



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/04113/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 28 June 2017**

**Decision & Reasons Promulgated  
On 7 July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**ATTA UL ALEEM**

**(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Malik for Thomson and Co Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 7 October 1983 and is a national of Pakistan.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Simmonds promulgated on 1 November 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 11 April 2016 to refuse the Appellants protection claim based on further submissions made on 11 April 2016.
5. The refusal letter gave a number of reasons which were in essence that :
  - (a) The Appellants claim to be at risk due to his Ahmadi religion and religious activities were the subject of a previous decision made by a Judge on 18 April 2015 and he found that the Appellant had failed to establish that he preached in Pakistan or had taken part in any significant activity in the UK.
  - (b) The Judge found that it was not the Appellants genuine wish to practice and manifest his faith openly on return.
  - (c) Reliance was placed on the CG case of MN and others (Ahmadis-country conditions-risk) Pakistan CG [2012] UKUT 389 (IAC)
  - (d) The letter from the Ahmadiyya Association (the AA) is vague and therefore little weight is attached to it.
  - (e) The photographs produced do not reflect religious activities.

### **The Judge's Decision**

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Simmons ("the Judge") dismissed the appeal on all grounds.
7. Grounds of appeal were lodged arguing: that the Judge was erred in her application of MN & Others; the Judges findings in relation to his religious activities in Pakistan were inadequately reasoned; the Judge had misdirected herself as to the live issues in the case given that this was a fresh claim.
8. On 24 February 2017 First-tier Tribunal Judge Dr H H Storey gave permission to appeal.
9. At the hearing I heard submissions from Mr Malik on behalf of the Appellant that
  - (a) He relied on the grounds of appeal and the grant of permission.
  - (b) The only issue was with the asylum findings and the approach that the Judge took to the evidence.

(c) The Judge appears to take Devaseelan as a blanket prohibition on the introduction of new evidence.

(d) Nevertheless the Judge accepted at paragraph 30 that the Appellant was organising preaching in Pakistan for 5 years and then leafletting thereafter.

(e) The further letters from the Ahmadiyya Association clarify the previous information they had given: thus it was not new evidence simply clarification of the evidence that they had already given. The AA is an independent organisation and their evidence can only be rejected with care.

(f) The Judge at paragraph 35 failed to adequately consider whether the Appellants decision to preach discreetly in Pakistan was more to do with the restrictions placed on his faith rather than a reflection of his genuine intentions : relying on HJ Iran if it was the former that was persecution.

10. On behalf of the Respondent Mr Harrison submitted that :

(a) He conceded that there was an error in law as argued by Mr Malik in relation to whether the Appellant would manifest his faith in the future.

## **The Law**

11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. 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 under argument. Disagreement with an Immigration Judge's factual conclusions, 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 that 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 told is untrue.

### **Finding on Material Error**

13. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
14. The first challenge is that the Judge erred in how she applied MN in that inter alia the test set out provides at 3(ii) that if it is found the Appellant would avoid engaging in the behaviour in issue to avoid persecution he is in need of protection. The Appellants witness statement at paragraphs 3 and 7 makes clear that the Appellant preached discreetly because of legal restrictions in Pakistan. I am satisfied that at paragraph 32 and 35 of the decision where the Judge reaches her conclusions she has not made clear findings that reflect an engagement with this part of the test it that while she refers to this being said in his witness statement it is unclear what she made of this assertion and I am satisfied that Mr Harrison was correct concede that this was a material error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
15. The second challenge is in relation to findings of fact made in relation to the Appellants activities in Pakistan. I am satisfied that there is an apparent contradiction between the finding at paragraph 30 that '*he was involved in some organising of preaching in Pakistan between 2005-2010*' and the finding at paragraph 32 that there was insufficient reason to go behind the previous Judges findings in relation to the letter of the AMA UK regarding his activities in Pakistan which was that the Appellant 'did not engage in preaching in Pakistan.' I am also satisfied that the approach of the Judge to the fresh evidence from the AA was inadequately reasoned in that while I do not accept that she views Devaseelan as a blanket ban it is unclear whether the Judge engaged with the argument that the Appellant was not seeking to add to the available facts because his evidence

about the meaning of the words Islaho Irshad was merely confirmed by the later AA letters.

16. The third challenge is that the Judges approach to her task failed to take into account that the Respondent in accepting that this was a fresh claim conceded that there was new evidence. I am satisfied that the Judge erred in setting out at paragraph 21 her task as requiring her to assess whether before her was the same evidence or new evidence when the Respondent had clearly conceded that it was new evidence in accepting the fresh claim and conceding that there was a right of appeal.

17. I therefore found that errors of law have been established in relation to both the Appellants activities both in Pakistan and the UK and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

*(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*

*(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*

19. In this case I have determined that the case should be remitted as I have found there was an error of law because the Appellant did not have a fair hearing due to the errors in the Judges approach to the evidence. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

20. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

21. I made the following directions for the resumed hearing.

- List for 3 hours
- Urdu interpreter.

Signed

Date 6.7.2017

Deputy Upper Tribunal Judge Birrell

