



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

Appeal Number: AA/05027/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23 July 2013**

**Determination
Promulgated
On 1 August 2013**

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Before

UPPER TRIBUNAL JUDGE KING TD

Between

ABDUL HAMEED SYED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Whitehouse, Counsel, instructed by Longfellow Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Pakistan born on 8 February 1968. He entered the United Kingdom on 4 May 2013 and claimed asylum.

2. Asylum was refused by the respondent on 20 May 2013.
3. Although it was accepted that the appellant was a police officer it was not accepted that he was an Ahmadi as claimed.
4. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Woolley on 21 June 2013.
5. Although she found the appellant to be an Ahmadi she did not find that he would be at risk upon return and therefore dismissed the appeal on asylum and on human rights grounds.
6. Grounds of appeal were submitted against that decision and permission to appeal was granted on 27 June 2013.
7. Initially the hearing was conducted under the fast track provisions but following the grant of bail the matter was listed at Field House in the usual way. The matter came before me in pursuance of the grant of leave.
8. In summary the appellant was a police officer.
9. The appellant was careful to whom and with whom he discussed his faith as an Ahmadi.
10. In September 2008 a leader of the Ahmadi community was shot and killed by one Imran. The appellant through his contacts obtained the name of that individual who was arrested but subsequently was released through lack of evidence.
11. That person began to cause trouble for the appellant and for his family. An FIR was lodged against his uncle and his uncle's son and an FIR was lodged against the appellant himself on 12 April 2013 and a warrant issued on 13 April 2013. Thus it was that the appellant removed himself from the jurisdiction and came to the United Kingdom.
12. The Judge did not accept that the appellant was wanted by members of the KN or that he had received threats.
13. A matter of some concern, however, is the approach taken to the potentially important documents of the FIR and arrest warrant. At paragraph 46 of the determination the Judge expresses some surprise that the appellant had made no mention previously of the fact that the documents had been issued against him. It is not clear from such a comment whether or not the Judge accepts that the documents were genuine or finds that they were not. Given the potential importance of such documents clear findings should have been made.
14. Perhaps of greater concern, however, is the way in which the Judge has sought to approach the appellant's faith were he to be returned in the light

of country guidance case of **MN & Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)**.

15. The Judge did not find that the appellant's behaviour whilst in Pakistan amounted to proselytising. She accepted that the appellant did not engage openly but was rather concerned to relate on a one to one basis. The Judge however went on to comment "nor am I satisfied that the appellant has shown any desire to act differently or demonstrated that he would do so should he be returned to Pakistan." Little reason is given for that conclusion.
16. It is clear that in his account the appellant has frequently indicated that he was careful with whom he spoke about his faith. **MN** however requires a decision maker to consider what the appellant would wish to do were he to return, discretion for fear of the authorities is not sufficient.
17. I raised those concerns for the considerations of the parties at the hearing. Mr Walker who represents the respondent most fairly indicated that he too was concerned as to those elements. He conceded that there was therefore an error of law in the approach such that there should be a rehearing of the matter.
18. I discussed with Miss Whitehouse, who represents the appellant, as to the way forward. On one view it would be sensible to send the matter back to Judge Woolley for her to consider **MN** in particular and the documents also.
19. I was informed that the appellant had changed his solicitors from Howe & Co to his current solicitors of Longfellow Solicitors. Further documents were to be sought and instructions to be given.
20. Looking at the matter overall it seems to me that the Senior President's Practice Directions paragraph 7 is satisfied. There would need to be new evidence presented and arguments on a large number of documents. In those circumstances a rehearing seems to me to be the appropriate and fair course to take in all the circumstances.

Directions

1. The decision of Judge Woolley shall be set aside save for the findings that the appellant was at a material time a policeman and that he is a member of the Ahmadi community.
2. The hearing of the appeal will be remitted to the First-tier Tribunal for a de novo hearing.
3. An interpreter in the Urdu language is required.

4. The hearing of the appeal will take place on 7 October in the morning at Hatton Cross.
5. All documents to be relied upon should be served no later than 5 days before the hearing. A paginated bundle of documents is required.
6. Mr Walker indicated that the respondent would be seeking to present the visa application at that hearing. Any further directions will be issued as appropriate by the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge King TD