclusion, Mr Wilding said that the judge may have used infelicitous language but he had clearly found nothing more than discrimination had occurred. The decision and findings were sound. Mr Wilding also submitted that there were no "sur place" activities of any relevance since the appellant's departure from Pakistan.
22. At this point in the proceedings, when I called on Mr Muman to respond, he said that he was intent on making an application under Rule 15(2)(a) of the Tribunal Procedure Rules to take into account additional evidence. He

also said that the persecutory acts referred to by the judge at paragraph 58 of his decision related to the allegation by Mr Saeed and the incident of 22 June 2013. Based on the appellant's case Mr Saeed had been motivated by the appellant's religion. The appellant had not told his employers that he was Ahmadi, however. The evidence suggested that the authorities were not aware of his Ahmadi faith but Mr Saeed was. Mr Saeed, a non-state actor, was capable of persecutory acts which did bring the appellant within the Refugee Convention. The Immigration Judge had failed to grapple with the essential characteristics of the case.

23. At the end of the hearing in order to assist the parties I announced that my decision was that there had been no material error of law. This is for the reasons which follow.

Discussion

24. The Ahmadis are a persecuted group within Pakistan. However, the country guidance and objective evidence indicates that the Pakistan state does not persecute those who practise or manifest their faith discreetly, the sanctions imposed by the relevant Penal Code being reserved for those who do so openly and in disregard of the religious traditions of the wider community. An Ahmadi may be targeted by non-state actors but this tends to be where the person concerned has a prominent social or business profile. An Ahmadi who is found not to be reasonably likely to engage in, or wish to engage in, behaviour of the type which would attract attention from the authorities would only be targeted where it is also found that the person concerned would engage in that behaviour on his return.
25. Mr Muman's principal submission at the hearing was that there was no evidence that the appellant's exoneration following the investigation into the Saeed incident was motivated by his religion. This, Mr Muman submitted, was indicative of an unsupported finding that the appellant would not be at risk on return. The argument runs that if the appellant's religion had not come to the attention of his superiors the appellant's superiors would not wish to protect him by reason of their common religion. It seems to be quite a leap from that to say that, because the appellant's superiors were unaware of the appellant's Ahmadi faith they would, on learning of that faith, inevitably adopt the views of his persecutors, but that seems to be the argument advanced.
26. As I pointed out to Mr Muman at the hearing, I did not accept this submission. There is no evidence that the appellant's superiors would have acted any differently whether or not they were aware of the appellant's religious beliefs. The investigation into the Saeed incident was conspicuously fair and not in any way motivated in favour or against the appellant or Mr Saeed. The appellant had been promoted to an elite branch of the police force and the response of the authorities to his going

absent without leave was entirely understandable and also nothing to do with his religion.

27. The decision clearly contains infelicitous language and there are a number of errors, for example:
- (1) the finding at paragraph 48 that his superiors were motivated by a desire to exonerate the appellant because of his religion was, as Mr Muman submitted, not supported by the investigation itself;
 - (2) the finding at paragraph 51 of the decision that the appellant had given a “highly exaggerated” account of the incident in June 2013 appeared to be inconsistent with a finding later that the appellant had “experienced persecutory acts from non-state actors.”
28. Nevertheless, when the decision is read as a whole it is clear that when the Immigration Judge speaks of “persecutory acts” what he actually means is that there was a possible religious motivation to Mr Saeed’s actions in blaming the appellant for the discharge of a rifle. It is important to note, however, that the Immigration Judge goes on to find, (in paragraph 52 of his decision) that “whatever religious motivation there may have been for his original dislike of the appellant, it is likely to have been superseded by (Mr Saeed’s) personal dislike following his dismissal from the police force.”
29. It seems to the UT that a finding that the appellant’s superiors probably did become aware of his Ahmadi faith between 2010 when he joined the police force and 2011 when the incident involving Mr Saeed occurred seems to be in accordance with common sense. Even if there is no reference to the appellant’s religion in the investigatory process it does appear to be reasonably likely that the appellant’s superiors were aware of his religious beliefs by the date of the investigation into the Saeed incident. It seems that these findings were open to the Immigration Judge on the evidence, including, the appellant’s own evidence as to the extent to which he had “problems” after starting in the police force. It is, this Tribunal finds, reasonably likely that his superiors would have been aware of his Ahmadi faith. However, this is not essential to the Immigration Judge’s decision since there is no evidence that the appellant’s superiors treated him any differently as a consequence. There was every indication that they treated the appellant fairly.
30. I have no doubt that when the Immigration Judge referred to “persecutory acts” he used inappropriate terminology. The principal motivation for Saeed appears to have been personal dislike or rivalry (see paragraph 52). There is no adequate basis for concluding that the appellant experienced persecutory acts from either non-state actors or state actors. In any event, where a claim based on persecution by non-state actors is asserted it is incumbent upon the applicant to show that no adequate protection would be provided for the appellant within the principle of **Horvath v**

Secretary of State [2001] 1AC 489. It seems in this case that the appellant would have been protected from any false allegations by the likes of Mr Saeed by virtue of his success in the police force and the strong regard which he was held in by his superiors.

Conclusions

31. Whatever infelicities exist the stark facts are that the appellant progressed to an elite branch of the police force and there is no evidence that prior to his departure from Pakistan he was ever discriminated against, yet alone persecuted, for his religious beliefs. There were significant credibility issues surrounding his claim, including the delay between the incident in 2011 and the alleged incident in 2013 not to mention a significant delay in advancing his asylum claim on arrival into the UK. Additionally, the appellant submitted a bogus application under the EEA Regulations to facilitate his entry into the UK. The Immigration Judge comprehensively rejected the allegation that the appellant had been subject to persecution by non-state actors in the form of a complaint by Mr Saeed that the appellant had fired his rifle at Mr Saeed accidentally. The main motivation for the actions of Mr Saeed, based on the judge's findings, was personal dislike. The Immigration Judge comprehensively rejected the account of any incident on 22 June 2013. These findings were open to the Immigration Judge who dealt comprehensively with the facts and the evidence. He unfortunately expressed himself inappropriately but his decision contains no error of law material to the outcome of the case.

My Decision

The appeal against the decision of the FTT is dismissed. The decision of the respondent to remove the appellant stands.

No anonymity direction and no fee award was made by the FTT and both decisions stand.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee award was made by the FTT and that decision is maintained.

Signed

Date

Deputy Upper Tribunal Judge Hanbury