



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

Appeal Numbers: AA/03498/2014
AA/01057/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 July 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

SITTING AS DEPUTY JUDGE OF THE UPPER TRIBUNAL

**Between
MR SHAMAL SHAH
(AKA: SHUJAAT KHAN)
MR ZEB SHAH
(AKA: MOSHIN HASSAN)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr H Malik, Solicitor

For the respondent: Mr D Clarke, Senior Presenting Officer

DETERMINATION AND REASONS

The appellants and the circumstances of the appeal

1. The appellants are nationals of Pakistan and their claimed birth of dates are disputed. They are two brothers. They appeal to the Upper Tribunal against the determination of First-tier Tribunal Judge Khawar dated 28 April 2015 refusing their appeals against the current decisions of the respondent dated 24 January 2014 and 8 May 2014 respectively refusing them asylum and humanitarian protection in the United Kingdom.

2. Permission to appeal was granted on 5 June 2015 by designated First-tier Tribunal Judge McDonald on the basis that it was arguable that the Judge did not take into account the pictures provided by the appellant which were taken from the public website which show the appellant taking part in a charity event of the Ahmadi community.
3. The First-tier Tribunal Judge in his determination found the following which I summarise. The principal issue in the case is the credibility of both appellants. The respondent does not accept that the appellants have told a truthful account of events and does not accept that the appellants are Ahmadi Muslims. Having considered all the evidence, in the round, and by virtue of various significant contradictions, inconsistencies and highly improbable events the Judge was not satisfied that the appellants have provided a truthful account. Indeed the Judge reached his conclusion that the appellants have proffered a wholly propagated account not only of their background but also the alleged fate of their mother and elder brother and their family alleged faith in order to substantiate an earlier false asylum claim.
4. The Judge took into account the inconsistencies in the evidence in respect of the appellants' dates of birth in the various documents. The appellants have provided an entirely false account of their names and dates of birth. They have also provided an entirely false account of their claim that they came to the United Kingdom with the wife of an agent. The Judge did not accept that the appellants were of the Ahmadi faith or generally involved in Ahmadi activities in the United Kingdom. The appellant's complete lack of credibility as set out in the respondent's refusal letters and in the determination impacts upon their claim to be involved in religious activities. There is no independent objective evidence other than a brief letter in the respondent's bundle relating to the second appellant which simply asserts that the second appellant attended the mosque referred to. On the totality of the evidence before the Judge, he do not accept that the appellant are generally involved in the Ahmadi faith and or are involved in proselytising the faith and that upon return to Pakistan they would wish to continue to do so. The letter clearly does not provide adequate independent evidence of any such activities on the part of the appellants.
5. The grounds of appeal state the following which I summarise. The appellants entered the United Kingdom as minors and were entitled to have their cases considered under Paragraph 350 of the Immigration Rules and more weight should have been given to the objective indication of risk. The Judge failed to provide any reasons from departing from this view. At paragraph 36 of the determination, the Judge states that there is no reliable evidence in relation to the appellant's claimed faith. However the Judge failed to consider the pictures of the first appellant at page 78 which are taken from a public Ahmadi public website. The pictures show the appellant taking part in a charity event of the Ahmadi community and confirm that their members are taking part (in captions). The Judge failed to mention this evidence and proceeded to find the appellant not to be an Ahmadi. The Judge was bound to provide reasons for not considering this

evidence in his determination. If the immigration Judge had considered this evidence, he would have found the appellants to be Ahmadi and as such further assessment under **MN** and others would have been required. The failure of the Judge to do so is a material error of law.

Discussion and findings whether there is an error of law

6. I have given anxious scrutiny to the determination of First-tier Tribunal Judge Khawar and have taken into account the parties submissions at the hearing, the full notes of which are in my Record of Proceedings.
7. The Judge in his determination gave many credible reasons for why he did not find the appellants evidence credible. He found that the appellants were not credible in respect of the evidence about their names and ages. He found that the appellants, in relation to the age assessment report from the London Borough of Croydon, clearly establishes why first appellant was assessed as being a 16-year-old child with the date of birth of 10 December 1993 (as at August 2010) the appellant did not provide any evidence to challenge this assessment. Their birth certificates which were produced, appeared to have been obtained on or about 15 July 2010 by their father. Both appellants claim that their father passed away in or about 2000/2001 although the second appellant states that it was in 2002/2003. Therefore the information on the birth certificates is clearly not reliable. On the evidence before him, the Judge was entitled to so find. This inconsistency in their ages materially impact on the appellant's credibility and the Judge was entitled to find that this compromises their claim.
8. The Judge took into account the inconsistency in the evidence when the first appellant maintains that his real name is Shujat Hussain and that his real date of birth is 15 January 1995. His visit visa application forms indicates that his name is Shamal Khan and his date of birth to be 10 December 1993 which is the date stated in his passport. During the second appellant's oral evidence, the second appellant referred to his brother, the first appellant as Shamal and not Shujat and gave no credible explanation for why he called his brother Shujat and not Shamal which the first appellant claims is his real name. The first appellants name is, in fact Shamal Khan and his date of birth is 10 December 1993. This demonstrated to the Judge that the appellants were not telling the truth about their names and it is within the bounds of common sense that anyone lying about their name and date of birth and attempting to get protection in the United Kingdom based on untruthful identities and the Judge took that into account in reaching his decision and was entitled to do so.
9. In relation to the second appellant his visa application form declared him as being Zeb Khan with a date of birth of 4 February 1995. The appellant now claims that his real name is Moshin Hassan and that he was born on 24 September 1996. The appellant's claim that the visit visa application forms were the product of an agent who fraudulently falsified their details. The

judge was entitled to find that this was not a credible explanation for the difference in their names and their ages. Furthermore, the Judge also took into account that the report also notes that the birth certificates produced by the appellants are clearly and wholly unreliable because they purport to include their father CINIC number which contains 13 digits and such numbers were only issued after 2001/2002. Therefore their father would have been provided in an NIC number containing only 11 digits.

10. The appellant is further stated that of Ms Praveen Ajmal was their mother. Such claim was clearly contradicted by the evidence of their sponsor Mr Tarik Mahmoud who was contacted by the Pladin Child Protection Team for their visit visa applications said that Praveen Ajmal was the mother of the appellants and they had stayed with him for a week and left and as far as he was concerned the appellants had all returned to Pakistan following their visit here. The Judge was entitled to rely on the Paladin Child Protection Team report prepared by Colin A Smith which clearly demonstrates that Tarik Mahmoud confirmed that Praveen Ajmal is his sister and that he had sponsored her and her three children which included the two appellants to come to the United Kingdom and that they stayed with him for a week. The appellant had claimed that Ms Praveen Ajmal was the agent's wife.
11. The Judge was entitled to take into account this very significant discrepancy in the evidence about the woman Praveen Ajmal who accompanied them to Pakistan was said to be by Mr Tarik Mahmoud to be his sister and not the agent's wife as claimed by the appellants. The Judge noted that the appellants did not ask Mr Tarik Mahmoud to give evidence or provide any other evidence about the relationship between them and Praveen Ajmal.
12. The Judge was entitled to find that if agent had brought the two appellants to the United Kingdom as claimed, he would not have had made two separate applications for a visit visas and an appeal against the second refusal. The Judge was correct in not holding that it is not in the least credible that an agent would have made two applications and appealed against the refusal and run the risk of being detected. The Judge was entitled to find this evidence not to be credible and compromise the appellants claim.
13. The Judge found that both appellants have fabricated their claim in relation to being Ahmadi Muslims. He also found that the appellants have fabricated their claim that their mother and elder brother were killed. The Judge found that they had clearly manufactured their account in order to substantiate a false asylum claim. This was based on the fact that the appellants were even inconsistent as to the date on which their mother and elder brother were killed. The first appellant states it was in September 2009 in his witness statement dated 14 February 2011 and at his asylum interview. The second appellant however states that it was approximately one and a half months after their grandfather died in 2008 at his asylum interview. When confronted with this contradiction during

the oral evidence, the Judge noted that, the first appellant said that it was "around 2008". The Judge was entitled to find that the appellant's inconsistencies about when their mother and older brother were killed goes to their credibility and to the truth of their claim.

14. The first appellant stated that the grandfather who he alleged was an Ahmadi community leader was his paternal grandfather. The second appellant however stated in his witness statement dated 24 July 2012 that it was their maternal grandfather. The Judge found that for the appellants to be contradictory about such basic family history shows that they are not credible and are not telling the truth. He took into account that the second appellant when he was questioned in court distanced himself from his earlier evidence and stated that his father had converted from Sunni to Ahmadi and this is why he was not in touch with him and when his father passed away his paternal family did not keep in touch with his mother and brothers. The Judge properly found that the second appellant was clearly attempting to link his father's alleged conversion to Ahmadi as being the reason for why his father's family including his uncle who assisted him in finding an agent, had distanced themselves from the appellants. If the grandfather was the paternal grandfather, the appellant's father would also have been born and grown up as an Ahmadi and therefore the uncle would also be an Ahmadi and thus he would not have had any interest in seeking to distance himself from the appellants' family. The Judge was entitled to find that this inconsistency in the evidence goes to their credibility into the credibility of their claim.
15. The Judge also took into account that in complete contrast to the evidence above, the first appellant claims at paragraph 9 of his written statement dated 14 February 2011 that his uncle is not an Ahmadi and therefore he did not want to be linked with the appellant's due to alleged potential risk to the uncle's own family. Indeed during his oral evidence the first appellant claimed that his uncle had said that the appellants are in a safe place and not to "disturb me and don't put my life in danger". The first appellant claimed that he only spoke to his uncle a couple of times after they arrived in the United Kingdom in July 2010 and never again thereafter. This the Judge said is wholly lacking in credibility especially in view of the fact that the appellants produced birth certificates which appear to have been obtained in or about July 2010. The second appellant in contradiction to the evidence of the first appellant suggested that his uncle's wife is a non-Ahmadi which is why he has changed his faith. The first time that the second appellant mentioned this was in his oral evidence because it had never been suggested that their uncle who assisted them in coming to the United Kingdom had changed his religion in order to coincide with that of his wife.
16. The Judge was entitled to find that all these inconsistencies in the evidence go to the credibility of the appellants and their claims.
17. The Judge found that the appellants when they were interviewed did not have significant knowledge of the Ahmadi fate. The first appellant

conceded as much during his asylum interview and said this is because of lack of education which is why he does not have knowledge of the Ahmadi faith. The Judge found that if their grandfather had generally been in Ahmadi community leader and involved in protest exercising and given that the appellant's claim that they lived with their mother and grandfather their father having passed away in about 2002, it is inconceivable that the appellants would not have been taught the significant features of the Ahmadi faith within the family home, especially in view of the fact that the second appellant claims that the Ahmadi mosque in their village was in fact in their own home.

18. This evidence that the appellant's had very little knowledge about the Ahmadi faith led the Judge to conclude that the appellants were not Ahmadi. This is a sustainable conclusion on the evidence before the Judge. The very fact that the Judge did not specifically mention the photograph of the second appellant taken at an Ahmadi Convention on the Internet does not detract from the Judge's conclusion that the appellant's lack of knowledge of the Ahmadi faith goes to the credibility of their claim that they are an Ahmadi. The Judge found that the appellant's are trying to bring themselves within the parameters of the country guidance case and are clearly and opportunistically attempting to rely upon a *sur plus* claim. The Judge even if he did not specifically mention the photographs on the Internet, it is implicit in his determination that given the enormous credibility issues in the appeals, a photograph on a website does not in itself cure all the inconsistencies or explain them.
19. The findings of the Judge after considering all the evidence in the round that the appellants are not Ahmadi is sustainable. It is implicit in the determination that the appellants are pretending to be Ahmadi in order to lay a false basis of an asylum claim and their involvement in Ahmadi activities and photographs is opportunistic. The Judge clearly found that the appellants were not credible in the least and gave very good and cogent reasons for the conclusion that he came to, on the evidence before him.
20. A Judge does not have to set out every piece of evidence in his determination. It is clear from the determination that the Judge took into account all the evidence in the appeal and stated in his determination that he has come to his decision based on all the evidence before him.
21. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

“15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original Judge's thought processes when he/she was making material findings.”

22. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why he reached his conclusions. I find that the Judge did take into account all the evidence in the appeal and come to conclusions which are free of error; I therefore reject the appellant's grounds of appeal in their entirety.
23. I find that no error of law has been established in the First-tier Tribunal Judge's determination. I find that he was entitled to conclude that the appellant's not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decisions

DECISION

I find that there is no error of law and I dismiss the appeal

Dated this 5th day of September 2015

.....
Signed by

Mrs S Chana
Deputy Judge of the Upper Tribunal