



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

Appeal Number: AA/06203/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 28th January 2015**

**Decision & Reasons
Promulgated
On 10th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**SEAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, Counsel

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 2nd August 1964. He entered the United Kingdom on 22nd February 2012 on a flight from Pakistan using his own national passport endorsed with a Tier 4 (General) Student visa valid from 30th January 2012 until 30th November 2013. He was accompanied by his five dependants and they claimed asylum at Heathrow Airport on arrival.

2. On 2nd August 2014 the Secretary of State issued a Notice of Refusal. The Secretary of State noted that the Appellant's claim for asylum was based upon a fear that if returned the Appellant would face mistreatment due to his religion and that his claim for humanitarian protection was based upon a purported fear that if returned he would face a real risk of unlawful killing in the country of return. The whole basis of the appeal turned on whether or not the Appellant was or was not as claimed of the Ahmadi faith. The conclusions reached by the Secretary of State set out in a very lengthy Notice of Refusal was that it was not accepted that the Appellant was an Ahmadi.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Raikes sitting at Stoke on 25th September 2014. In a determination promulgated on 9th October 2014 the Appellant's appeal was dismissed on asylum grounds and the Appellant was found not to be in need of humanitarian protection. On 20th October 2014 the Appellant lodged Grounds of Appeal and on 30th October 2014 Upper Tribunal Judge Deans granted permission to appeal. Judge Deans noted that the Appellant had claimed to fear persecution or serious harm in Pakistan as an Ahmadi but that the judge did not find that the Appellant's evidence was credible and was not satisfied that he was of the Ahmadi faith. Judge Deans noted that the application for permission to appeal contended among other things that the Appellant's presentation of his appeal was hindered by the Respondent not having produced documents which the Appellant had submitted on previous occasions. These included letters from the Ahmadiyya Muslim Association and, in particular, the Appellant's ID card and marriage certificate. A submission was made to the judge about the apparent loss of these items by the Respondent but the judge failed to address this issue adequately or fairly. A subject access report request after the hearing showed that the ID card had been provided to the Respondent on 22nd February 2012. Judge Deans concluded that arguably the judge did not adequately address the consequences of documents, said by the Appellant to have been provided to the Respondent, having gone missing and granted permission to appeal.
4. On 5th November 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. That response contended that the grounds had no merit and merely disagree with the adverse outcome of the appeal. It was claimed that the judge had considered all the evidence that was available to him and came to a conclusion open to him based on that evidence and the relevant Rules on the balance of probability and did not disclose any error. The Rule 24 response points out that the judge had considered *Devaseelan* and at paragraph 12 and throughout the determination had referred to the fact that the previous determination found the Appellant not to be credible.
5. The Appellant appears by his instructed Counsel Mr Fripp. Mr Fripp has considerable experience of this matter, having appeared before the First-tier Tribunal and also by being the author of the Grounds of Appeal to the

Upper Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mc McVeety.

Preliminary Issue

6. One of the purported Grounds of Appeal related to the failure of the First-tier Tribunal Judge to anonymise this matter. It was conceded by Mr Fripp that that could not constitute a material error of law but I agreed, bearing in mind that there are young children who have an interest in this appeal, that it would be appropriate to anonymise this matter for both this hearing and ongoing hearings and Mr McVeety indicated he had no objection. I consequently made an anonymity direction.

Submissions/Discussions

7. I am considerably assisted in this matter by the approach adopted by Mr McVeety on behalf of the Secretary of State who points out that missing documents had not been considered by the judge and that this is a position he is unable to defend and therefore he accepts that there is an error of law and that it would be material. He indicates that none of the findings of fact should stand and the matter should be reheard and he asked me to remit the matter to the First-tier.
8. Such a submission is most helpful but it might, bearing in mind the rehearing of this matter, be of assistance to the court and in the interests of justice to set out the submissions made orally at the hearing by Mr Fripp.
9. Mr Fripp submits that the Respondent's own documents attested that the Respondent had lost or failed to disclose at the date of hearing a substantial body of evidence provided to the Secretary of State on different occasions which went to the heart of the claim namely whether or not the Appellant was an Ahmadi Muslim. A baggage *pro forma* from Heathrow in February 2012 (presumably when the Appellant and his family arrived in the country) listed as being taken for further examination documents including a letter from employers, two Pakistani ID cards, an ID letter and other items including cash which the Appellant concedes was returned to him.
10. The Appellant attended an asylum interview in March 2012 and Mr Fripp points out that at that interview other documents were provided to the Secretary of State and these documents are referred to at page 6 of the Respondent's bundle from the appeal to the First-tier Tribunal. Further the Appellant has with him an undated card from the Ahmadiyya Muslim Association of Great Britain and at the same section of the interview records that other documents were handed over including a letter from the Ahmadiyya Muslim Association and the Appellant's marriage certificate

and that all these documents are recorded at the end of the interview and I am referred to the comments section therein. Mr Fripp consequently contends therefore that a number of documents came into the possession of the Secretary of State but no reference is made to these documents in the Notice of Refusal which Mr Fripp points out took the Secretary of State some two and a half years to produce. The only document referred to therein (and he takes me to paragraph 11 of the Notice of Refusal) is a letter purported to be from the Ahmadiyya Muslim Association UK dated 22nd March 2004. Mr Fripp acknowledges that the Appellant's passport does not state that he is an Ahmadi.

11. Mr Fripp takes me to paragraph 15 of the Notice of Refusal which he points out refers to correspondence with a British High Commission which contends that passports can be abused and that one of the bases of the Secretary of State's contention that the Appellant is not an Ahmadi is because the Appellant's passport does not stipulate that he is but he points out that the previous letters from the Ahmadiyya Muslim Association, the Appellant's Pakistani ID cards etc., which had been lost are ignored and that all these documents were raised before the First-tier Tribunal Judge but that the Secretary of State failed to explain the position and that the First-tier Tribunal Judge has failed to deal adequately or at all with these issues. He takes me to paragraph 62 of the determination where he submits there is only the most minor of reference to these documents therein.
12. He acknowledges that the judge saw a copy of the marriage certificate but that he was unable to see the original because of course this was a document handed to the Secretary of State which had gone astray and that the judge did not accept the copy as he could not cross-reference it to the original and therefore the losses incurred by the Secretary of State create considerable procedural unfairness to the Appellant. Further he submits the judge failed to ask the Secretary of State to account for the lost documents and therefore the decision was unbalanced and he asked me to set it aside. Further he points out that it is interesting to note that the Rule 24 response also makes no reference to the loss of documents by the Secretary of State.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of

credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. I have probably within this error of law decision gone into greater detail than is absolutely necessary bearing in mind firstly that Mr McVeety has made a concession on behalf of the Secretary of State that there is a material error of law and secondly because I, rather than any other judge, will be rehearing this matter. However it is I think appropriate that the matter be considered in context. It is clear that the issue that is outstanding is whether or not the Appellant can show that he is a member of the Ahmadi faith. Documents that have gone astray are material documents and it is incumbent upon the Secretary of State, even if they cannot be found, to at least provide some form of explanation as to what has happened. There is, I am satisfied, a real prospect of procedural unfairness in the failure to consider those documents by the First-tier Tribunal Judge. In such circumstances I agree with the contentions made by both representations that the previous decision cannot be sustained. It is appropriate to set aside the decision of the First-tier Tribunal Judge with none of the findings of fact to stand and for the matter to be reheard.
16. We are starting afresh and it would have been possible to have remitted this matter back to the First-tier Tribunal to yet another judge. The Appellant's family have been involved in several appearances before the Immigration Tribunal. There was a previous determination dated 22nd May 2013 in respect of the Appellant's mother. There was then the decision against the Appellant of Immigration Judge Raikes. It seems that continuity needs to be maintained in this matter and this matter disposed of once and for all and on that basis none of the findings of fact are to stand, the matter is to be remitted to be heard afresh in the First-tier Tribunal reserved to myself.

Notice of Decision and Directions

- (1) The decision of the First-tier Tribunal contains a material error of law. For the reasons set out above the decision of the First-tier Tribunal Judge is therefore set aside with none of the findings of fact to stand.

- (2) It is recorded that the issue in this matter centres on whether or not the Appellant is or is not an Ahmadi Muslim.
- (3) That the matter be remitted to the First-tier Tribunal to be heard afresh reserved to Immigration Judge Harris sitting at Manchester on Wednesday 25th March 2015 at 10am with an ELH of four hours.
- (4) That the Secretary of State do provide an explanation of the missing documents which they have recorded that they have received to the Tribunal at least seven days pre-hearing.
- (5) There be leave to the Appellant to serve an updated bundle of evidence upon which he seeks to rely at the hearing at least seven days pre-hearing and that a copy of that bundle be served on the Home Office.
- (6) That any skeleton arguments or authorities upon which the parties seek to rely be lodged at court in a separate bundle at least seven days pre-hearing.
- (7) Urdu interpreter required.

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 their 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.

Signed

Date **28th January 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date **28th January 2015**

Deputy Upper Tribunal Judge D N Harris