



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

Appeal Number: AA/01605/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 25 June 2013**

**Determination**

**Promulgated**

**On 17 July 2013**

**Before**

**THE PRESIDENT, THE HON MR JUSTICE BLAKE  
UPPER TRIBUNAL JUDGE LATTER**

**Between**

**A A  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Mr A Khan, of Thompson & Co, Solicitors.

For the Respondent: Mr G Saunders, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a decision of the First-tier Tribunal (Judge O'Keeffe) dismissing an appeal by the appellant against the respondent's decision of 15 February 2013 refusing him leave to enter following the refusal of his claim for asylum.

Background

2. In brief outline the background to this appeal is as follows. The appellant is a citizen of Pakistan born on 18 August 1985. He entered the UK on 6 November 2010 with a Tier 4 Student visa. He went back to Pakistan on 7 December 2012 and returned to the UK on 22 January 2013 when he claimed asylum. He claimed that he was an Ahmadi and that he had come to the UK initially under the guise of being a student because he was the victim of an attack on a mosque on 28 May 2010. He had had no option but to obtain a student visa. He had been to college for the first three months but had opted not to continue his studies and never completed his course. During his recent stay in Pakistan he had been sitting with a friend discussing religion when he was introduced to a man called Nasir. He later found out that Nasir was a member of Jamaat-e-Dawaa and that a police report had been filed against him on 16 January 2013. He then returned to the UK on 22 January 2013.
3. In her decision letter of 14 February 2013 the respondent noted that according to the background information available to her, if the appellant was an Ahmadi in Pakistan his religion would be printed in his passport but his contained no such information. The respondent went on to consider the appellant's account of events in Pakistan but was not satisfied that he had been reported to the police or that he was of any adverse interest to the authorities there.

#### The Hearing before the Immigration Judge

4. The judge heard oral evidence from the appellant and his uncle. The appellant maintained his claim that he was an Ahmadi. He had been involved in Ahmadi activities in Pakistan from 2007 to 2010 and had also been involved in preaching in the UK. He repeated his claim that in January 2013 he had met with an activist in a hotel who had subsequently filed a police report against him. The police had visited his home twice and as a result his family had moved. His parents had not had problems with the authorities but they had had problems with Khatumnabawat. His uncle said that he knew that the appellant had been in the mosque where there was an explosion in May 2010 and he had arranged the passport for him. The appellant had stayed with him when he came to the UK in 2010. He knew he had not been studying and after he left college, he mostly went to the mosque. When considering the evidence about the events following the appellant's return to Pakistan on 7 December 2012 the judge commented that it was not plausible that his friend would place him at risk in such an obvious way. A copy of the police report was produced in evidence but the judge did not regard this as a genuine or reliable document.
5. The judge did not find the appellant to be a credible witness. She did not believe that he was an Ahmadi or that he would be of any interest to the authorities on return. She noted that his passport recorded his religion as Islam and that when asked why it did not contain a declaration that he was

an Ahmadi, he had given a number of explanations: his agent had told him that if he mentioned being an Ahmadi in his passport application he would not get a visa, later in interview the appellant said that after he received his passport and saw that Islam was recorded in the religious column the agent told him that if he changed it he would not get a visa and when it was later put in interview that he did not get his passport amended when aware the details were incorrect he said that the agent had requested the passport be delivered urgently for a visa and they did not have enough time to get it amended.

6. In oral evidence in cross-examination the appellant was asked whether he had told the agent to put Ahmadi in his passport, he replied yes. He said again that the agent had told him he would not get a visa if he changed his passport to Ahmadi. The judge was not satisfied that the appellant had given a plausible explanation as to why his passport recorded his religion as Islam if in fact he was an Ahmadi.
7. The judge commented that the appellant had said that he was involved in Ahmadi activities but the letter from UK Ahmadiyya Muslim Association produced in support of his claim made no mention of the involvement he described and in particular did not mention his claim that he had been involved in preaching or had had any specific role. She found that his account of his role within the community in Pakistan was not supported by the letter and that he had not demonstrated that he was involved in Ahmadi activities in Pakistan.
8. The judge took into account s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as damaging the appellant's credibility. Although the appellant had said he spent some time at college, when he was asked in interview what he was studying, he had said that he did not come to study. The judge found that he had entered the UK as a claimed student and that this was behaviour designed or likely to mislead and should be taken into account as damaging his credibility. Further, he had accepted in cross-examination that he had been in fear when he left Pakistan in 2010 but had not claimed asylum on arrival later in 2010. The judge rejected an argument that she should not draw any adverse inference from his failure to claim asylum at that time on the basis that a fear was not the same as qualifying for asylum and the attack on the mosque had been an attack of indiscriminate violence. The judge pointed out that the appellant's explanation for not claiming asylum was that he was frightened of being placed in the fast track procedure and returned home.
9. She summarised her findings as follows:
  - "38. Considering the evidence as a whole I find that the appellant has not given a credible or plausible account of the incident in January 2013 which he claims resulted in the police report against him. Although the letter from the Ahmadiyya Association sets out the appellant's involvement in the community in the UK, I have already set out the

lack of information as to when those activities took place and I attach limited weight in any event to these sur place activities. On the evidence before me I find that the appellant has not demonstrated that he is genuinely an Ahmadi.

39. If I am wrong on that, I consider the appellant's intentions or wishes as to his faith if returned to Pakistan. For the reasons set out above, I find that the appellant was not involved in Ahmadi activity in Pakistan to the extent that he claimed. Information provided by the Ahmadiyya Association in the UK about the appellant's engagement in the Ahmadi community in Pakistan may be summarised as showing that the appellant was of good character and was connected to the auxiliary organisation for his age group. There was no suggestion that the appellant was involved in what is described in MN as paragraph 2(i) behaviour.
40. The appellant had demonstrated that he was involved to a degree with the Ahmadiyya community in the UK but not to the extent that he claimed. The letter from the Ahmadiyya community did not specify when the appellant was involved in such activity. The appellant's uncle did not give any evidence that the appellant had been involved in paragraph 2(i) behaviour in the UK and there were no witnesses to give evidence that he had been actively involved in preaching or proselytising. On the evidence before me I find that the appellant has not discharged the burden of demonstrating that he has any intentional wish to practise or manifest his faith openly in Pakistan or that it is important to him to preserve his religious identity.
41. The appellant's own evidence was that his parents had not faced any problems with the authorities and on his evidence they had clearly been able to practise their faith on a restricted basis. Even if I am wrong on my finding that the appellant is not an Ahmadi, his evidence does not demonstrate that he practised his faith at all in Pakistan or that he did so on anything other than a restricted basis which would not infringe domestic Pakistani law."

### Grounds and Submissions

10. In the grounds it is argued that the judge erred in law in the way she approached s.8 of the 2004 Act and in particular by failing to engage with the basic point made by the appellant's representative that his presence at the explosion in the mosque in 2010 would not place him in need of international protection. The grounds argue that it could not be said that the appellant had failed to take advantage of a reasonable opportunity to claim asylum if he would not have qualified at that time. It is also argued that the judge appeared to treat s.8 issues as automatically damaging the appellant's credibility. The grounds then argue that the judge reached conclusions which were not rationally sustainable particularly in relation to his answers at interview about why he was not listed as an Ahmadi in his passport (Q85 and 88).

11. In his submissions Mr Khan submitted that the judge had not been entitled to find that the appellant was not an Ahmadi. She had been wrong to place such weight on the explanations given about why the appellant's passport did not contain the declaration that he was an Ahmadi. He submitted that the judge had misunderstood the evidence. The appellant's concerns about being identified as an Ahmadi in his passport arose from the fact that he could not get a visa from the British authorities if he had disclosed that he was an Ahmadi. The fact that he was in fact an Ahmadi was confirmed by the letter from the Ahmadiyya Association which described him as an Ahmadi by birth whose contact and cooperation with the Ahmadi community had been good. The judge had failed to take into account, so he argued, what had been said in the country guidance determination in MN & Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 at [66] that Ahmadiyya Associations kept sophisticated records of their members. He submitted that the judge had failed to deal adequately with the issues arising in the letter relied on. He adopted the arguments set in the grounds about s.8 but did not seek to add any further submissions on those issues.
12. We did not need to hear from Mr Saunders.

#### Assessment of Whether there is an Error of Law

13. The issue for us at this stage of the appeal is whether the judge's determination contained an error of law, and if it did whether we should set her decision aside and re-make it. We would only take the latter course, if we concluded that any error was likely to make a difference to the outcome. We shall deal first with the issues raised in the grounds. The main argument in the grounds is that the judge was wrong to draw an adverse inference on credibility under s.8 from the fact that the appellant had not claimed asylum when he arrived in the UK in November 2010 as he would not have been entitled to asylum had he claimed then because the bomb attack was an act of indiscriminate violence and was not aimed at him. However, this submission overlooks the fact that it was the appellant's evidence that he had been in fear when he left Pakistan in 2010 and that the purpose of obtaining the student visa was so that he could come to the UK and his own explanation for not claiming asylum was that he was in fear of being placed in the fast track procedure and being returned home.
14. Further, the appellant's uncle in his evidence said that some of the appellant's friends had advised him to apply for asylum as he had suffered on account of his faith but he refused to do so as he was frightened of the fast track procedure. In these circumstances the judge was entitled to take the view that a failure to claim asylum in 2010 was a factor properly to be taken into account in her assessment of credibility and in the light of the appellant's admission of his reasons for coming to the UK and that it had never been his real intention to study, she was also entitled to taking that conduct into account as behaviour designed or likely to mislead.

15. There is nothing in the determination to indicate that the judge regarded these factors as automatically damaging the appellant's credibility as the grounds assert. She approached her assessment of credibility in line with the guidance given by the Court of Appeal in JT (Cameroon) v Secretary of State [2008] EWCA Civ 878 by taking those factors into account in the light of the evidence as a whole when assessing credibility.
16. The grounds also argue that the judge reached conclusions which were not rationally sustainable on the issue of why the appellant's passport did not contain the endorsement describing him as an Ahmadi. The different explanations are a little difficult to understand. Before us it was submitted that the judge misunderstood that the appellant was saying that the agents told him that the British High Commission would not grant him a student visa if he declared that he was an Ahmadi, presumably because if he did so declare they would think he was an asylum claimant rather than a genuine student. It is possible that the judge did not quite understand that this was being said, however, that does not mean that there was a material error of law. Indeed, this explanation might reinforce the overall conclusion that the appellant, if he was Ahmadi at all, was not a prominent one given his willingness to suppress any reference to his faith in order to obtain a visa.
17. At the hearing Mr Khan focused his submissions primarily on the judge's finding that the appellant was not a genuine Ahmadi. Although this issue was not directly raised in the grounds, we do have concerns about whether the judge properly took into account the guidance in MN in particular at [66] that the Ahmadiyya Association is highly organised and capable of providing sophisticated information about its members. Although the appellant was not described as an Ahmadi on his passport, the letter from the Ahmadiyya Association described him as an Ahmadi from birth. If this appeal turned on whether or not the appellant had established that he was at the time of the hearing an Ahmadi, we would have taken the view that the judge had erred in law in her assessment of that issue by failing to take relevant evidence, the letter from the Ahmadiyya Association, into account.
18. However, the judge went on to consider in the alternative if the appellant was an Ahmadi, whether he would be at real risk of persecution on return. She found that he had not been involved in Ahmadi activity in Pakistan to the extent that he claimed. We are satisfied that that was a finding of fact properly open to her. She had understandable concerns about why the appellant's passport recorded his religion as Islam and there was no declaration that he was an Ahmadi. The fact that the appellant had obtained a passport in this form tends to suggest that if in fact he is an Ahmadi, he did not regard his faith as compromised by obtaining a passport in the circumstances he describes. So far as his involvement with the Ahmadiyya community in the UK is concerned, she was entitled to take the view that the letter did not specify when he was so involved and

to note that his uncle did not give evidence that he had been involved in the kind of activities set out in the country guidance determination in MN as likely to give rise to a real risk of persecution.

19. The judge considered the appellant's evidence about the events of January 2013. It was for her to decide what weight to give to the evidence. She was entitled to reject his evidence for the reasons she gave. She did not find it plausible that his friend would place him at risk as he described and she has explained why the document produced in support was not reliable. She was also entitled to take into account the appellant's own evidence that his parents had not faced any problems with the authorities. She took into account the country guidance in MN, and in light of her findings of fact it was open to her to find that the appellant did not come within the risk categories identified in that decision.
20. In summary, we find that even if the judge erred in law in her finding that the appellant was not an Ahmadi, her finding that he would not be at risk on return was properly open to her for the reasons she gave. Any error of law on whether he was an Ahmadi does not affect or undermine her findings on whether he would be at risk and is not capable of affecting the outcome of the appeal.

#### Decision

21. The First-tier Tribunal did not err in law and the decision stands.
22. There has been no application to vary or discharge the anonymity order made by the First-tier Tribunal and that order remains in force.

Signed

Date: 17 July 2013

Upper Tribunal Judge Latter