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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01452/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 24 October 2014	**On 13 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

M N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Fripp, Counsel
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, aged 52. He last arrived in the UK on 6 April 2003 with leave to enter as a visitor. He overstayed and was encountered on 14 April 2009. He was granted temporary admission but did not report, as required. On 30 August 2010 he made an application for leave on article 8 grounds. He was subsequently encountered again and given fresh reporting conditions. He made two further article 8 applications, the first of which was rejected for lack of payment and the second of which was refused without a

right of appeal. On 11 December 2013 the appellant requested an appointment at the Asylum Screening Unit.

2. The core of the appellant's asylum claim is that he has converted to the Ahmadi faith and he fears ill-treatment from his family, society in general and members of Khatme Nabuwat ("KN"). The respondent refused his claim, finding he had not genuinely converted. The appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Nightingale on 4 August 2014 at Hatton Cross. The judge accepted the appellant had converted to the Ahmadi faith but concluded nevertheless that the appeal had to be dismissed. She reasoned that there was nothing in the appellant's evidence to suggest he would do anything more than continue to practise his faith by attendance at the mosque. There was no reason to believe he would preach publicly. There was nothing in the evidence to indicate that any form of preaching or public activity was part of the appellant's identity or integral to his faith. She did not accept that the documents indicating animosity from the family and KN in Lahore were reliable. She dismissed the appeal on all grounds.

3. The appellant was granted permission to appeal by the First-tier Tribunal on two grounds: (1) the judge had not considered whether the appellant would be at risk as a result of manifesting his faith other than by preaching; and (2) she did not consider the fact of the appellant's apostasy as an additional risk factor.

4. The respondent filed a response opposing the appeal, arguing the judge found there would be no suppression of the appellant's identity on return to Pakistan. The judge also found the appellant would have a viable internal flight alternative.

5. I heard submissions from the representatives as to whether the judge made a material error of law. I have recorded them in full and merely attempt to summarise them here. Mr Fripp developed his written grounds seeking permission to appeal. He referred to the most recent country guidance case of *MN and others (Ahmadis – country conditions – risk) Pakistan CG* [2012] UKUT 00389(IAC). He suggested there was evidence showing the situation for Ahmadis had deteriorated since then. He argued that the Upper Tribunal had set the test wider than mere proselytising and the judge ought to have considered other means of expressing the faith. If these matters were important to the appellant and he would refrain from practising them due to fear of persecution, then he was entitled to refugee status.

6. The judge had not considered the risks of apostasy, even though this was referred to in counsel's skeleton argument at the First-tier Tribunal hearing. The judge appeared to have been applying the earlier guidance in cases such as *KK (Ahmadis – Unexceptional – Risk on Return) Pakistan* [2005] UKIAT 00033 by looking for a record of active preaching. Even that case had recognised that conversion could be an additional risk factor. Mr Fripp acknowledged that the issues of discretion and concealment of the faith were important. He argued that the appellant could not be expected to protect himself by taking on a "hermit-like" existence or expected to lie (*Hysi v SSHD* [2005] EWCA Civ 711).

7. Mr Shilliday agreed there were errors in the judge's assessment. He accepted counsel's skeleton argument had raised the issue of conversion as a risk factor and the judge should have dealt with it. He also accepted the judge had over-simplified the issue of the behaviour which would lead to risk on return as a result of an over-emphasis on preaching. However, the errors were not material on the facts because this was not a case of concealment at all. The judge was entitled to find the appellant would be able to practise his faith as he currently does. *MN* had stressed the importance of adverse credibility findings in the assessment of future risk.

8. Mr Fripp replied and argued that Mr Shilliday's arguments overlooked the *Hysi* factors and the fact that people enquire about religion in everyday life.

9. I have carefully considered all the submissions made, even if I have not set them all out here.

10. I shall now consider in detail how the judge approached the case. Having given reasons for rejecting the appellant's claims regarding why he previously failed to return to Pakistan and also for accepting his more recent conversion to the Ahmadi faith, the judge's relevant conclusions are as follows:

> "58. I have found nothing in the appellant's evidence to suggest that he would do more than to continue to practise his Ahmadi faith by attendance at an Ahmadi mosque. He has not long been initiated into this faith, and I can find no reason to suspect that he would be called upon to preach his faith given his new status as a convert. Whilst I accept that he has taken some time to study, he has not had the benefit of the many years of study and involvement of those born into, or long converted to, the Ahmadi faith. I can find no reason as to why, even if he wanted to do so, he would be called upon by members of the Ahmadi faith to preach publicly at the present time or that he would have the ability to do so.
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> 59. I am prepared to accept that the appellant has handed out a few leaflets and, also, that he may have staffed a stall at the mosque. However this, once again, appears to have been something which he has done only recently and I have no evidence before me with regard to the contents of the leaflets which he has been handing out. I cannot find he has done anything in the Untied Kingdom which would amount to "preaching" in accordance with the decision in **MN**. The appellant has said nothing to indicate that he would wish to hand out leaflets in Pakistan. There is nothing in the evidence which indicates that any form of preaching or public activity is part of this appellant's identity or integrity for his faith as he current[ly] practises it. There are, of course, Ahmadi mosques in Pakistan and a sizeable Ahmadi community still residing there. I find no reason to suspect that the appellant would not, if his conversion is, indeed, a genuine one, be welcomed into that community and assisted on his return to Pakistan by that community. He would be able to practise his faith as he presently does in Pakistan.
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> 60. The appellant has chosen not to return to Pakistan since 2003. I have

not accepted that this choice has been the result of his fearing harm during most of his stay in the United Kingdom. Since the appellant has chosen to remain outside of Lahore, and away from his family, for eleven years, I find no reason to suspect that he might want to return to Lahore if he went back to Pakistan. I have considered the documentary evidence with care and in accordance with the decision in Tanveer Ahmed. There is nothing on the notice said to come from the KN which identifies the document. There is also no explanation as to why the appellant's family, from whom he has absented himself for over eleven years, should issue newspaper advertisements about him, drawing local attention to a religious conversion which must, at the least, have a potential for family embarrassment. I do not find the documents to be of any weight in supporting this appeal and, rather, I find them to be of a self-serving and contrived nature. In any event, I have considerable doubts that the remaining relatives have any power there to cause him serious harm if he were to return. I find no reason as to why the appellant should need to return to Lahore. Even if, which I do not accept, the appellant is at risk from his family and the Mullahs of the KN in Lahore, there are clear internal relocation options open to this appellant in Pakistan which is, I remind myself, a large and populous country with a number of cities and urban centres to which the appellant could relocate.

61. I do not find that this appellant has established any difficulties in Pakistan prior to leaving. I accept that he has converted to the Ahmadi faith, and whilst I have some peripheral doubts as to his genuine intentions on conversion, I am prepared to accept, on the lower standard applicable, that he would wish to continue to practise this faith in Pakistan. However, I find that he has not performed any preaching activities in the UK and I find no evidence he intends to do so if he is returned. There is nothing on the evidence before me which indicates that it is of particular importance to this appellant's religious identity to practise or manifest his faith openly in Pakistan in defiance of the restrictions placed on Ahmadi Muslims.

62. I have taken into account the fact that there is little by way of documentary evidence from the UK Ahmadi headquarters. Such evidence is often very helpful to the Tribunal in deciding cases which involve individuals of this faith. I do, however, find it consistent with the generally helpful stance taken by the Ahmadi organisations in the UK that they might not support new converts in appeals such as this until those persons have shown themselves to be genuinely committed to the faith after some time. It might have been useful to the appellant, perhaps, to have sought some confirmation of this stance from the UK headquarters. Nonetheless, I do not find this in any way determinative of the issues before me. Since I do not find that this appeal has established any real risk that he genuinely wishes to engage in the behaviour found at paragraph 2(i) of **MN**, and given that the appellant has not practised his faith at all in Pakistan previously, I cannot find that he would be at any real risk there presently. He is a fit and healthy man who has taken employment in the United Kingdom. I find no particular prominent social or business profile of a type which makes him reasonably likely to be targeted by any non-state actors. I would therefore find that the appellant is not entitled to international

protection."

11. It is also useful to set out the head note of *MN and others (Ahmadis – country conditions – risk) Pakistan CG* [2012] UKUT 00389(IAC), which contains the general country guidance given at paragraphs 118 to 127:

> 1. 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.
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> 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.
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> (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.
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> 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 2(i) 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.
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> (ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above ("paragraph 2(i) behaviour") to avoid a risk of prosecution.
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> 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 2(i) 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 2(i) 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(i) 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(i) 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.

12. I do not find the judge made a material error of law in her decision such that it must be set aside. Having considered all the arguments, I have concluded that the judge's decision correctly applies the country guidance and should stand. My reasons are as follows.

13. Whilst there are numerous references in the passages set out above to the finding that the appellant would not preach, a fair reading of the determination as a whole shows the judge clearly had in mind the whole range of ways in which Ahmadis express their faith and thereby might fall foul of the restrictions contained in Pakistani law. These are set out in paragraph 2(i) of *MN*. In paragraph 62 the judge makes it clear that her finding is that the appellant would not wish to engage in any practice or behaviour of a kind described in 2(i). That shows that her conclusion in paragraph 61 that the appellant would not be prevented from doing anything which would infringe his right to express matters going to his religious identity was not limited to an inability to preach but went much wider. Even one of the paragraphs in which the judge makes her finding about preaching (paragraph 59) is expressed broadly enough to include other "public activity".

14. It is plain from the judge's reference in the same paragraph to the appellant's "identity or integrity for his faith" that the judge had in mind the correct test found in *HJ (Iran) and HT (Cameroon)*[2010] UKSC 31 and *RT (Zimbabwe)* [2012] UKSC 38. Lord Hope analysed the issues this way in HJ (Iran) at paragraph 35:

> "(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. … The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.
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> (c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin."

15. Concealment lies at the heart of the test (see also paragraph 75 of *MN*). I agree with Mr Shilliday that the principles set out in *HJ (Iran)* and the other cases do not assist the appellant because he failed to satisfy the judge that on return to Pakistan he would have to conceal his faith in any way which would amount to an infringement of his right to express any aspect of his core identity. He would be able to attend an Ahmadi mosque. The judge found there was nothing else amounting to paragraph 2(i) behaviour which the appellant would be prevented from doing. As such, the judge was entitled to conclude that the appellant did not fall within the class of Ahmadis entitled to protection by virtue of paragraph of the head note of 3(i) of *MN* and he fell within paragraph 8. That conclusion was open to the judge on the evidence and there was no error in her approach.

16. In terms of the issue of conversion as a risk factor, I note there is no reference to as being a risk factor it in the judge's findings. This point was argued by counsel at the hearing in her skeleton argument and the judge should have considered it. Moreover, paragraph 9 of the head note of *MN* refers to conversion in terms of the need for careful evidential analysis. The difficulty for the appellant is in showing that any error on the part of the judge was material to the outcome of the appeal. It is not the case that she did not approach the evidence with care and she expressly rejected some aspects of the appellant's account. She also considered the absence of any supporting evidence from the UK Ahmadi community without holding this against the appellant.

17. In my view this ground fails for the same reason the first ground failed. Unless the appellant can show that his conversion would be disclosed through his public activity as an Ahmadi then he cannot reach the requisite threshold of risk. He has not established this for the same reasons he has not established he would engage in 2(i) activities.

18. I also heard arguments about the judge's findings on internal flight but, in the circumstances that her primary finding that the appellant would not be at risk can be left undisturbed, I do not need to consider these arguments.

NOTICE OF DECISION

The Judge of the First-tier Tribunal did not make a material error of law and her decision dismissing the appeal shall stand.

Anonymity direction made.

Signed Date 10 November 2014

Judge Froom,

sitting as a Deputy Judge of the Upper Tribunal