



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08129/2013

THE IMMIGRATION ACTS

Heard at Field House, London	Determination Promulgated
On 15 May 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

WA
(Anonymity direction continued)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the respondent to refuse his application for asylum and to remove him from the UK. Judge of the First-tier Tribunal Baldwin dismissed the appeal. The appellant now appeals with leave to this Tribunal.
2. At the hearing in the Upper Tribunal there was no appearance by or on behalf of the appellant. The solicitors previously acting for the appellant wrote to the Tribunal on 14

May 2014 to inform the Tribunal that they were without instructions from the appellant and advising that they were withdrawing their representation. I was satisfied that the notice of hearing had been sent to the appellant at the address given on the notice of appeal. As I was satisfied that the appellant had been notified of the hearing and that no reasons had been given for his absence I decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 38 of the Tribunal Procedure (Upper Tribunal) Immigration Rules 2008. I heard submissions from Mr Nath who contended that there was no error of law in the First-tier Tribunal Judge's decision.

3. The background is that the respondent accepted the appellant's claim that he is of the Ahmadi faith. However the respondent rejected the appellant's claim that he encountered difficulties in Pakistan as a result of his faith and that he would be at risk from the Pakistani authorities upon his return. The First-tier Tribunal Judge accepted that the appellant is a Pakistani Ahmadi but found that the appellant does not openly preach or proselytise and does not want to do so and dismissed the appeal.
4. There are three grounds identified in the renewed application for permission to appeal to the Upper Tribunal. The first ground contends that the Judge made inadequate findings in relation to the appellant's credibility and made errors of fact in his assessment of the appellant's credibility in relation to his activities in the UK. It is secondly contended that the Judge failed to apply the country guidance set out in the case of MN and others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC) and that he failed to apply the decisions of the Supreme Court in the decisions of the Supreme Court in HJ (Iran) [2010] UKSC 31 and RT (Zimbabwe) [2012] UKSC 38. It is contended that the Judge focussed on proselytising rather than analysing the remaining aspects of the appellant's faith based activities as set out in MN. The third ground contends that the Judge applied the wrong standard of proof.
5. Permission to appeal was granted by Upper Tribunal Judge Peter Lane on the basis that it is arguable that the First-tier Tribunal Judge did not make findings as to whether the appellant would wish to engage in paragraph 2 (i) behaviour, within the meaning of MN, falling short of proselytising.

Error of law

6. The country guidance set out in MN is summarised in the head note 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 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.

(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.

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.”

7. In light of the fact that the respondent had accepted that the appellant is a Pakistani Ahmadi, in accordance with the country guidance, the issue to be determined by the Judge in this case was whether the appellant demonstrated that, upon return to Pakistan, he genuinely intends or wishes to practise and manifest aspects of his faith openly that are not permitted by the Pakistan Penal Code (PPC) and that such practice of his faith is of particular importance to him to preserve his religious identity (paragraph 6 above).
8. The Judge set out his findings at paragraphs 20-22. He made a number of adverse credibility findings in relation to the appellant's account. The Judge considered that there was a conflict between the appellant's evidence and the information contained in one of the letters from the Ahmadiya Muslim Association (AMA) UK as to the age group of people with whom the appellant was said to be serving as an assistant. The appellant said that his involvement was with those under 16 whilst the letter stated that it was those under 18. The conflict in the evidence was such that the Judge was not satisfied that the appellant performed any role with any age group.
9. The Judge also found that the fact that none of the 3 letters from the AMA mention the appellant's claim that he was subjected to incidents of violence and claimed seizure of his shop in Pakistan. He noted that the letters did not mention any open preaching or proselytising. The Judge considers that this damages the appellant's credibility. The Judge notes that the appellant failed to produce any evidence about the school he claimed to have attended, he failed to produce any medical evidence as to his claimed injuries sustained, or articles about the seizure of his shop which he said was publicised or any articles about the other incidents he recounted. The Judge further found that the appellant has not preached in Pakistan or in the UK and noted that no one had given evidence as to his claimed activities in the UK. The Judge noted that the appellant could not say where in London the mosque is situated even though he had been living in the same area of London.
10. Considering all of the evidence the Judge found that the appellant's activities in the UK 'have not extended beyond child minding and security'. Given the inconsistencies in his evidence in relation to his activities in the UK the Judge found that 'it would seem unlikely that anyone would encourage or want him to start preaching or proselytising' in Pakistan.
11. The Judge said that the conflict as to the age group which the appellant claimed to work 'leaves a doubt as to whether he performed any such role for any age group'. I

accept that this may indicate the application of too high a burden of proof. However I read this finding in the context of all of the other findings and the decision as a whole. I am satisfied that the Judge did apply the correct standard of proof.

12. The Judge did not set out his findings in the manner suggested by MN. However I am satisfied that when the decision is read as a whole and given the adverse credibility findings it is clear that the Judge did not accept that the appellant practised his faith in Pakistan on anything other than the restricted basis described in paragraph 2(ii) of MN. The Judge did not accept the appellant's account of his activities in the UK and made clear findings on that matter. I do not accept that the Judge made any factual errors in relation to the letters from the AMA in reaching that conclusion. I consider that it is therefore clear that the Judge was not satisfied that the appellant had shown that his genuine intentions or wishes are to practise and manifest his faith openly on return, as described in paragraph 2(i) of MN.
13. I am satisfied that the Judge did not err in his approach to the evidence or the application of the country guidance in MN and that he made a decision which was open to him on all of the evidence before him.

Conclusion:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Signed

Date: 28 June 2014

A Grimes
Deputy Judge of the Upper Tribunal

Anonymity

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

Date: 28 June 2014

A Grimes
Deputy Judge of the Upper Tribunal