



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

Appeal Number: AA/04101/2014
AA/04102/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 25th August 2015**

**Decision & Reasons Promulgated
On 3rd September 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M A K & N M
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr G Harrison (Senior Home Office Presenting Officer)

For the Respondent: Mr M Blundell (instructed by Rashid & Rashid Solicitors)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State in relation to a Decision and Reasons of the First-tier Tribunal (Designated Judge McClure) promulgated on 5th November 2014 by which he allowed the Appellants' asylum appeals.
2. The Appellants in the appeal before the First-tier Tribunal were husband and wife who had claimed asylum on the basis of their

Ahmadi faith. They are Pakistan nationals. Their three children claimed as their dependants.

3. They arrived in the UK in 2011 with visit visas and claimed asylum three weeks after arrival. Their applications were refused by the Secretary of State. They appealed and their appeals came before Judge Levin who dismissed their appeals in a determination promulgated in April 2012.
4. The Appellants made further submissions to the Secretary of State who treated the submissions as a fresh claim but refused it on 5th June 2014. Additionally the Secretary of State made decisions to remove the family on 10th June 2014.
5. The Appellants appealed against the removal decisions on asylum grounds and the appeals came before Designated Judge McClure on 22nd July 2014.
6. The claim before Designated Judge McClure was that they would be unable to practise their faith openly as Ahmadis because Ahmadis are widely persecuted in Pakistan.
7. Designated Judge McClure referred to Judge Levin's determination having noted that Devaseelan [2003] Imm AR 1 applied. He also referred himself to the latest Country Guidance case of MN & Ors (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC) and set out the guidance contained therein.
8. So far as Judge Levin's determination is concerned Designated Judge McClure indicated that his determination stood as an assessment of the claim at the time of the determination. The first determination was the starting point, save and except that he could review the facts where there was additional evidence.
9. He then set out the details and findings of the first determination. Judge Levin had identified that the core issue was the credibility of the First Appellants' claim that he had preached his faith to another in Pakistan and as a consequence had been targeted. He found that the first Appellant's own evidence was that he had faced no significant problems in Pakistan as a result of his claimed conversion of another to the Ahmadi faith. He concluded that there was no reasonable likelihood that the first Appellant's claim was true; namely that there were court proceedings or a Fatwa issued against him and found that he had fabricated his story as to what had occurred in Pakistan.
10. Judge Levin went on to find that as ordinary members of the Ahmadi faith, as he found the Appellants to be, they would not be at risk in Pakistan based on the then Country Guidance of MJ & ZM (Ahmadis - risk) Pakistan CG [2008] UKAIT 00033.
11. Designated Judge McClure, having set out Judge Levin's findings in detail then set out the evidence before him. He looked at the evidence of the Appellant's activities in the UK.

12. At paragraph 45 Designated Judge McClure found that various documents produced, that originated in Pakistan, were created in order to support the asylum claim and attached no weight to them.
13. At paragraph 46 he found no reason to go behind Judge Levin's findings and that his reasons for rejecting the claim about what had occurred in Pakistan were valid.
14. At paragraph 50 Designated Judge McClure identified that he needed to consider whether the Appellants would be at further risk if returned now on the basis that the first Appellant claimed that he would want to preach in Pakistan and be active in promoting his faith.
15. At paragraph 53 Designated Judge McClure reminded himself that he needed to consider whether his activities in the UK, as in the past, were designed to create a claim for asylum and whether he would in fact preach and seek to promote his faith in Pakistan.
16. The Designated Judge noted that the first Appellant was seeking to involve himself in the Ahmadiyya Association in the UK and there was evidence from that organisation to that effect. He noted that the first Appellant was not merely just involving himself in the observance of his religion but was positively seeking to promote his beliefs to others.
17. At paragraph 56 the Designated Judge noted that:-

"According to the letters from the Ahmadiyya Association the first Appellant attends the congregational prayers, annual conventions, gatherings of the Khuddam and any other events involving the association. He has attended the inauguration of a mosque. He has participated in face-to-face conversations with non-Ahmadi friends discussing promoting his religion. He has been involved in attending at public events where his religion is being promoted and explained to other people"
18. The Designated Judge found that he was not merely attending at the mosque and answering the call to prayer.
19. At paragraph 57 the Designated Judge noted that according to the Ahmadiyya Association one of the children had committed and dedicated herself to service of the Ahmadiyya community which indicated that the family as a whole was involved in the faith and the promotion of the faith.
20. At paragraph 58 he found that notwithstanding the adverse matters found by Judge Levin, there was evidence that since coming to the UK the family had been materially and actively involved in the promotion of their faith.
21. The Designated Judge was clearly alive to the possibility of this being a ruse to gain asylum as at paragraph 59 he said:-

"Whilst one would look at that with a certain degree of circumspection, the degree and extent of the commitment is such that I am now

satisfied that the first Appellant is materially committed to the Ahmadi faith. I find that the Appellants are a family that are genuinely committed to their faith and to the promotion of their faith and proselytising others”.

22. At paragraph 60 he found:-

“Having been given the opportunity in the UK I find that the Appellants have taken the opportunity of the greater religious freedom to express openly their faith. I find that the Appellants would wish to continue promoting their faith. It is not just a case of the first Appellant being materially involved in the promotion and advancement of the faith but other members of the family as well”

23. On that basis and in accordance with Country Guidance he allowed the appeal.

24. The Secretary of State sought and was granted permission to appeal. She argued that at paragraph 47 the Judge had found the Appellants were not exceptional Ahmadis and had endorsed the first Judge’s findings as to the claims about what took place in Pakistan. He found the Pakistani documents false and yet against that background had nevertheless allowed that appeal. The Secretary of State argues that the finding that they would wish to openly promote their faith in Pakistan is inadequately reasoned and irrational.

25. I have set out above the Designated Judge’s findings and reasoning. He was clearly alive to the credibility issues but made findings on the basis of the Appellants activities in the UK in the three years since they arrived. He was cautious, as he pointed out, but nevertheless found the Appellants would wish to promote their faith in Pakistan. His reasoning is detailed and conclusions rational and open to him on the evidence before him.

26. The Secretary of State’s appeal to the Upper Tribunal is dismissed.

27. The First-tier Tribunal having made an anonymity direction I order it to continue.

Signed

Dated 1st September 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

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 1st September 2015

Upper Tribunal Judge Martin