



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

Appeal Number: AA/11022/2014
AA/11024/2014
AA/11027/2014
AA/11029/2014
AA/11032/2014

THE IMMIGRATION ACTS

Heard at North Shields

**Decision & Reasons
Promulgated**

On 21 September 2015

On 25 September 2015

Prepared on 22 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

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(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Dogra, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The First Appellant first entered the UK in 2013, using entry clearance granted to him on 13 December

2012. Subsequently he was granted a multi-entry visa. The Second to Fifth Appellants (his wife and three children) entered the UK in 2014 using entry clearance granted to them on 19 November 2013. The Appellants claimed asylum on 15 March 2014.
2. On 28 November 2014 the Respondent refused the asylum claims, and in consequence made a decision to refuse to vary their leave, and to remove the family by reference to s47. The Appellants' appeals against those removal decisions were heard on 26 January 2015, and they were dismissed in a Decision promulgated on 5 March 2015 by First Tier Tribunal Judge Buchanan.
 3. The Appellants were granted permission to appeal the Decision on 31 March 2015 by Tribunal Judge Pooler on the basis it was arguable there had been procedural unfairness because the Judge had gone behind a concession of fact made by the Respondent.
 4. Thus the matter comes before me.

The Respondent's decision

5. It is accepted on behalf of the Respondent that in the course of giving her reasons for refusing the asylum applications, she had said the following [RFR #13];

In the light of the above, it is considered that you have given a consistent and coherent account of why you converted to the Shia denomination of Islam. It is therefore accepted that you are a Shia Muslim.
6. It is moreover accepted that this amounts to concessions of primary fact, that lie at the heart of the First Appellant's claim that because he had converted to the Shia faith, from the Deobandi faith, that he and his family are at risk of harm. The Respondent has never formally withdrawn either the concession that the First Appellant is a Shia Muslim, or, that he converted to that faith from the Deobandi faith.

The Judge's decision

7. The Judge noted the existence of the concession that the First Appellant was a Shia Muslim [6.18] but makes no express reference to the concession that the First Appellant had converted to that faith from the Deobandi faith.
8. It is common ground that the only fair reading for paragraph 6.24 of the Decision is that the Judge therein considered the credibility of the First Appellant's claim to have converted to the Deobandi faith. Rather than noting the Respondent's concession of fact the Judge made the following finding, rejecting his claim to have done so;

I do not consider it likely, in face of the objective evidence about the terror wrought upon the Shias, that the appellant and his wife and children would convert to Shia sect simply because two Shia Muslims began working for the appellant and that on observing them, the appellant was persuaded that these are true lovers of the Prophet. I consider that the evidence about

converting sects is vague and superficial and without sufficient detail to persuade me that it truly occurred as claimed.

9. There are other references in the Decision to the lack of credibility of the evidence of the First and Second Appellants, but it is clear in my judgement that the Judge rejected the core of the account upon which the asylum claim is based, which the Respondent had conceded. Mr Mangion accepted before me that the Respondent had not sought to resile from the concession at the hearing, and that the Judge had not given any indication to the parties at the hearing that he intended to disregard it. For her part Ms Dogra accepts that the Judge was not bound to accept the Respondent's concession, if he had good reason not to do so, and if he took steps to ensure that the Appellants were afforded a fair hearing. In this case that might have required an adjournment and providing the opportunity for the Appellants to obtain further evidence on the issue.
10. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by the Appellants. In the circumstances of the appeal I am satisfied that this is the correct approach, and I note Mr Mangion does not seek to suggest otherwise. In circumstances such as these, the effect of that error of law has been to deprive the Appellants of the opportunity for their case to be properly and fairly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
11. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Buchanan.
 - ii) An Urdu interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 12 October 2015.
 - iv) The Respondent shall by 5pm on 5 October 2015 state her position in writing in relation to the concessions of fact previously made in paragraph 13 of the letter of 28 November 2014, specifying whether the First Appellant's claim to have converted to the Shia faith from the Deobandi faith continues to be accepted, or, whether the Respondent accepts merely that the family are Shia Muslim, or, whether she withdraws the previous concession in its entirety so that no concession is made in relation to the family's faith.
 - v) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

12. The decision promulgated on 5 March 2015 did involve the making of an error of law sufficient to require it to be set aside and the appeals to be reheard. Accordingly the decision upon the appeal is set aside and the appeals are remitted to the First Tier Tribunal with the following directions;
- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Buchanan.
 - ii) An Urdu interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 12 October 2015.
 - iv) The Respondent shall by 5pm on 5 October 2015 state her position in writing in relation to the concessions of fact previously made in paragraph 13 of the letter of 28 November 2014, specifying whether the First Appellant's claim to have converted to the Shia faith from the Deobandi faith continues to be accepted, or, whether the Respondent accepts merely that the family are Shia Muslim, or, whether she withdraws the previous concession in its entirety so that no concession is made in relation to the family's faith.
 - v) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 22 September 2015