Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01386/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Sent**
on 1st August 2013	**on 18th September 2013**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHAHID RIZWAN KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs G Patel instructed by Wimbledon Solicitors
For the Respondent: Mrs Pettersen - Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Reed, promulgated following a hearing at Bradford on 18th March 2013, in which he dismissed the appellant's appeal on all grounds. The determination is challenged on a number of grounds which I shall discuss in more detail below. Permission to appeal was granted by another judge of the First-tier Tribunal on 23rd April 2013.

Background

2. The appellant, who was born on 26th April 1955, is a citizen of Pakistan. He arrived in the United Kingdom as a visitor on 27th July 2002 and his leave was extended thereafter as a Work Permit holder until 22nd July 2009. An application for indefinite leave to remain was

refused on 19th August 2010, against which he did not appeal, although on 29th November 2012 he claimed asylum alleging that his return from the United Kingdom will breach the terms of the Refugee Convention, the Qualification Directive, and/or European Convention on Human Rights.

3. Having considered the evidence, which is summarised in the determination, together with the relevant country guidance case law the Judge set out his findings of fact and credibility at paragraph 23 of the determination. It is accepted that the appellant is a Pakistani national and of the Ahmadi faith.

4. The appellant did not attend the hearing as he is unwell. This is supported by medical evidence although as the hearing was listed for an Initial (error of law) hearing only, and he was represented, it was agreed the hearing can proceed in his absence.

Discussion

5. Ground 1 challenges the Judge's reasoning for dismissing the asylum claim alleging the Judge provided no reasons for why the claim on asylum grounds was dismissed. I find this claim has no arguable merit for in paragraph 25 of the judgment Judge Reed states:

> 25. Having carefully considered all of the evidence in the round, I find that the appellant has not shown to the lower standard that if returned to Pakistan he would either demonstrate his religion openly or would wish to do so, only being dissuaded from this through fear of the consequences. I also find that the appellant has failed to show that he has any profile which will draw adverse attention upon himself outside the Ahmadi community. I therefore conclude that the appellant is not outside the country of his nationality owing to a well founded fear of persecution either for a Convention reason or at all. I therefore dismiss his appeals under the Refugee Convention, under the Qualification Directive (in relation to Humanitarian Protection) and under the Articles 2 and 3 of the ECHR.

6. In paragraph 20 Judge Reed summarises the guidance provided by the Upper Tribunal in the country guidance case of MN and others (Ahmadis - country conditions – risk) Pakistan CG [2012] UKUT 00398 which I accept he applied to the findings made when assessing risk on return.

7. Mrs Patel in her submissions referred to the oral evidence given by the appellant at the hearing and claimed that the Judge had not mentioned the same. It is not a requirement for a judge to make findings on each and every aspect of the evidence and the general approach to be adopted was recently confirmed by the Upper Tribunal in the case of Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) Blake J) in which the Tribunal held that (i) Although there is a

legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

8. I accept the Judge was aware of the appellant's evidence and the basis of his case which is summarised in the determination. I find no merit in the claim the Judge did not consider the appellant's evidence which would have included his claim regarding what he would do in relation to his faith if returned to Pakistan. The fact the Judge may not have made a finding in relation each and every element of the evidence does not mean that the determination is infected by legal error. As all the evidence was considered the grounds must, in essence, be a challenge to the weight given by the Judge to that evidence when weight is a matter for the Judge - SS (Sri Lanka) [2012] EWCA Civ 155 refers. It has not been shown that the Judge failed to consider the evidence with the degree of care required in an appeal of this nature, that of 'anxious scrutiny', or failed to give adequate reasons for findings made.

9. The Judge accepted that the appellant had demonstrated an interest in his faith and had undertaken activities in the United Kingdom. In paragraph 23 (ix) there is a reference to various cards and a letters relating an Ahmadi charity walk and a certificate of achievement relating to the walk in June 2003 and a letter from the Ahmadiyya Association in the UK dated June 2013 appointing the appellant to a named position in that organisation. The Judge's conclusions that the documents did nothing more than demonstrate his involvement with his own religion but said nothing about his openly demonstrating or practising his faith within the wider society is a finding in accordance with the evidence which has not been shown to be perverse or irrational.

10. In paragraph 23 (xiv) the Judge expressed surprise that the appellant had not provided a letter from the Ahmadiyya Association in the UK setting out his activities as an Ahmadi both in this country and in Pakistan. The Judge notes the appellant was asked about this and gave oral evidence to the effect he had not told the Association about his asylum claim as he was not proud of it. He claimed he could get a letter if one was needed. The Judge found there had been ample opportunity to obtain this evidence and in such circumstances did not find it credible that the appellant had not provided a letter about his

activities from the Association in the United Kingdom. The absence of the letter was stated to be significant particularly bearing in mind guidance in MN.

11. Mrs Patel referred me to documents and translations contained within the appellant's appeal bundle and marked SRK 2/09 and so forth. There was reference to a poem published in a book which was accepted by the Judge and other activities in the United Kingdom prior to the appellant's move to Doncaster, two months prior to the hearing, after which he did not attend the mosque in Sheffield as a result of alleged financial constraints.

12. The documentation in the bundle appears to be an exchange of commentary which is not in the form of the content of letters from the UK-based Association often seen by the Tribunal and specifically referred to in MN. I accept that such a letter has now been obtained but it was not before Judge Reed and cannot be a legal error to fail to take into account evidence that did not exist at that time.

13. It was submitted on the appellant's behalf that even taking into account factors found in his favour by the Judge, had the principles of MN been properly applied, he would have succeeded in any event. The grounds challenge the reasoning given for credibility findings made and allege it is not clear what evidence has been considered and which parts of the case have been deemed to bolster a genuine claim and which undermined the claim. Again I find this to be in substance a mere disagreement as the Judge clearly considered the evidence and it has not been shown inadequate reasons were given or that the Judge legally misdirected himself when considering the question of which aspects of the claim were accepted as being credible and which were not. A judge does not have to accept or reject all an account. In Karanakaran. At [2000] Imm A R 282 there are set out the four categories of evidence that decision makers may have to take into account when assessing the future risk facing an appellant on return to his home country:

    1) evidence they are certain about;
    2) evidence they think is probably true;
    3) evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true;
    4) evidence to which they are not willing to attach any credence at all.

14. The Judge set out which parts of the evidence was accepted and that rejected and, against this, his conclusions. I find this argument is more a disagreement with such findings made and conclusions flowing from those findings than a challenge which identifies an arguable legal error.

15. Having considered the submissions, the evidence available to the Judge, the contents of the determination and reasons for findings made, I accept there are aspects of the determination which are capable of being criticised but not to the extent they amount to material legal errors. I find the Judge did considered the claim in context. I accept having considered the documents to which my intention was specifically drawn by Mrs Patel, the document appearing at SK 2/11 refers to preaching but there was no further evidence from the named individuals and the Judge was entitled to form the view that he did, namely that having considered all the evidence it was insufficient to discharge the burden of proof upon the appellant to prove he was able to satisfy the required tests.

16. In relation to the evidence from the Ahmadi Association in United Kingdom I note Mrs Petersen's submission that the reasons for refusal letter made reference to the Association and so this was a matter of which the appellant would have been made aware, in terms of its importance, yet he failed to obtain such evidence.

17. I accept that the situation for an Ahmadi who comes to the adverse attention of the authorities or extremist religious groups in Pakistan has been recognised as being sufficient to entitle such individuals to a grant of international protection in certain circumstances. This does not take away from such individuals the need for them to ensure that sufficient evidence is made available to support their case and prove they are entitled to a grant of international protection. On the basis of the evidence the Judge was asked to consider he was not satisfied that sufficient evidence had been provided. That is the key finding which is supported by adequate reasons. I am not satisfied that the appellant has discharged the burden of proof upon him to the required standard to show that any legal error that may have been made by the Judge is material to the decision to dismiss the appeal. I note there is now in existence a letter from Ahmadi Association which may give rise to a fresh claim. That is a matter which the appellant will no doubt discuss with his legal representatives.

Decision

18. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand**

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) application for anonymity was

made and neither have the grounds warranting such in order been established.

Signed.....
Upper Tribunal Judge Hanson

Dated the 16th September 2013