



**First-tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/08697/2012  
AA/08700/2012  
AA/08701/2012  
AA/08702/2012  
AA/08703/2012

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 20<sup>th</sup> September 2013**

**Determination Promulgated  
On 26<sup>th</sup> September 2013**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**SHR  
BM  
SAHR  
SABR  
AHSR**

**(ANONYMITY DIRECTIONS MADE)**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Ms G Patel, instructed by Wimbledon Solicitors  
For the Respondent: Mr Wardle, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellants are citizens of Pakistan. The first and second Appellants are husband and wife and they are the parents of the third, fourth and fifth Appellants. The first

Appellant was born on 24<sup>th</sup> April 1974, the second born on 17<sup>th</sup> July 1977. The third Appellant was born on 13<sup>th</sup> February 2002, the fourth Appellant on 5<sup>th</sup> March 1999 and the fifth Appellant was born on 6<sup>th</sup> September 2007 whilst his parents were in the United Kingdom. The first Appellant entered the United Kingdom in April 2007 and the remaining Appellants joined him in the United Kingdom in May 2007.

2. This appeal is subject to an anonymity direction that no report or other publication of these proceedings or any part or parts of them shall name or directly or indirectly identify the claimant. Reference to the claimant may be by use of his initials but not by name. Failure by any person, body or institution whether corporate or incorporate (for the avoidance of doubt to include either party to this appeal) to comply with this direction may lead to a contempt of Court. This direction shall continue in force until the Upper Tribunal (IAC) or an appropriate Court lifts or varies it.
3. This appeal was brought under the One-Stop Regulations made under the 1999 Act, and involves claims under both the Refugee Convention and the European Human Rights Convention.

### **The Procedural History**

4. The first Appellant had obtained a visit visa to come to the United Kingdom in February 2007 whilst living in Saudi Arabia. The first Appellant claimed asylum on 14<sup>th</sup> May 2007. That was refused on 8<sup>th</sup> June 2007 by the Respondent and an appeal against the decision to refuse was dismissed by Immigration Judge Vellins in a determination promulgated on 27<sup>th</sup> July 2007. Following that decision of Judge Vellins, the Appellant sought permission to appeal that decision. However Senior Immigration Judge Taylor was not satisfied that there was a material error of law in that determination and thus did not grant permission to appeal. The reasons given were set out at paragraph 38 of the First-tier Tribunal determination. Thus the appeal rights were exhausted on 15<sup>th</sup> April 2008.
5. The Appellants were not removed from the United Kingdom and further submissions were submitted on their behalf on 20<sup>th</sup> February, 16<sup>th</sup> September and 29<sup>th</sup> January 2010. Those submissions were refused, however a further submission for a fresh claim was sought on 23<sup>rd</sup> March 2010 and whilst was initially refused, was later withdrawn by the UKBA.
6. In respect of that fresh claim, the Respondent considered the new facts asserted on behalf of the Appellants. The Respondent in a notice of immigration decision dated 7<sup>th</sup> September 2012 considered the fresh claim but refused to grant the first Appellant asylum under paragraph 336 of HC 395 (as amended) and gave directions to remove the Appellants from the United Kingdom by way of directions. It is right to note that the second, third, fourth and fifth Appellants are dependants of the first Appellant's fresh claim application. They are now Appellants having appealed in their own right, however their case is based on the factual account submitted on behalf of the first Appellant.

7. The Appellants sought to appeal the decision of the Respondent and their appeals came before the First-tier Tribunal (Judge Birkby) sitting at Bradford on 24<sup>th</sup> October 2012. At that hearing he heard oral evidence from the first Appellant and considered the documentary evidence that had been placed before him. In making an assessment of their claim, he took into account their factual basis of the claim which was that the first Appellant and the family members were of the Ahmadi faith. When the Appellant first arrived in the United Kingdom and made his first application for asylum, it had been determined by Immigration Judge Vellins after a hearing on 17<sup>th</sup> July 2007.
  
8. The First-tier Tribunal (Judge Birkby) pursuant to the case of Devaseelan, took the findings of Immigration Judge Vellins as his starting point when considering the Appellant's current appeal. The findings of Immigration Judge Vellins as to credibility and fact were set out in his determination at paragraphs 41 to 58. They were recorded by Judge Birkby at paragraph 34 of the determination. In essence, Judge Vellins concluded "I did not find the Appellant to be a credible witness and I did not believe the core version of events he claimed to have occurred in Saudi Arabia and in Pakistan". At paragraph 43 Immigration Judge Vellins considered how the Appellant had left Saudi Arabia and concluded that the Appellant had plans to leave Saudi Arabia voluntarily and not due to any fears in Saudi Arabia and that he had plans to enter the United Kingdom which were not based on any fears. He went on at paragraph 44 to say that he did not believe the Appellant's claims that in Karachi whilst staying at his parents' home on 27<sup>th</sup> March 2007 the home was besieged by a group from KN with eight people shouting abuse. He further did not believe the claim that on 7<sup>th</sup> May 2007 whilst in the United Kingdom members of the KN had entered his parents' home and attacked the Appellant's father and brother. Immigration Judge Vellins found that if the Appellant had genuine fears of persecution from KN because of his Ahmadi faith it is not credible that he would have gone to live at his parents' home in Karachi after he had left Saudi Arabia. He had furthermore left his parents' house in Karachi and returned there on two occasions which was not the action of someone in genuine fear. The judge also pointed out that the Appellant had arrived in the United Kingdom on 27<sup>th</sup> April 2007 but did not claim asylum until 14<sup>th</sup> May 2007 and thus the delay adversely affected his credibility. The judge also stated that even if he believed the Appellant's claims the core of his events (which he did not) the appeal still had to be dismissed as he found that the Appellants could internally relocate to Rabwah. At paragraph 50 of the decision of Judge Vellins he stated:

"I find in this appeal that the Appellant is a practising Ahmadi, who believes in the Ahmadi faith. The Appellant in his interview made no claim that he preached either when he was living in Pakistan or in Saudi Arabia. I did not believe his claims in his witness statement after the decision that he had preached. I find that if he had in fact been an Ahmadi who preached, he would have mentioned this at his interview. If I am wrong about that and the Appellant did in fact preach, on his own version of events he was not a prominent preacher and not a person of high profile."

9. The Appellant had provided further evidence since the decision of Judge Vellins relating to what was asserted to be the worsening situation for Ahmadis in Pakistan and that it was asserted that his application had not received fair scrutiny previously and that he had been credible when giving an account of the past events in Pakistan and Saudi Arabia. In the evidence placed before the First-tier Tribunal, it was asserted that he was a well-known Ahmadi because of the prominent and active positions he has held and that his family have held in the Ahmadi community in the United Kingdom and that it was not possible therefore to relocate anywhere in Pakistan. It was asserted that even in Rabwah, it had been unsafe to live. He claims to have followed his Ahmadi faith by preaching and propagating the Ahmadi faith in Pakistan and that he states that he had occupied the Ahmadi community roles of organiser, Assistant to Local Head of Youth Organisation and the Head of the Youth Organisation and because of that he had come to the notice of the KN as someone who had committed blasphemy. He also claimed that since being in the United Kingdom he had followed his faith in the United Kingdom being an active member of the Ahmadi community involved in preaching and propagating his faith. Despite the constitutional position in Pakistan, the Appellant considered himself to be a Muslim.
10. It is clear from the decision of the First-tier Tribunal that the Secretary of State in the refusal letter of 7<sup>th</sup> September 2012 accepted that the first Appellant was a follower of the Ahmadi faith as were his family members. The Secretary of State had considered the Appellant's recent supporting documents including a statement from Dr Asim Salim, President of the Leeds branch of the Ahmadyya Association dated 22<sup>nd</sup> July 2012, and also a letter from the Ahmadyya Muslim Association UK. It was further acknowledged that the Appellant was known to the local Ahmadyya Associations in Spen Valley and in Leeds and it was further accepted that he had followed his faith in the United Kingdom. It was shown that the Appellant had been an organiser for children from 2007 until 2010 in Spen Valley and that he had been the General Secretary and Nazim Itfil in the Ahmadyya Association's Leeds branch from 2010 to 2011. However, the Secretary of State considered that the Appellant had a history of acting with discretion prior to arriving in the United Kingdom relying on the account that he had given in his asylum interview in 2007. Therefore whilst the Secretary of State had accepted that he had followed his faith in the UK as he had done in the past both in Pakistan and Saudi Arabia, and whilst it was accepted that he had held positions within the local branches of the Ahmadyya UK community, it was considered by the Appellant that he had demonstrated a discreet history of choosing when to disclose his faith and thus would not be at risk of return.
11. The Secretary of State considered the country guidance decision of **MJ and ZM (Ahmadis - risk) Pakistan CG [2008] UKAIT 0003** and the decision of **HJ (Iran) v SSHD [2010]**. In doing so, the Secretary of State considered that the Appellant's case did not demonstrate any past preaching or attempts to publish documents to recruit people to the Ahmadi faith in either Pakistan or Saudi Arabia in the past and therefore he did not have such a profile with history to indicate that the practise of his faith on return to Pakistan would lead the Appellant to be subjected to ill-

treatment or persecution. In respect of the decision of **HJ (Iran)** the Secretary of State considered that he had not demonstrated a previous history of either preaching or proselytising his faith in Pakistan and therefore he could practise his religion on return as he had previously practised it therefore avoiding the need to alter the way he currently behaved.

12. The judge considered the evidence in the case and set out his findings at paragraphs 53 to 57. He was not satisfied that the new background documentation undermined the existing case law of **IA and Others (Ahmadis: Rabwah) Pakistan CG [2007]** and the other case law concerning Ahmadis. He was satisfied that the targeting of Ahmadis had continued and in some respects it intensified but the conclusion of the Respondent in general terms with regard to risk for Ahmadis, without more, were at risk of discrimination and not persecution. It was noted by the Judge that Mr Diwnycz at the hearing made a concession that it was not argued that Rabwah would be a safe internal relocation option. However the judge noted at paragraph 55, the family could return safely to their home area in Karachi.
13. As to the Appellant's activities in the UK and the new evidence upon which the Appellant relied, the judge at paragraph 55 noted that the Secretary of State had accepted that he had been involved in those activities. The judge set out his principal findings of fact at paragraph 56. His starting point, pursuant to the case of **Devaseelan**, were the findings of Immigration Judge Vellins. He considered that none of the new evidence put forward in particular with regard to the practise of the Appellant's Ahmadi faith in the United Kingdom had not undermined the findings of Immigration Judge Vellins. He found the account of past persecution in both Pakistan and Saudi Arabia not to be credible. He found that he had not preached his faith previously or as the judge said "certainly he had not preached his faith openly". Thus the judge found that:

"Any assertion which might be made that the Appellant would now preach his Ahmadi faith openly and put himself at risk, I find not to be credible. The Appellant has not been credible in the past with regard to such assertions and I do not believe that he would do anything other now on return to Pakistan than to practise his faith as he has always done previously."

Thus the judge adopted the adverse credibility findings of Immigration Judge Vellins regarding the Appellant's stated history.

14. Consequently, he did not find the Appellant would be at risk of harm if returned to Karachi. He noted that he adopted the assertions of the Respondent save for the concession made that Rabwah would not be an appropriate relocation option. He did not find however that he would require a relocation option as he could return back to his home area. The judge then stated "I do not accept that his family have been persecuted in Karachi. In all the circumstances the case of **HJ** does not apply to this particular Appellant". The judge also dealt with Article 8 at paragraphs 62 to 64 of the determination.

15. The Appellant sought permission to appeal that decision on a number of grounds and permission, whilst originally refused, upon renewal was granted by Upper Tribunal Judge Kekic. The reasons given by the Upper Tribunal are as follows:-

“The grounds argue that there was a failure to consider material matters, a failure to properly apply Devaseelan and a failure to apply HJ (Iran) and MT (Ahmadi - HJ Iran). Although the Secretary of State relied on HJ, MT, MJ and ZN and IA in her refusal (see paragraphs 44, 45 and 49 of the determination), it is arguable that the judge erred in only applying IA [2007] when making his findings (paragraph 53) and in giving inadequate reasons in finding at paragraph 57 that HJ did not apply. There is no consideration of the other country guidance cases relied on and that is arguably an error of law. The grounds may all be argued.”

### **The Error of Law Hearing:**

16. The appeal came before the Upper Tribunal. Ms Patel who had appeared before the First-tier Tribunal and had settled the grounds for permission to appeal, appeared before the Upper Tribunal. Mr Diwnycz appeared on behalf of the Respondent who had also appeared before the First-tier Tribunal.
17. In a decision promulgated on the 11<sup>th</sup> July 2013, the Upper Tribunal was satisfied that the FtT erred in law only in respect of the decision made in respect of the Refugee Convention. I found no error of law in the judge’s approach of adopting the findings of fact made by Immigration Judge Vellins made in 2007 in accordance with the decision of Devaseelan. He was entitled to rely upon those findings of fact which had been subsequently upheld by the Tribunal. I also found that there was no error of law based on the assertion that Immigration Judge Vellins had not given anxious scrutiny to the events in 2007 in respect of events in Pakistan and Saudi Arabia. The judge gave entirely sustainable reasons that were open to him and were subsequently upheld by the Upper Tribunal (decision of SIJ Taylor). There was no cogent evidence before the First-tier Tribunal concerning the events in 2007 to demonstrate that the findings of fact should be revisited or that there was evidence to demonstrate those findings of fact that were sustainably made should be displaced in any way. The only evidence that was produced was from the Appellant relating to his conduct in Pakistan and Saudi Arabia which had previously not been believed by Immigration Judge Vellins. Thus I found no error of law in respect of that. However I found that the FtT erred in law by failing to consider the claim in the light of the decision in HJ (Iran) for the reasons set out in the error of law determination and annexed hereto marked “Appendix 1”).
18. In respect of Article 8, I was satisfied that the decision of the First-tier Tribunal did not disclose any error of law in considering that issue for the reasons given.
19. In those circumstances, the decision in respect of the Refugee Convention disclosed the making of an error of law and thus was set aside.

### **The Re-making of the Decision:**

20. The re-making of the decision relates solely to the issue of the Refugee Convention and will be remade in the light of the evidence and the new country guidance decision of **MM and Others (Ahmadi - country conditions - risks) Pakistan CG [2012] UKUT**.

### **The Evidence**

21. The Appellants' bundles consist of the original bundle under cover of a letter dated 17<sup>th</sup> October 2012 which included witness statements from the Appellant, Dr Salim, documents from the AMA UK and a number of documents and background materials. The other bundle contained further evidence submitted under Rule 15(2A) which included an additional statement from the Appellant and Dr Salim, a further letter from the AMA UK, copy photographs and copy leaflets and skeleton argument.
22. At the hearing the Presenting Officer relied upon the original Respondent's bundle before the First-tier Tribunal and a skeleton argument prepared for the hearing. Both advocates made reference to the CG decision of **MM and Others (Ahmadi - country conditions - risks) Pakistan CG [2012] UKUT**.
23. The first Appellant gave evidence with the assistance of the court interpreter and gave evidence in the Urdu language. I carried out an introduction of the proceedings so that the Appellant was familiar with the procedure that would be adopted during the court hearing and in particular I ensured that the Appellant and the interpreter could understand each other. There were no difficulties identified. I note that during the hearing there were no difficulties with the Appellant being able to give evidence or with the interpretation and no concerns were raised at any time during the hearing in relation to that.
24. There is a full record of oral evidence of the Appellant and the witnesses which appears in the Record of Proceedings. I shall refer to the relevant parts of the evidence during my analysis of the case. I have heard both advocates by way of summary at the conclusion of the case which I have recorded in my Record of Proceedings. I confirm that I have considered those submissions during my analysis of the evidence and in the conclusions that I have reached, even if not specifically referred to.
25. I note that I was guided to certain passages in the objective material. I confirm that I have read those passages with care, but I read them in the context of the entire document. I further confirm that I have read the whole of the documentation set out before me in order to assist me in reaching my conclusions.
26. The Appellant adopted his two witness statements dated 17<sup>th</sup> October 2012 and 20<sup>th</sup> September 2013 as his evidence-in-chief. The Appellant was asked about his faith. In particular, he was asked about what he understood to mean by the word "tabligh".

The Appellant stated that the meaning of the word to him was that he should spread the message of the Ahmadi faith to those who lived nearby him and wherever possible to spread the message to these people. He said it was the true meaning of Islam. As to the importance of this, he stated that it was for his devotion that it is most important and that if he did not spread the message then his faith would be incomplete. He made reference to the activities that he had been carrying out in the United Kingdom since 2007 and was asked whether upon return he would carry out and continue the same activities. The Appellant said that he would have to be extra careful because of the laws of the land stop him from carrying out the activities and it would be very difficult for him but he would have to be very very careful in those circumstances. He confirmed that in Pakistan he was not allowed to call himself a Muslim because the law forbade it. He said that it was most important for him to be considered a Muslim as it was his faith and of the most central importance to him.

27. As to his background in the United Kingdom he confirmed that he had been living in Leeds for the last three years having lived in Normanton prior to that. He said that since his arrival he has been involved in the Ahmadiyya Muslim Association UK. He originally landed at Heathrow Airport and lived in London for seven to eight days. He and the family were then provided with accommodation out of London to Normanton and he joined the Spen Valley AMA UK. They had no mosque in the area but they had a hall where he and his family were able to perform Friday prayers and their activities. He moved to Leeds in 2010 but between 2007 and 2010 he was practising his faith in Normanton as part of the Spen Valley Association. He was asked about photographs that had been produced and he confirmed that they were photographs showing him preaching in Leeds city centre and in particular at the "tabligh" stall in Leeds city centre. He identified himself from the photographs. He also made reference to a document entitled "local jama'ats elections 2013" which is for the North East region. He confirmed that he had been voted the General Secretary, the Secretary of Sami Basri and the Secretary Talimul Quran and Waq fardi. He also referred to the leaflets that he had been distributing which were set out in the bundle.
28. In cross-examination, he was asked about the short time that he was in London. He said that he had been staying with a friend for a few days before he moved to the Wakefield (Normanton) area. He said he only had a short time in London and therefore he did not preach at that time. He said he had just arrived from Pakistan and that the first thing he needed to do was to settle he and his family. He said that he first started preaching in Normanton when he first arrived there. He said that he was individually involved in preaching and was involved in the investigation including other activities. He said that he got to know a lot of people in the area and that he had preached to non-Ahmadis who had lived in the surrounding area where he lived including the taxi drivers and people at takeaways because they were Pakistanis. He said that when he got to know them that he would preach his faith to them. In respect of the leaflets, he said that he did not distribute leaflets in Normanton because those leaflets had not been printed at the time. He said that he had handed out some Ahmadi literature but that he had really taken part in verbal



preaching. In respect of literature he had handed out he confirmed that the organisation had booklets of about fourteen to fifteen pages and there was another book in regard to the prophet. He said that the organisation said they should only be given if people showed interest in the faith. He was asked how many booklets he had handed out and he said there were four to five booklets. He said that the organisation had a policy that you would not hand out leaflets until you have got to know the people and once they had shown some interest you would then give them the leaflets. It was simply based on whether they had shown interest. He said that the AMA UK were aware of his activities in Normanton and that he was an active member of the Association. He said the Normanton branch had a President who was Mr Arif. He confirmed that during the time he lived in Normanton he invited people to the mosque/hall and did preach during that period but that no-one had taken up the offer of attending prayers. He was asked if he wanted people to attend his prayers? The Appellant stated that it did not work that way. He said that if he was preaching to Christian then he would have to understand the faith and once he had understood the faith he would convert and it would only be once he had converted that he would pray. He was asked if he converted anyone in Normanton. The Appellant said that the Presenting Officer had misunderstood the meaning of tabligh. He stated that it was not aimed to convert people, it was to inform people and give them knowledge and that it was up to the individual to make the decision as to whether or not they wish to do so. He said that once he had spoken to someone and they had showed interest he would give them the literature and then they would be able to do so. He said no-one had taken up that interest.

29. He was then cross-examined about his activities in Leeds. He confirmed that he had carried out the same activities in Leeds. He referred to handing out leaflets. The leaflets had the address of the London mosque on it and also a contact number. He confirmed that the address on the leaflet was not Leeds but Bradford but the headquarters were in London and that was where the telephone number was.
30. The Appellant refuted the suggestion that the letter from the AMA UK dated 3<sup>rd</sup> July 2011 did not mention his preaching. He stated that it confirmed that he was involved in activities for the AMA UK between 2007 and 2010 and that also included the preaching activities that he had carried out at that time. He confirmed that he began taking part in door to door leaflets when he arrived in Leeds in 2010. He said that the leafleting tended to be carried out once or twice per month. He said this is an activity organised by the organisation itself and they were given particular times and areas in which to leaflet. He said the organisation kept a record and in particular they kept a record of the streets that had been leafleted. The organisation had a map of the entire Leeds area and marked off areas that had already been leafleted and ones that were remaining. He confirmed that he delivered leaflets door to door and gave an explanation as to what he would carry out. He said that he was told by the organisation as to the process that they should adopt, namely they should knock on the door but knock on it more than three times. If someone answered the door then you would give an introduction about the organisation but if no-one opened the door they would put the leaflet through the letterbox. As to those who open the door and

take the leaflet, he was asked if he had been invited back. The Appellant said that certain people had asked him to come back but it did not happen very often. He said the whole aim of leafleting was to spread the message and information to 10% of the population and to give them the contact details on the back of the form. The important thing was that they had the message and had the contact details for them to follow it up.

31. As regards the stall in Leeds city centre known as the “tabligh” stall he confirmed that the stall was used twice per year as they had a free space given to them by the council. He said that he has attended twice, once last year and once this year.
32. He was asked about his mother if she was still a practising Ahmadi, he said that she was. He said that his father had passed away last year but whenever he would have the opportunity he would preach but getting out of the house is difficult.
33. In re-examination he was asked about the leaflets. He confirmed he produced two leaflets, one that gave the mosque details in London and that it had the head office and the phone number for the head office. He said that they would ring that number and if anybody wanted to write a letter they could write to the mosque with the addresses but if they wanted to phone it would be the London telephone number because they had more staff there. He confirmed there was no formal centre for Leeds for people to call. When asked about meetings and prayers he said they had a meeting in the hall in Leeds for Friday prayers.
34. In answer to questions from the Tribunal, he confirmed that he attended the 2012 annual convention known as the Jalsa Salana. He said that the spiritual head had attended that year but he had not been able to talk to him.
35. The Tribunal then heard from Dr Asim Salim who confirmed the two statements in the 2012 bundle and an up-to-date statement dated 20<sup>th</sup> September 2013. He confirmed that he had known the Appellant for three years. As to his own role in the AMA UK he confirmed that he was the President of the Leeds chapter. He said that they had elections every three years and elections from the headquarters and the appointment is then considered by the spiritual leader in London. This takes place three years in summer and the last time was in 2010 and recently in 2013 where he was re-elected as the President of the Leeds jama’at. He referred to the letter in the bundle dated 23<sup>rd</sup> August 2013 confirming that appointment. He was asked about the election that took place in 2013 with reference to the Appellant. He confirmed that the Appellant is now the General Secretary of the Leeds jama’at and that also he was the Secretary of “Sami Basri” which meant that he was responsible for organising the tactical paraphernalia required for meetings. He also confirmed that he was the Secretary known as “Talimul Quran and Waq Fardi” which was for the education of the Koran. Dr Salim described this as that when members of the organisation and the community had some temporary leave from their occupations they were able to undertake religious work during that time. He said that the Appellant’s role in this would be to organise and oversee people who wanted to

undertake voluntary work during their holidays and this would be religious work for the Association purposes. He confirmed that he had known him for three years and he was asked if he doubted his Ahmadi faith. The witness stated “absolutely not”. He confirmed that in his opinion that his faith was very important to him. He also confirmed that he was a witness in the country guidance case of MN (as cited).

36. In cross-examination Mr Wardle asked Dr Salim about the evidence in the country guidance case at paragraph 138. The Appellant at that paragraph had held offices in Pakistan and Dubai. He was asked how he had found this out. The witness said that the Appellant had told him previously and there had been a statement given by the headquarters in Rabwah. He was asked if he was aware if the Appellant had any roles in Pakistan. He said that the Appellant used to live in Rawalpindi but he was in Lahore so he would not know. He was then asked again if he was aware of any role the Appellant had in Pakistan and the witness said that he had not gone to the local jama'at in Pakistan for any firsthand knowledge. He was asked about his work at the Leeds branch and distributing leaflets. He said that for the least two or two and a half years the Leeds branch had been distributing leaflets. They began approximately two or two or two and a half years ago where they began to comply with directions from the spiritual leader and preparing a way in which to distribute the literatures to the population which would involve going door to door, greeting the person and then if they wanted to proceed with the conversation then a contact number was given and that they could spread the message of Ahmadi Islam and peace. He said that on the back of the leaflet there was a contact number which is for the headquarters in London and that if anyone was interested they could call the headquarters and that they would be directed to either him or someone in the Leeds branch. He said that nobody had joined as a result of the Appellant's leafleting. He said that preaching the message is one thing but someone accepting the message is quite another thing and it is their job to carry out the orders of the spiritual leader to preach the faith. He confirmed that he did have advice to give to people as to who to give the leaflets to and confirmed what the Appellant had been asked in cross-examination. He said that days before the leafleting took place they would identify areas and they would go to the start of the street and every household and every door. They would also keep a record that the street had been leafleted. When asked if they had ever been met with hostility the witness said that it had happened. He said not with him personally but a few time he said that there had been some incidents in Bradford where they had called on some individuals from Pakistan/Bangladesh and they had been incidents where people had not been very keen and had been very rude. The advice given to members is that they live in the country where there is total religious freedom but they knew that there would be hostility. They said their advice was to be polite and to give them the leaflet but if they did not want it to apologise and leave the house. He said that if the person came after them, their advice was to stay calm and call colleagues or call the police. He said that there were no areas in Leeds that they did not leaflet but in Bradford they had identified some areas where the people were originally from Pakistan and they had avoided them but that that had not happened in Leeds.

37. The witness was asked about his own knowledge of this Appellant and in particular the elections in 2013. The witness said that since the Appellant had arrived in Leeds he considered him to be a very active member of the Ahmadi Association and that he had always participated in all activities, especially the ones set out in the statement; preaching and propagation of his faith and that he had been very active in leafleting including holding stalls in the city centre and holding meetings. He said the elections of people who are voting for a person who was active in all parts of the local activities and preaching tabligh. In addition to the day-to-day activities he is a good Ahmadi and a good example that showed strong connections to the headquarters. He said that he had always found him to be a very strong Ahmadi in his faith, a strong colleague and a strong active preacher and member of the Association in Leeds. When asked what a good Ahmadi was, he said he is someone who listens and has strong beliefs in the religion. The Appellant had a strong belief that tabligh was important and an integral part of his religion and that he had shown this by his behaviour from preaching tabligh and this was very important for this particular Appellant's religious identity. He referred to his active involvement in the faith and that he "strongly believed" that wherever he had the freedom to do activities it would be an integral part and requirement of his life. He said that for the last three years he had shown this by example. When asked why the Appellant's faith was important to him the witness said that the Appellant was a good Ahmadi and that it was shown by his relationship and contact with the Association and headquarters; his keenness to participate in the local headquarters to donate money and to preach "tabligh". The spiritual leader had stressed that this was important to be actively involved in spreading the message and this was what he had seen of the Appellant in the last three years.

### **Submissions**

38. Mr Wardle had helpfully produced a skeleton argument on which he placed reliance. In addition he made the following oral submissions. He made reference to the credibility findings made by IJ Vellins. He submitted the appeal must be looked at in the context of activities carried out in Normanton and London and whether the Leeds activities were "opportunistic". There was little evidence concerning activities contravening Pakistani law and there was no supporting evidence concerning Normanton except for vague information in 2011. In respect of the letter from the Association in 2013 it gave an indication of further activities and is a summary of those that were carried out in Leeds. As to the situation in Normanton, the Appellant gave evidence as to work he had done on an individual basis but there was nothing from the President in Spen Valley to confirm that he was engaging in preaching activities or not. It is clear from the Appellant's evidence that there was an amount of discretion even carried out in the United Kingdom. Dr Salim said there was an area in Bradford as identified where others should not preach. It was significant that the witness had not been in contact with Rabwah or to an Ahmadi mosque in Pakistan to find out the activities.

39. The issue was whether or not he had preached in the United Kingdom and his faith had manifested itself in the UK. Mr Wardle submitted that his mother remained in Pakistan. The past findings showed that the Appellant had not preached openly and that this was not an important part of his faith. Therefore the Appellant would not be at risk upon return.
40. Ms Patel relied upon the skeleton argument that she had also produced for the hearing. She accepted that the previous credibility findings of IJ Vellins were important. However she invited the Tribunal to note the length of time that had elapsed since that determination in 2007 and that there had been a great body of evidence concerning the Appellant's faith in the United Kingdom. The important evidence was that evidence relating to the period 2007 to 2013. As to the activities in the United Kingdom there was a great deal of evidence showing that he was active throughout his time. Whilst the Presenting Officer had said there was nothing to demonstrate his faith in Normanton there was a letter from the AMA UK setting out his activities. The Appellant is an Ahmadi by birth and served as the Nazim Itfil between 2007 and 2010. The letter dated 3<sup>rd</sup> July 2011 confirmed his activities and his arrival in the United Kingdom. The letter came from a reputable source of the AMA UK which is referred to in the country guidance decision. She submitted that it was not necessary for the Appellant to go back to 2007 to consider his activities given the evidence from Dr Salim confirming his activity for the past three years.
41. Ms Patel also submitted that this case began as a fresh claim that started some time ago. At that time the country guidance was that Rabwah was a safe place and Immigration Judge Vellins made a finding in the alternative that if he had preached his faith in Pakistan he could return safely to Rabwah. As it was a fresh claim there was fresh evidence of his activities and put before the country guidance came out, therefore it is not a case that the Appellant tried to tailor his activities to the country guidance case.
42. So far as his activities are concerned, he had shown the importance of his faith by answering a number of questions credibly in cross-examination and in evidence-in-chief. Furthermore the evidence of Dr Salim was also credible and weight should be attached to it. In terms of his preaching, he was following his religion as far as he could by "tabligh". In MN (as cited) the Tribunal mentioned the fact all Ahmadis are required to propagate their faith but that is not an aim to convert. They do so by way of encouragement and it is not compulsory to convert people which is different from the Christian religion. The evidence of Dr Salim is that the aim of tabligh is to interest people to make them aware so that they can make up their own minds about the religion. The length of time that the Appellant has been involved in activities in the UK is significant for the past six years. He has proved his standing via his activities in the Association.
43. Whilst his mother remains in Pakistan she is a widow and just because she remains there does not indicate that it is safe for the Appellant to return. The Appellant has demonstrated that he wishes to carry out the activities in Pakistan as he does here

but because of the anti-Ahmadi laws he would be prevented from doing so. If he returned, if he had to be discreet and the reason for this would be fear of persecution and in those circumstances the decision of **HJ (Iran)** would demonstrate that he should be entitled to refugee status.

44. Ms Patel made reference to the individual Appellants in **MN** stating that the activities of the Appellant far outweighed those of the Appellants in **MN** and that applying the lower standard of proof he demonstrated that his faith was an important one to him and his religious identity. Thus he has demonstrated that he would be at risk on return.

### **The Law and the Burden and Standard of Proof**

45. In reaching my decision I have borne fully in mind the relevant law and Immigration Rules, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Handbook on Procedures and Criteria for Determining Refugee Status ('The Handbook') (Geneva, January 2000). By Article 1(a)(2) of the Refugee Convention the term "refugee" shall apply to any person who:-

"Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or, owing to such fear, is unwilling to return to it."

46. The provisions of **SI [2006] No. 2525 "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006"** now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29<sup>th</sup> April 2004 on 'minimum standards' for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9<sup>th</sup> October 2006.
47. The determination I have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended Immigration Rules. These have permitted us to consider whether the Appellant is in need of Humanitarian Protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, I have gone on to consider whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.
48. The burden of proof is upon the Appellant. The standard of proof has been defined as a '*reasonable degree of likelihood*', sometimes expressed as '*a reasonable chance*' or a

*'serious possibility'*. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. We regard the same standard as applying in essence in human rights appeals although sometimes expressed as *'substantial grounds for believing'*. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of Humanitarian Protection.

49. Paragraph 339C of the Immigration Rules defines a person eligible for Humanitarian Protection, as a person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.
50. Accordingly, where below I refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying respectively:
  - (i) whether on return there is a well-founded fear of being persecuted under the Geneva Convention;
  - (ii) whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and
  - (iii) whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.
51. The Appellant places specific reliance on Article 3 of the ECHR. It is for an Appellant to show that there are substantial grounds for believing that he or she is at real risk of ill-treatment contrary to Article 3 ECHR, which prohibits torture, inhuman or degrading treatment or punishment. The standard of proof equates to that in asylum appeals. Unlike Article 3, Article 8 rights are qualified rights protecting the right to respect for private and family life, home and correspondence. It is for an Appellant to show that one or more of such qualified rights is engaged and that there is an interference with such a right or rights. The Respondent must then show that any interference pursues a legitimate aim, is in accordance with the law and is proportionate.
52. In coming to my determination, following Section 85 (4) of the 2002 Act, I may take into account evidence about any matter which I think relevant to the substance of the decision, including evidence which concerns a matter arising after the date of decision.

## The Country Guidance

53. The Tribunal have dealt with the decision of Ahmadis most recently in the decision of **MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)**.
54. In **MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)** the Tribunal held that (i) this country guidance replaces previous guidance in **MJ & ZM (Ahmadis - risk) Pakistan CG 2008 UKAIT 00033** and **IA & Others (Ahmadis Rabwah) Pakistan CG [2007] UKAIT 00088**. The guidance we give is based in part on the developments in the law including the decisions of the Supreme Court in **HJ (Iran) [2010] UKSC 31**, **RT (Zimbabwe) [2012] UKSC 38** and the CJEU decision in **Germany v. Y (C-71/11) & Z (C-99/11)**. The guidance relates principally to Qadiani Ahmadis; but as the legislation which is the background to the issues raised in these appeals affects Lahori Ahmadis also, they too are included in the country guidance stated below.
55. The head note reads as follows:-
- “2. (i) The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one’s religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one’s place of worship as a mosque and to one’s religious leader as an Imam. In addition, Ahmadis are not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.
- (ii) It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law;
3. (i) If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in paragraph (ii)(a) above, he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution under section 295C for blasphemy;



- (ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph (ii)(a) above (“paragraph (ii)(a) behaviour”) to avoid a risk of prosecution.
4. The need for protection applies equally to men and women. There is no basis for considering that Ahmadi women as a whole are at a particular or additional risk; the decision that they should not attend mosques in Pakistan was made by the Ahmadi community following attacks on the mosques in Lahore in 2010. There is no evidence that women in particular were the target of those attacks;
  5. In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.
  6. The next step (2) involves an enquiry into the claimant’s intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph (ii)(a) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.
  7. The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to engage in paragraph (ii)(a) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
  8. Ahmadis who are not able to show that they practised their faith at all in Pakistan or that they did so on anything other than the restricted basis described in paragraph 2(ii) above are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return, as described in paragraph 2(a) above.
  9. A sur place claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant’s local United Kingdom Ahmadi community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant’s account as a whole may be relevant to the assessment of likely behaviour on return.

10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(a) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile."

## Findings of Fact and Analysis of the Evidence

56. It is common ground between the parties that the starting point are the findings of fact made by Immigration Judge Vellins as set out in his determination which was promulgated on 18<sup>th</sup> July 2007. They are set out at paragraphs 41 to 58 of that determination. At paragraph 42 the judge concluded that he "did not find the Appellant to be a credible witness and did not believe the core version of events he claimed to have occurred to him in Saudi Arabia and in Pakistan." At paragraph 43 the judge considered how the Appellant had left Saudi Arabia and concluded that the Appellant had plans to leave voluntarily and not due to any fears in Saudi Arabia and that he had planned to enter the United Kingdom which were not based on any fears. At paragraph 44 he said that he did not believe the Appellant's claim that in Karachi while staying at his parents' house on 27<sup>th</sup> March 2007 that the home was besieged by a group from KN with eight people shouting abuse. He also further did not believe the claim that on 7<sup>th</sup> May 2007 whilst in the United Kingdom members of the KN had entered the parents' home and attacked the Appellant's father and brother. He found that he did not have genuine fears of persecution from KN as a result of his Ahmadi faith as it was not credible that he would have gone to live at his parents' home in Karachi after he had left Saudi Arabia. He had left his parents' house in Karachi and returned there on two occasions which was found not to be the action of someone in genuine fear. The judge also pointed out that the Appellant had arrived in the United Kingdom on 27<sup>th</sup> April 2007 but did not claim asylum until 14<sup>th</sup> May 2007.
57. At paragraph 50 Immigration Judge Vellins stated,

"I find in this appeal that the Appellant is a practising Ahmadi, who believes in the Ahmadi faith. The Appellant at his interview made no claim that he preached either when he was living in Pakistan or in Saudi Arabia. I did not believe his claims in his written statement after the decision that he preached. I find that if he had in fact been an Ahmadi who preached, he would have mentioned this at his interview. If I am wrong about that and the Appellant did in fact preach, by his own version of events he was not a prominent preacher, and not a person of high profile."
58. The first question I must ask is whether the claimant genuinely is an Ahmadi. As noted by the country guidance decision, in reaching the conclusion on this aspect of the case, the Tribunal is likely to include an enquiry whether the claimant was registered with the Ahmadiyya community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity is also relevant including

confirmation from the UK Ahmadi headquarters regarding activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.

59. In the refusal letter relied upon by the Respondent dated 7<sup>th</sup> September 2012 it is accepted on behalf of the Secretary of State that the Appellant is a follower of the Ahmadi faith as are members of his family and that they follow the Ahmadi religion (paragraph 24). The refusal letter also considered evidence that had been provided as part of the fresh claim in support of his following of that faith in the United Kingdom and acknowledged the Appellant's activities in Spen Valley and in Leeds and further acknowledged the documentation and letters from the Ahmadiyya Muslim Association UK dated 3<sup>rd</sup> July 2011. The Secretary of State accepted and acknowledged that he followed his faith in the United Kingdom and that he was of the Ahmadi faith (paragraphs 24, 25 and 26).
60. The findings of fact made by IJ Vellins indicate that the Appellant, whilst he was a practising Ahmadi who believed in the Ahmadi faith, had not preached in Pakistan. In the alternative that, if he had preached, on his own version of events he was not a prominent preacher. There is no information before the Tribunal in support of any activities carried out in Pakistan that had been attested to by the AMA UK. That might not be surprising given the length of time that the Appellant has been in the United Kingdom and has been following his faith, that is, since 2007 and for the past six years. Nonetheless, the matters set out in the refusal letter indicate that the Appellant is genuinely a member and follower of the Ahmadi faith as are his family members.
61. I have also considered the evidence before the Tribunal and in the light of the oral evidence as to his propagation of his faith in the United Kingdom. Whilst the refusal letter appears to indicate that it was acknowledged that the Appellant had taken part in Ahmadiyya activities on behalf of the AMA UK between 2000 and 2010 when the Appellant was living in the Normanton area, it has been submitted on behalf of the Respondent that there is little evidence to confirm his activities during that period.
62. I have considered the evidence. The Appellant had applied for verification of his faith and preaching activities in the United Kingdom by making an application to the UK Ahmadiyya headquarters for such verification to take place. It is known from the country guidance case of MN that the AMA UK are a highly organised organisation and have an information gathering capacity (see paragraph 66 of the decision). The AMA UK have no particular interest in supporting any particular Appellant but provide information that is based from their sources. In this appeal a verification letter has been provided before the Tribunal dated 3<sup>rd</sup> July 2011. The letter is signed by the Secretary of the AMA UK and provides confirmation that the Appellant is "an Ahmadi by birth and a bona fide member of the Ahmadiyya Muslim Community". It sets out that since his arrival in the United Kingdom him and his family members are "participating in both the activities of their local branch and that of the Association." It further certifies and confirms that the Appellant

“served as the Nazim Itfal (organiser for children) from 2007 till 2010 in our Spen Valley branch and was the General Secretary and Nazim Itfal for the Leeds branch 2010 and 2011.”

I am satisfied that there is a reasonable likelihood that during the time that the Appellant arrived in Normanton which is between May 2007 to 2010 that the Appellant formed part of the Spen Valley AMA UK and took part in a number of activities on the organisation’s behalf. In particular, he held a position in the Spen Valley branch as demonstrated in the letter of 3<sup>rd</sup> July 2011 and I also accept his oral evidence that he gave before the Tribunal concerning the activities that he carried out at that time. I place no weight on the submission that for the seven to eight days in London he did not preach to anyone. That is not surprising given the short period of time that he was in London. However I do place weight upon his evidence concerning the activities that he carried out in Normanton after his family had been housed there by the Home Office. His evidence was that he had joined the Association as soon as he had gone to Normanton and that he would take part in the Friday prayers in a hall that had been designated for such a purpose there not being a mosque in Normanton. I accept his evidence that he began preaching generally to neighbours who were of Pakistani origin but also those who lived in the surrounding area such as taxi drivers and people who worked in the takeaways.

I find that his evidence concerning the distribution of leaflets in Normanton is consistent with that of the witness Dr Salim. In cross-examination the Appellant was asked if he had distributed leaflets in Normanton. The Appellant said that he did not because at that time the leaflets had not been printed. That evidence is consistent with the account given by Dr Salim when he was asked independently of the Appellant as to when the leafleting began for the Association. He confirmed that it began two or two and a half years ago which is consistent with the Appellant’s account as to why he has not leafleted in the Normanton area. Nonetheless the Appellant did refer to handing out some Ahmadi literature but that “tabligh” had been taking place by way of verbal preaching. He said that he had handed out some booklets which were four or five. He was able to name the Normanton branch President and thus I am satisfied that he did undertake activities for the AMA UK between 2007 and 2010.

I am further satisfied that there is a reasonable likelihood that he took part in activities of “tabligh” or preaching during that time. The Appellant did not attempt to overplay or exaggerate the preaching that he undertook in the Normanton area. In cross-examination he was asked if he had been able to “convert anyone during the time that he had been in Normanton”. The Appellant openly stated that during that time he had not. However there does appear to be a misunderstanding as to the general tenets of the Ahmadi faith. As both the Appellant and Mr Salim testified, “tabligh” is not aimed to convert people but it is the process of informing others, giving them knowledge and then for the individual concerned to make a decision as to whether or not they wish to show interest in the faith. As Dr Salim said in his oral evidence, preaching the message is one thing but someone accepting the message is

another thing. He said "our job is to carry out the process of preaching faith and to provide information for them to make up their own mind." I am therefore satisfied that the Appellant has demonstrated that during that period of time 2007 to 2010 the Appellant was an active member of the Spenn Valley Association and during which time he actively propagated his faith and was preaching to people within that area. I am also satisfied that he held the positions as set out in the letter of 3<sup>rd</sup> July 2011.

63. I now turn to his activities in the UK between the period 2010 to date. As noted earlier in this determination, there did not appear to be any dispute in the refusal letter that the Appellant had participated actively in activities on behalf of the AMA UK. The skeleton argument prepared by Mr Wardle refers to the evidence of the Appellant and in particular his account of preaching in the United Kingdom, leafleting door to door and holding a stall in the Leeds city centre. It was noted that there were no real details provided about that and that the burden was on the Appellant to demonstrate that he intended or wished to practise manifest aspects of his faith openly that were not permitted by the Pakistan Penal Code (paragraph 123 **MN and Others**).
64. Thus the skeleton argument proceeded on the basis that the account given by the Appellant as to his activities, whilst accepted, appeared to be vague.
65. I do not find that that is the position having heard the evidence in this appeal. The activities that the Appellant has carried between 2010 to date in 2013 have been evidenced in detail by the Appellant and by the witness Dr Salim whose evidence I place weight upon. This was explored in cross-examination quite properly by Mr Wardle. He was cross-examined concerning the leafleting that he said that he had carried out for the Association as part of his preaching and tabligh activities. The Appellant had given an account during his oral evidence as to when he began leafleting in the Leeds, the method that was adopted by him and what had happened as a result of the leafleting that had taken place. He answered the questions in a credible way and a way that was consistent by the independent evidence of Mr Salim who gave his evidence after the Appellant. As to the leafleting in the Leeds area he gave a credible account, which was confirmed by Dr Salim as to the instructions that they had been given concerning the leafleting process. He described that a note was taken of the areas that they had already leafleted and said that particular streets had been identified. He further gave an account as to how he would knock on the door but only three times and if no-one had answered he would place the leaflet through the letterbox. However if someone did answer he would talk to them about the religion to see if they were interested but if they were not he would politely leave. He made it clear that he had been leafleting throughout the period of the last two and two and a half years which was consistent with the evidence of Mr Salim. As to the point made in cross-examination that no-one had contacted the Bradford/Leeds office, as a result of the leafleting, that is not surprising. The leaflets that were produced demonstrated that the telephone number for the initial contact was for the London headquarters. The reason for that was obvious; they have a number of staff who are able to deal with any telephone enquiries who then direct the particular

person to the area in which they live. That was borne out not only by the leaflets themselves for which no telephone numbers are given for local areas but also by the evidence of Mr Salim concerning the process of the supply of information.

66. The Appellant has also provided evidence of him being active in propagation of his faith in the Leeds city centre at the tabligh stall. The pictures clearly show the Appellant manning the stall in Leeds city centre, approaching people with leaflets and engaging with people concerning the Ahmadi faith. The evidence of the Appellant was that he had done this on two occasions both last year and this year as the council allowed them to have a stall on that basis. Whilst photographs of this nature are always self-serving, I find when that evidence is placed in the round that it is further support for the Appellant's genuine and active participation in the tabligh process of the Ahmadi faith.
67. The Appellant has also held positions within the AMA UK. The most recent elections in 2013 show that he was voted the General Secretary, the Secretary for Sami Basri (dealing with the technical aspect of meetings) and a Secretary Talimul Quran and Waq Fardi which, upon further exploration, was that the Appellant was the organiser of the periods of time used by members of the Association undertaking voluntary work for religious purposes during times of annual leave. The process of the elections was described by the witness Mr Salim and that those offices held by the Appellant were scrutinised and confirmed by the spiritual leader before such a post could be held.
68. I have also had the opportunity of hearing the oral evidence of Mr Salim. He is the President of the Leeds jama'at and has known the Appellant since 2010. His evidence was clear that having known him for a significant period of time that there was no doubt in his mind whatsoever concerning this Appellant's faith. He further confirmed that in his opinion and in his knowledge the active participation and practising his faith was very important to him. He said in his evidence that he considered him to be a "very active member of the Ahmadi faith" and that he has been preaching and propagating his faith actively whilst in the United Kingdom. He said that he had been elected in 2013 to those positions as a result of his participation and faith and that the people who voted were looking for "a person who is active in all the local activities including preaching and tabligh in addition to the day-to-day activities of a good Ahmadi." He said that he was a "good example of an Ahmadi showing connections to the headquarters." He said that he had always found him to be "a very strong Ahmadi, a strong colleague and a strong active preacher and member of the Association in Leeds." He believed from his firsthand knowledge of the Appellant that he was a strong believer in tabligh and that it was an integral part of his religion and a requirement to be a good Ahmadi and this had been shown in his conduct during the last three years and his active involvement.
69. I have considered with care the oral evidence heard from Dr Salim in the light of the evidence of the Appellant and also the evidence before this Tribunal as a whole. Having done so, I am satisfied to the lower standard of proof that the Appellant has

demonstrated that he is an active and prominent member of the Ahmadi faith. He has sought advancement of that faith by holding offices for the committee and I place weight upon the evidence of Dr Salim concerning this Appellant's belief and propagation of his faith. He has known him for the last three years and I place weight upon his personal knowledge as the President of the Leeds jama'at branch concerning the Appellant's faith generally. I find that there is an abundance of evidence concerning his participation in the faith in the United Kingdom. As I have stated, that does not simply include the evidence relating to his period in Leeds but over a significant period of time from 2007 until 2013. It has been supported by the oral evidence of Dr Salim, the President of the local jama'at in Leeds who knows him well and confirmed by the AMA UK and the Secretary of that Association. That information has been given some consideration in the country guidance decision of MN as the kind of evidence that lends support and weight to a particular Appellant's account of his claimed faith.

70. I have also considered the photographic evidence confirming his activities showing him distributing leaflets and preaching to members of the local Leeds community. Thus I have concluded that the Appellant is a genuine Ahmadi for the reasons given.
71. The next step is to involve an enquiry into the Appellant's intentions or wishes as to his or her faith if returned to Pakistan. The relevance of that is clear as it is because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in the behaviour noted in the country guidance case. I recognise that the burden is on the claimant to demonstrate that any intention or wish to practise the manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance for the Appellant to preserve his or her religious identity.
72. In this regard I have evaluated the evidence before me and in particular the evidence of the Appellant's conduct since his arrival in the United Kingdom. Whilst the Appellant did not demonstrate that he had been at any risk of his faith in Pakistan, it was noted that he had practised his faith in Pakistan. Over the last six years which I find to be a significant period, the Appellant has demonstrated by his active participation and propagation of his faith in the United Kingdom that he actively believes in the preaching and propagation part of the faith. The evidence as to his intentions concerning his faith must be seen in the light of the significant period of time that he has practised his faith in the United Kingdom. It should not only be seen in that light but also in the light of the evidence of Dr Salim, who I accept whose evidence was that he had been considered a very active member of the Ahmadi faith and was active in tabligh and was a strong active preacher. He believed that it was an integral of this Appellant's faith and religion and that he believed that wherever the Appellant lived this was so integral to his being that he would carry out that faith. That is consistent with the oral evidence of the Appellant who gave credible reasons as to why he would continue with his faith knowing that his wish to practise manifest aspects of the faith openly would not be permitted by

the Pakistan Penal Code and that this would bring him to the attention of the authorities and members of the KN.

73. The country guidance case notes that a sur place claim by an Ahmadi based on post-arrival conversion or revival in belief will require careful evidential analysis. I do not find that this is a sur place claim based on post-arrival conversion. It is accepted by the Secretary of State that he was a genuine Ahmadi practising his religion in Pakistan. The only real issue was that it was not accepted that he had preached in Pakistan. Thus it could not be said that there was a revival in his belief. Nonetheless even taking into account the adverse findings in the claimant's account concerning activities in Pakistan, this has to be set against the significant period of six years of the active participation in the faith that I have referred to. I am satisfied to the lower standard that the Appellant, if returned to Pakistan, would seek to continue the propagation of his faith and the active participation in it as he has done in the United Kingdom. I am satisfied from the evidence before me that the restrictions on Ahmadis in Pakistan on the practice of his faith is of particular importance to his religious identity and that he has shown an intention or wish to defy such restrictions. I have reached the conclusion that the restrictions in the Pakistani Penal Code on his ability to live openly as an Ahmadi are matters of particular importance to his religious identity and I conclude that he has demonstrated his wish to continue with his practice of his faith if returned to Pakistan.
74. In the light of those findings as set out above, the Appellant has discharged the burden of proof upon him to demonstrate that he is in need of protection and has demonstrated that he has a well founded fear of persecution on account of his religious beliefs if returned to Pakistan. The family members are dependants upon his claim and therefore should be granted leave to remain as part of the family of the Appellant.

### **Decision**

The determination of the First-tier Tribunal involved the making of an error on a point of law. The determination is set aside. The decision is remade as follows:-

The appeals are allowed on asylum and human rights grounds (Article 3 of the ECHR).

Signed

Date 24/9/2013

Upper Tribunal Judge Reeds