



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

Appeal Number: AA/10200/2014

THE IMMIGRATION ACTS

Heard at Phoenix House

Decision and Reasons

On 12 May 2015

**Promulgated
On 15 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SYED KHAWAR JAMILRIZVI
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the appellant: Mr A Khan of Counsel

For the respondent: Mr M Diwnycz, Senior Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant is the Secretary of State and the respondent is a citizen of Pakistan born on 4 February 1981. However, for convenience, I refer below to Mr Rizvi as the appellant and to the Secretary of State as the respondent, which are the designations they had before the First-tier Tribunal.
- 2.** The Secretary of State appeals with permission to the Upper Tribunal against the determination of First-tier Tribunal Judge Robson promulgated on 11 February 2015 2015, allowing the appellant's appeal against the

decision of the Secretary of State made on 7 November 2014, in which the Secretary of State refused the appellant's claim for asylum and humanitarian protection in the United Kingdom.

3. Thus the appeal came before me

The appellant's case

4. The appellant's case is as follows. The appellant's parents, brothers and sisters live in Pakistan. His wife and children also live in Pakistan. His family members are all of the Ahmadi faith. There are difficulties in practising his faith in Pakistan. There have been several incidents affecting the appellant due to his Ahmadi faith. The main incident happened on 15 June 2014. On 14 June 2014 three people came and left their cassette player with the appellant to repair. He fixed the appliance into the car. The owner of the car, Raza spoke to the appellant pointing out that the name of the premises indicates that the appellant must be an Ahmadi and therefore how is it that he could continue to work. He asked about the appellant's faith and the man got angry and threw the cassette player through a glass window display cabinet and verbally abused the appellant.
5. The appellant reported the matter to the police station but he did not have sufficient details about the perpetrators of the offence. Nevertheless, he asked the police to visit his shop to see the damage. The police initially agreed but failed to attend and he later learned that Raza had issued an application on 18 June. He was aware that in FIR would follow in all likelihood. He obtained the FIR relating to himself from the police through a friend. The document he received was not an original but a copy.
6. On 25 June the police came to his shop when the appellant was not there and then they went to his house. He learnt that the police were seeking the appellant so he stayed at Silcott at his paternal aunt's house until he left Pakistan. He however did return to say farewell to his wife, children and parents.

The respondent's reasons for refusal

7. The respondent in her Reasons for Refusal letter dated 5 December 2014 stated in summary the following. The appellant's credibility has been compromised due to the various inconsistencies in his evidence. The appellant claims that he was wanted by the authorities in Pakistan but he was able to pass through airport security and leave the country unhindered. Section 8 of the Asylum and Immigration (treatment of claimants et cetera) Act 2004 applies to the appellant's conduct.
8. "Whilst it was accepted that the appellant was a Pakistan national from Rabwah, he has failed to demonstrate a reasonable degree of likelihood that he would be at real risk of persecution from Pakistani authorities on account of his religious beliefs and it was not accepted that he is wanted by the authorities on a charge of blasphemy.

9. The appellant does not meet the requirements of the Immigration Rules in respect of appendix FM and paragraph 276 ADE. Although she states that he has a brother who is a British national the appellant was not able to detail where his brother lived and simply said “somewhere in London” which indicated the low level of the relationship. There are no exceptional circumstances in the appellant’s case and therefore he does not qualify for discretionary leave.

The First-tier Tribunal Judge’s findings

10. First-tier Tribunal Judge Robson gave the following reasons for allowing the appellant’s appeal.

- i. Paragraph 53 “it would be helpful to bear in mind the decision of MN where it states that legislation in Pakistan restricts the way in which Ahmadi’s are able to openly practice their faith. The legislation not only prohibits preaching and other forms of proselytising but also restricts other elements of manifesting one’s religious beliefs, such as holding open discourse about religion with non-Ahmadi’s, although not amounting to proselytising”.
- ii. Subparagraph 5 “in light of the above the first question the decision maker must make is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding, the judge will need to reach conclusions on all the evidence as a whole giving such a weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualifications Directive. This is likely to include an enquiry whether the claimant was registered with the Ahmadi community in Pakistan and worship and engage their on a regular basis. Most travel activity will also be relevant.
- iii. Subparagraph 6 “the next step (2) involves an enquiry into the claimant’s intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage at paragraph (2) (i) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practice and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code is genuinely held and of particular importance to the claimant to preserve his or her religious identity.
- iv. Paragraph 56 “the appellant had previously applied for visit visas (as noted by the respondent in the refusal letter) and those visit visas included in both cases reference to the intention of the appellant to attend an Ahmadi Convention. Both applications were refused not because the respondent rejected that the appellant was going to attend an Ahmadi Convention but in both cases on financial grounds”
- v. Paragraph “57 the appellant has demonstrated some active elements of his Ahmadi faith by on the one hand attending (Ahmadi) meetings in India and on the other hand seeking to attend meetings in the United Kingdom”.
- vi. Paragraph 59 “the question that arose as to how the appellant had managed to open a business in a predominantly Ahmadi community which caused the appellant then to tell the man of his Ahmadi faith.” The appellant further said in his oral evidence that although he accepted that the man was not from Rabwah area, he, the appellant was in a very major Ahmadi area and he felt safe.

- vii. Paragraph 60 “I consider it is not unreasonable given the evidence about his practices in his country that he would choose not to tell a lie albeit that he was aware of the potential repercussions of so doing.
- viii. Paragraph 69 “in view of my findings above, I am satisfied and find that the appellant is a practising Ahmadi and his fear of persecution on return is a genuine one. It was and would be his intention to practice his faith on return” and accordingly he allowed the appellant’s appeal on both asylum and humanitarian protection grounds.

The respondent’s grounds of appeal

- 11.** The respondent’s grounds of appeal states the following. The judge’s assessment of credibility is materially flawed. The refusal letter relied on section 8 of the Asylum and Immigration (Treatment of Claimants, Etc) Act 2004 and the Judge committed an error in law in failing to address either implicitly or explicitly, factors relied upon as damaging the appellant’s credibility under section 8.
- 12.** The Judge failed to resolve the conflicts in the evidence. The appellant gave conflicting accounts of his immigration history (see paragraph 16, 18 and 52) however the Judge fails, however briefly, to make any reference to these conflicts. While it is accepted that the Judge does not have to rehearse every detail but there is a further failure to address material conflicts in the evidence as set out in paragraph 43 and 32 of the reasons for refusal letter.
- 13.** The Judge failed to take into account when addressing the credibility of the FIR, the remarks made by the respondent in her refusal letter at paragraph 62 and also failed to look at the documentation in the round and follow the guidance in **Tanveer Ahmed [2002] UKIAT 00439**.
- 14.** The Judge further erred in allowing the appeal both under asylum and humanitarian protection grounds although this is not a material error.
- 15.** At the hearing I heard submissions from both parties as to whether there is an error of law in the determination.

Findings as to whether there is an error of law

- 16.** The Judge fell into material error as he failed to determine the inconsistencies and conflicts in the appellant’s evidence. The Judge failed to take into account the various discrepancies in the appellant’s evidence in assessing the appellant’s credibility. The appellant mentioned the incident which happened on 15 June 2014 which was the catalyst for him to leave Pakistan. He claims that his business was in the predominantly Ahmadi area. The appellant’s evidence was that a Muslim man who he has never met before, travelled from Chiniot and noticed the name of the appellant’s shop and deduced from the name of the business and the appellant’s name that the appellant is an Ahmadi. The appellant’s evidence is that this man then began to question the appellant how he managed to open a shop in predominantly Ahmadi community. The

appellant said that he informed the man of his Ahmadi faith and detailed his Ahmadi faith. He also told this man the specifics of his belief and showed him an image of Mirza Ghulam. The man became angry and smashed the nearby display cabinet and left the appellant's shop instructing him to "follow the true religion".

- 17.** The respondent in the reasons for refusal letter stated that it was not consistent with the background evidence that an Ahmadi living in Pakistan since birth, would choose not only to divulge his Ahmadi faith and say an Ahmadi prayer but also volunteer the specifics of his belief to an unknown customer when he was aware of the repercussions of doing so. The respondent at paragraph 34 of the refusal letter stated that the appellant it is Asylum interview accepted that Ahmadi's cannot say their prayers in public and the difficulties that the Ahmadi's face even when praying at the mosque and had stated that armed guards were in order to deter attacks, that the appellant would recite his prayers in public to a complete stranger.
- 18.** There is nothing in the determination which demonstrates that the Judge analysed this evidence and questioned why someone living in Pakistan since birth would open up about his Ahmadi religion to a total stranger who came to his shop for repairs from outside the area. Instead, the Judge at paragraph 60 found "I consider it not unreasonable given the evidence about his practices in his country that he should choose not to tell a lie albeit that he was aware of the potential repercussions of so doing". This finding is perverse given the evidence before the Judge.
- 19.** There is also nothing in the challenged determination to indicate that the Judge considered Section 8 of the 2004 Act when assessing the appellant's credibility. He did not take into account that the appellant gave a conflicting immigration history in the documents he used in order to travel. The appellant stated he gave his official Pakistani passport which contained a fraudulent French visa to the agent who took it to France. However at a substantive interview he claimed that the fraudulent Visa corresponds to Spain and the agent travelled there. He then once again change this evidence stating that the visa was in fact French and the agent did go to France. The Judge's failure to consider section 8 as it affected the appellant's credibility led him into material error.
- 20.** The Judge at paragraph 62 accepted the FIR is a genuine document without giving credible reasons for so finding. This is also a material error.
- 21.** At paragraph 66 the judge stated that the respondent placed much weight on the fact that the appellant had gone into hiding on 12 August and yet returned to say farewell to his family. The Judge stated "such action which I consider to be unwise would not necessarily mean to say that it did not happen and given that it was likely that he was unlikely to return in the foreseeable future, I find it is plausible that he should seek to see his family." The judge did not take into account that if a person is in such fear of his life and wanted by the authorities, the fact that he may not see his

family for a long time, would not return to the area of danger where he was wanted by the authorities, if he was genuinely in fear. The Judge has fallen into material error for his failure to properly consider the evidence.

- 22.** I am ultimately satisfied that there is a material error in the determination of First-tier Tribunal Judge, in that he did not give adequate reasons for finding the appellant's account to be credible and consistent, and there is nothing in the determination to show that he gave sufficient consideration to points adverse to the appellant's credibility that were set out in the reasons for refusal decision.
- 23.** Consequential to my finding that there is a material error of law, I set aside the determination of the Judge in its entirety and preserve none of the findings.
- 24.** Both parties agreed that the appeal ought to be sent back to the First tier-Tribunal so that findings of fact can be made. I agreed that this was the proper course of action to take in this appeal in accordance with section 7. 2 (b) (i) the Senior President's Practice Statement of 25 September 2012 as we were of the view that the appeal requires judicial fact-finding and should to be considered by the First-tier Tribunal.
- 25.** The re-making of the decision on appeal will be undertaken by a First-tier Judge in the First-tier Tribunal other than by First-tier Judge Robson on a date to be notified

Decision

- 26.** The determination of First-tier Tribunal Judge Robson is set aside, and the appeal is sent back to the First-tier Tribunal for re-determination.

Signed by

Date 5th day of June 2015

A Deputy Judge of the Upper Tribunal Judge
Mrs S Chana