



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03589/2013
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THE IMMIGRATION ACTS

Heard at North Shields
on 6th December 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SIA
NI
(Anonymity order in force)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Brakaj of Iris Law Firm (Gateshead).

For the Respondent: Mrs Rackstraw – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. Following a hearing at North Shields on 13th August 2013 it was found First-tier Tribunal Judge Trotter had erred in law in his determinations promulgated on the 22nd May 2013 which were set aside. There are a number of preserved findings which can be found in paragraphs 23 to 28 of the determination of NI and paragraphs 18 to 21 of that relating to SIA. I have considered in detail the evidence provided and further submissions made by the advocates.

Discussion

2. Guidance on the approach to be adopted in a case involving a claimant who claims to be at risk as a result of following his faith as an Ahmadi is provided by MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389(IAC) and, in relation to the weight to be given to evidence from the Ahmadiyya Association, in AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 00511 (IAC) it which it was held that in deciding a claim to international protection based on a person's Ahmadi faith where credibility was in issue, the more that a letter from the Ahmadiyya Association UK contained specific information as to the claimant's activities in the United Kingdom, the more likely the letter was to be given weight.
3. There is ample evidence from the Association to corroborate the activities of the Appellants both in Pakistan and in the UK.
4. It is not claimed that all Ahmadi are at risk in Pakistan or that they are not able to follow their faith if they wish to do so, provided they do so discreetly. The difficulties they face are summarised in the case law and paragraph 23 of Judge Trotter's determination for NI in which he refers to the way in which legislation in Pakistan restricts the way in which the Ahmadi are able to openly practice their faith. They are prohibited from preaching and proselytising and severely discouraged from manifesting their beliefs even by open discussion. Sanctions against breaches include the issue of a FIR, sometimes coupled with detention, and prosecution for blasphemy which can carry the death penalty.
5. It is a preserved finding that prior to coming to the UK NI did not openly proselytise in Pakistan. There is no adverse credibility finding in relation to the claim to have provided funding to the Ahmadi organisation and to have worked in a youth organisation or that one of his uncles is a prominent Ahmadi. It is noted that despite this NI did not claim to have received any threats [25].
6. Judge Trotter found on the evidence that NI undertook activities at a low level, did not openly pursue his faith and did not have the profile of a person who faced a real risk of persecution on return. I note the continuation of activities in the UK, including public demonstrations of his support for his faith, as recorded in the evidence. These activities are not disputed. Had this been the end of the assessment there would have been no legal error in the conclusions of Judge Trotter for, as recognised in MN, Ahmadis who are not able to show that they practiced their faith at all in Pakistan or that they did so on anything other than the restricted basis, are in general unlikely to be able to show that their genuine intentions or wishes are to practice and manifest their faith openly on return. Judge Trotter, however, went on to make a further finding in paragraph 25 in which he found in relation to NI:

“He claims to have converted two individuals to the Ahmadi sect and that he no longer carried out preaching and proselytizing work from 2005 because of threats to the community”

7. Judge Trotter noted the claim NI’s uncle had been the subject of threats of violence and had shots fired at him. Judge Trotter also recognised that NI is genuinely fearful of return to Pakistan in the honest belief that by reason of a combination of his Ahmadi faith and his association with his father, grandfather and uncle he will be at risk [26].
8. It is the nature of the conduct on return that creates the real risk and in relation to such behaviour it was found in MN that “the burden is on the claimant to demonstrate that any intention or wish to practice 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”. It is therefore necessary to consider the reasons a person who appears to have been active and to have converted others and to have openly declared his faith and who has acted to inform others of his faith in the UK did not do so as openly after 2005 and is not prepared to do so on return. The answer is provided by the country information and the preserved finding of Judge Trotter that it is as a result of threats to the community. This is a finding that it is the fear of persecution arising from his religious identity that is the reason for NI’s behavior.
9. There was a need in this case to consider the guidance provided by the Supreme Court in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31. The principles set out by the Court in that case apply to any person who has religious beliefs and is obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them. The right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to have to express opinions. If the reasons a person changed his pattern of behaviour in relation to his or her belief was to avoid persecution, in this case as a result of a fear arising from threats made to the community, and he will not return to such conduct as a result of such an ongoing fear, it must be the case that he or she is entitled to succeed as a result of the findings in HJ (Iran).
10. In relation to SIA, he is the older of the two appellants, having been born in 1933. His case is based upon a claim that some months before he left to come to the UK he had been accosted by an unknown person who threatened him if he did not leave the Ahmadi faith and convert to Islam. In relation to the core of his claim Judge Trotter was satisfied SIA is an Ahmadi and the brother of the local Amir and that he has been active until his latter years in “propagating the Ahmadi faith” mostly by speaking to people on a one to one basis. He has not

claimed to convert anyone. In his determination for SIA promulgated on 22nd May 2013 Judge Trotter found:

19. I think it highly likely that this Appellant was afforded a threat by a single individual in the manner that he claims. I note that there has been no “follow up” to the threat, I am content even on the lower standard of proof to accept that this was little other than an incident of hooliganism (although it took place I am satisfied), there has been no result thereafter, this Appellant cannot be a high profile Ahmadi, he has no profile in the community, he lives with a small group of Ahmadis, he has been safe to do so over many years and even though I accept that he is related to the Amir of the local Ahmadi community I cannot find he is at any risk either by way of his relationship with his brother nor by way of threats that were afforded to him.
 20. To the extent that the Appellant claims to have preached the faith it seems to me he has only done so by chattering in the barber’s shop or the other shops which he visits, none of this has caused him any problems in the past, under these circumstances, therefore, I cannot find that either by reason of his Ahmadi faith or by reason of his relationship to the local Amir or by reason of his talking in the local shops that he visits or even by the one confrontation to which he refers he is at risk of persecutory treatment.
 21. It follows, therefore, that in my view this appeal must be dismissed. I dismiss it with some considerable reluctance since this Appellant struck me as an honest witness genuinely afraid of the situation in which he finds himself although that genuine fear is, in my view, misplaced.
11. In relation to SIA I have been provided with a letter from the Associated dated 21st November 2013 which refers to this activities in the UK as being:
- i. Attending congregational prayers, Friday prayers/sermons, annual convention of the community, annual gathering of Majlis Ansarullah (The group of people over 40 years) an branch’ general meetings;
 - ii. Participating in preaching programmes of the branch including Quran Exhibition, peace conference, Tabligh training classes, one to one Tabligh sittings, question/answer sessions with non-Ahmadi friends.
12. In relation to his activities in Pakistan a letter from the Association dated 15th April 2013 confirms he, his parents, and family are very well known to the

Community but this was included in the original appeal bundle at pages 20 – 21 and was considered by Judge Trotter,

13. The correspondence from the Association does not support a claim have had involvement in activities in Pakistan such as to create a real risk on return or of a person who wished to undertake such activities based upon his sur place undertakings. The evidence is suggestive of a person who falls within the category of those adherents to the faith who practice their faith on a restricted basis either in private or in the community with other Ahmadis without infringing domestic law. There is evidence of work obligations constraining SIA in the past from activities and the effect of old age restricting his mobility now. There is insufficient evidence or preserved findings of Judge Trotter to show this appellant has modified his behavior as a result of a fear of persecution, unlike in the case of NI. It is a case of any such modification being as a result of the fact it suited his personal circumstances and no more.
14. Mrs. Brakaj referred to the positive credibility finding made in relation to SIA and whilst this is an element in his favor I do not find he has substantiated his claim to have a profile that will expose him to a credible real risk on return or that it has been shown SAI is entitled to succeed on the basis of an HJ (Iran) argument. No basis for finding he is entitled to any form of leave has been established on the facts.
15. In light of the preserved findings, the acceptance NI is a genuine Ahmadi who has practiced his faith in contravention of the laws of Pakistan prior to 2005, the finding he changed their method of expressing/manifesting their beliefs after this date as a result of threats made by third parties, the evidence of open expressions of his faith since arriving in the UK, the letters from the Ahmadiyya Muslim Association UK in the file, the current country conditions and case law, I find the appellant NI has discharged the burden of proof upon him to the lower standard applicable to this appeal to show he is entitled to be recognised as refugees on the basis of there being a credible real risk of persecution on return to Pakistan if he manifests his faith openly, which it is accepted he would do but for the risk of persecution. His wife and child are dependants upon his claim and are entitled to a grant of protection in line with NI.

Decision

16. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decisions as follows. This appeal of NI is allowed. The appeal of SAI is dismissed.**

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 27th January 2014