



IAC-AH-KRL-V1

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

Appeal Numbers: AA/05710/2015
AA/05711/2015
AA/05712/2015
AA/05713/2015

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Birmingham
On 16th March 2016**

**Decision & Reasons Promulgated
On 18th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

SM

ZF

LA

FA

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Fripp, Counsel, instructed by Lester Dominic Solicitors

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

DECISION AND REASONS

Introduction

1. The Appellants are a mother and her three minor children. They were born respectively on [] 1974; [] 2001; [] 2002; and [] 1995. They are all citizens of Pakistan. They all first arrived in the UK on 11th October 2013 when they were given leave to enter as family visitors. They immediately applied for asylum as Ahmadis. Those applications were refused for the reasons set out in the Respondent's Decision dated 26th March 2015. All the Appellants appealed, and their appeals were heard together by Judge of the First-tier Tribunal Hussain (the Judge) sitting at Birmingham on 6th July 2015. He decided to dismiss the appeals on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 7th July 2015. The Appellants sought leave to appeal that decision, and on 9th September 2015 such permission was granted.
2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge made his decision for the following reasons. He found the Appellant and her children had lived in very comfortable circumstances in Lahore. The adult Appellant had worked as a teacher. She had distributed Ahmadi literature to close colleagues and had experienced hostility at work in the shape of taunts, insults and disparaging remarks. However, she had never been reported to the police and had never been arrested. She had never suffered any physical harm despite living in the midst of the majority Sunni community. She had never been deprived of her employment, and her home had never been attacked. The Appellant had never sought protection from the police.
4. On the basis that the adult Appellant and her family had not had a particular profile as Ahmadis, and had never suffered any past persecution, the Judge found that the Appellants were not at risk on return. There was no evidence that following such a return the adult Appellant would behave in any way differently from the way she had behaved whilst living in Pakistan.
5. At the hearing before me, Mr Fripp argued that the Judge had erred in law in coming to this conclusion. The Judge accepted that the Appellants were Ahmadis who had suffered some harassment in Pakistan. However he had dismissed the appeal on the basis that based on their past experience the Appellants would not be at risk on return. However, the Judge had failed to consider the Appellants' circumstances in the context of the Country Guidance decision in **MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 389 (IAC)**. Indeed, the Judge had not even referred to this decision. The failure to follow a Country Guidance decision amounted to an error of law. In particular, the Judge had not appreciated the contents of paragraph 3(i) of the head note to **MN** which states that an Ahmadi who found it particularly important to his religious identity to practise and manifest his faith openly in Pakistan would be in need of protection on return. The Judge had not considered whether the Appellants came within this category of risk even if there

was not a high profile and the Appellants had suffered no more than harassment and discrimination whilst living in Pakistan.

6. In response, Mr Whitwell referred to his Rule 24 response and said that the Judge had accepted that the Appellants were Ahmadis who had suffered discrimination in Pakistan. However, there had been no need for the Judge to consider the current Country Guidance case following his findings of fact which were essentially that the Appellants had not suffered persecution in Pakistan. The Judge had set out at paragraph 3 of the Decision an accurate description of the situation in Pakistan for Ahmadis and therefore had taken into account the relevant country information.
7. I do find an error of law in the decision of the Judge so that it should be set aside. The Judge had made his decision that the Appellants were not at risk on return to Pakistan solely on the basis that they had not been persecuted in the past there and had only experienced harassment and discrimination. This is not the only criteria for deciding the risk of future persecution. It was an error of law for the Judge to fail to consider at all the Country Guidance case of MN, particularly bearing in mind that it was not in dispute that the Appellants are Ahmadis. MN examines in detail the situation of Ahmadis in Pakistan and decides that in certain circumstances they are at risk on return regardless of whether or not they had suffered past persecution.
8. Having announced my decision, I agreed to a joint request from Mr Fripp and Mr Whitwell not to proceed to remake the decision in the appeal but instead to remit the cases to the First-tier Tribunal for the decisions to be remade there. I agreed to that request applying the provisions of paragraph 7.2(b) of the Practice Statements. Further evidence as to future persecution of Ahmadis in Pakistan from for example the Appellants themselves and the Ahmadiyya Association is necessary.

Notice of Decision

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remit the appeals to the First-tier Tribunal for the decision in the appeal to be remade there.

Anonymity

10. The First-tier Tribunal made an order for anonymity which in the circumstances I continue.

Signed

Dated

Deputy Upper Tribunal Judge Renton