

3. In his grounds of appeal, Mr de Ruano submits that the judge fell into legal error in reaching the findings which were adverse to the appellant. Mr Jarvis, who represented the respondent before me, accepted with characteristic fairness that a number of these complaints were made out. Mr Jarvis submitted that the judge's decision was careful and thorough in many respects but that he had fallen into clear error in the following respects:
- (i) As contended at [5] of the grounds, the judge had reached a finding which could not readily be reconciled with the background evidence on the situation in Rabwah. The judge had found it inherently unlikely that the Muslim Student Federation would venture into Rabwah to attack the appellant, given the strong Ahmadi presence in that area. That finding was reached without reference to or consideration of the background material which shows, sadly, the continuous threat to Ahmadis in Rabwah notwithstanding their numbers there. The judge's finding was not made with this background evidence in mind, as required by authorities such as Y v SSHD [2006] EWCA Civ 1223.
 - (ii) As contended at [7] of the grounds, the judge had erred in failing to take account of uncontentious background material about the Ahmadiyya Association before deciding to attach no weight to its correspondence in support of the appellant. The judge had found that the letter from the association was based 'entirely on the appellant's unsupported assertions' and that it was significant that no one from the association had attended. The respondent's background material showed, however, that the association was 'extremely careful' to verify accounts given to it and that it did not, as a matter of policy, attend hearings due to want of resources. Again, neither of these relevant matters had been taken into account by the judge before he reached the findings he did at [60] of his decision.
 - (iii) As contended at [6] of the grounds, the judge had erred at [25] and [55] of his decision, in seizing upon the appellant's failure to explain how his activities in the UK had amounted to proselytising without considering how that activity is defined in the Ahmadi faith. The judge had noted, correctly, that proselytising is a key tenet of the Ahmadi faith but he had not informed his decision by considering the background material concerning the ways in which Ahmadis might discharge that obligation. The CPIN showed that proselytising was not limited, in the eyes of the Ahmadi community, to activity 'promoting his faith', as the judge had thought at [55].
4. Mr Jarvis noted that there were a number of other findings which were plainly open to the judge, and which represented cogent points against the appellant's credibility. Nevertheless, Mr Jarvis felt unable to submit, in light of the failings which he was constrained to accept, that the judge's decision could properly be sustained on the basis of those findings alone. In the circumstances, he submitted that the proper course was for the decision of the judge to be set aside and for the appeal to be remitted to the FtT for hearing afresh.

5. I agree with the considered submissions made by Mr Jarvis. It is apparent that the judge fell into error for the reasons given above and that his decision cannot withstand scrutiny. The error, in each respect, is that the judge made findings of fact without considering the relevant background material. I accept the submission made by both representatives that the proper course, in the circumstances, is for the decision of the judge to be set aside and the appeal to be remitted to the FtT for hearing afresh before another judge.

Notice of Decision

The decision of the FtT is set aside. The appeal is remitted to be heard afresh by a judge other than Judge Traynor.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. I make this direction because the appellant is an asylum seeker.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

05 February 2021