



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number:
AA/03361/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9 October 2013

Promulgated on:
On 10 October 2013

Before

Upper Tribunal Judge Kekić

Between

O M

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr A A Khan, Solicitor

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. An anonymity order was made in respect of the appellant by the First-tier Tribunal and in the absence of any request for that to be set aside, it is continued.

2. The appellant challenges the decision of First-tier Tribunal Judge Oliver to dismiss his appeal by way of a determination promulgated on 13 May 2013. Permission to appeal was granted by First-tier Tribunal Judge Cox on 20 August 2013.
3. The appellant is a national of Pakistan born on 6 September 1980 and this is his second asylum claim made on the basis of religion. He has also unsuccessfully attempted to remain as a spouse. He claims that as an Ahmadi he would be at risk on return to Pakistan. He does not appear to have pursued the part of his case which argued that he would be at risk from his former in-laws.
4. His appeal was initially determined and dismissed by the First-tier Tribunal on 7 December 2012. More recently it was dismissed by First-tier Tribunal Judge Oliver who relied heavily on the earlier determination, concluding briefly at paragraph 13 that there was nothing new in the appellant's evidence that could be regarded as a fresh claim and that the evidence made it clear that he had never indulged in the type of behaviour referred to in the country guidance case of MN (i.e. openly practising his faith). He found the section 47 decision to give removal directions unlawful and dismissed the substantive asylum/humanitarian protection/human rights appeal.
5. At the hearing on 9 October I heard submissions from Mr Khan and Ms Holmes. It was argued for the appellant that the judge had been confused over whether this was a fresh asylum application or a statutory appeal. Reference was made to paragraph 13 of his determination where he stated that there was nothing new in the evidence "to indicate that I could regard it as a fresh claim". Mr Khan also argued that the appellant's oral evidence was that he had not preached in Pakistan as he had done in the UK because he would have been beaten. This did not accord with the judge's finding on the appellant's behaviour. He submitted that the judge had only one option available to him and that was to allow the appeal. He urged me to substitute my own decision for that of the First-tier Tribunal and allow the appeal.
6. In response Ms Holmes conceded that she was unable to defend the determination, accepting that it was inadequate and that there was no analysis of the appellant's evidence. For that very reason she objected to Mr Khan's proposal for disposal.
7. Mr Khan's reply was to submit that the judge had accepted the appellant's evidence.

8. Having heard the submissions made and having considered Judge Oliver's determination, I have no alternative but to set it aside (apart from the decision relating to section 47 which is maintained; see paragraph 12 below). The only 'analysis' of the evidence is contained at paragraph 13 and even that is confused. The judge was not required to make findings on whether the evidence was sufficient to found a fresh claim. Although I suspect that what he meant was that there nothing new which would lead to a departure from the findings of the previous judge (as per Devaseelan guidelines), that is not what he said and, given his reference in the same paragraph to dismissing "any further asylum claim", I cannot find with any certainty what he had in mind. Further, there is no consideration of the evidence the appellant gave, whether new or not, and no explanation for why it was found that his behaviour was not covered by paragraph 2(1) of MN. The determination is, regrettably, inadequate.
9. This is not to say that the appellant should expect to be successful when his appeal is reheard. There are difficulties with his case. Firstly the evidence that purports to be new (in ground 1) is not. Evidence from the Ahmadiyya community was also submitted in support of the earlier hearing and the letter now relied on is plainly a generic one which provides no specific information on the appellant and indeed gives a wrong address of residence for him. His evidence, as contained in his witness statement of 2011, maintained that he had been preaching in Pakistan which rather contradicts his claim that he would be unable to preach there because of fears of ill treatment.
10. This contradiction in the evidence needs to be put to the appellant and his claim needs to be fully considered and the evidence analysed in light of the earlier determination.
11. For these reasons, the appeal is remitted to the First-tier Tribunal for a hearing afresh. No separate human rights or humanitarian protection claims have been made.
12. There was no dispute over the judge's decision that the Secretary of State's decision under section 47 was unlawful and that part of the determination is preserved.

Decision

13. The First-tier Tribunal made errors of law. I re-make the decision and allow the appeal to the extent that it is remitted to the First-tier Tribunal for a fresh decision to be made.

Signed:

**Dr R Kekić
Judge of the Upper Tribunal**

9 October 2013