



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/03719/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2015**

**Decision & Reasons Promulgated
On 10 August 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**FARAH YOUNAS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E King, Counsel, instructed by Dean Manson Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 1st January 1970. She married Raja Mohammad Younas, a British citizen, in 2010. She came to the UK on 29th September 2012 as a visitor and immediately claimed asylum on arrival. She appeals against the decision of First-tier Tribunal Judge Obhi dated 24th April 2015 dismissing her appeal against removal on asylum and human rights grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge Levin on 27th May 2015 on the following basis.

“Given the judge's apparent acceptance of the evidence of the Appellant's husband's brother that he was an Ahmadi, it is arguable that the judge erred by failing to make a clear finding as to whether the Appellant's husband was an Ahmadi and if so, to consider whether the Appellant had converted to the Ahmadi faith by reason of her marriage.

It is also arguable that in the absence of the judge having referred to and her considering the principles enunciated by the Court of Appeal in the case of HJ (Iran) [2010] UKSC 31 that the judge erred in her consideration of the risk that the Appellant may face on her return to Pakistan as an Ahmadi.”

3. In the Rule 24 response, the Respondent stated:

“The judge rejected almost entirely the credibility of the Appellant and her husband. He accepted only that the Appellant had registered as an Ahmadi convert in the UK. The judge concluded that even if the Appellant and her husband are Ahmadis their past behaviour is such as to indicate that they do not practise their religion openly and would not therefore be at risk. The judge found that the Appellant's husband travelled to Pakistan and lived there for many years without incident.”

Submissions

4. Miss King relied on her grounds and stated that there were two issues. Firstly, whether the judge took into account evidence of witnesses and how that impacted on her credibility findings and, secondly, whether the Appellant and her husband did not have problems in Pakistan because they were obliged not to openly practise their religion.
5. In relation to ground 1, Miss King submitted that the judge accepted the evidence of Mohammad Younas, the Appellant's witness, but failed to properly consider his evidence given profile as an Ahmadi. The judge accepted that the Appellant had converted in the UK, not on her marriage.
6. At paragraph 39 the judge did not accept that the Appellant's family had found out about her conversion. In coming to this conclusion the judge had not taken into account that the Appellant's husband was part of a well-known Ahmadi family. Therefore, the judge failed to consider whether he could have hidden this from his wife's family. The judge's finding was perverse because it was implausible that the Appellant's family would not have known that her husband was an Ahmadi and it fails to take into account the judge's acceptance that the Appellant's husband was part of an Ahmadi family given that Mohammad Younas was in fact the Appellant's cousin.
7. In relation to ground 2, Miss King submitted that there was no consideration in paragraph 39 as to whether the Appellant's husband's behaviour in not exhibiting his faith publicly was one of choice not necessity. It was not clear from the record of evidence in the decision whether evidence was taken on this point. However, it was a key point in itself and had been dealt with in the country guidance cases. The judge had failed to consider the reason why the Appellant and her husband had not sought to practise their faith in Pakistan. It was not a case that there

was no evidence before the judge, but that the judge had not turned her mind to the reason why there had been no previous preaching or proselytising.

8. For the respondent Mr Clark submitted a copy of the case of MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC). He relied on paragraphs 5 and 6 of the head note, which states:

“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(1) behaviour. 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 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 United Kingdom may also be relevant. If the claimant discharges his burden he is likely to be in need of protection.”

9. Mr Clarke submitted that there were clear findings at paragraph 34 that the Appellant was not an Ahmadi. The issue in this case was whether her conversion was a genuine one. The only evidence before the judge was that the Appellant was registered as an Ahmadi in the UK. The judge had found that the Appellant had tried to deceive the court and therefore the evidence of the situation in Pakistan was wholly incredible. She did not accept that the Appellant was a genuine convert.

10. In relation to ground 2, the intentions or wishes of the Appellant on return, there was no evidence before the judge to demonstrate that the Appellant practised or preached in Pakistan. In paragraph 2 of the head note at MN there was a distinction between those who openly practised their faith and those who did not. The Appellant had to demonstrate that she fell into the second category, someone who would proselytise. All that was left to the judge was a sur place claim. The account of the Appellant and her husband was inconsistent and the evidence of Mohammad Younas did not go further than to say that the Appellant was registered as an Ahmadi. She was at no risk per se.

11. Given the judge's credibility findings about what happened in Pakistan the judge had no choice. The Appellant had failed to discharge the burden upon her and to show that she was a genuine Ahmadi. In any event, the judge took the evidence at its highest and still found that the Appellant was not at risk because she had failed to show that she would openly practise her religion on return to Pakistan.
12. In response, Miss King submitted that although the judge was entitled to take into account particular findings in relation to deception, she had accepted that the Appellant's cousin, Mr Mohammed Younas, had a high profile as an Ahmadi. Therefore, regardless of credibility concerns, whether the Appellant's husband was in fact an Ahmadi, was capable of being established independently. This evidence should have been balanced against her findings of deception. There was evidence from Mohammed Younas that the judge had failed to take into account and it was implausible that the Appellant could not have known that her husband's family were Ahmadi. The judge's findings at paragraph 39 were perverse.
13. Accordingly, the second stage test was tainted by these findings of fact. The judge had failed to enquire into why the Appellant and her husband had not openly practised their faith in Pakistan. The findings made at paragraph 40 were without consideration as to why the Appellant's husband did not openly practise his faith in Pakistan. That was a key element that was missing from the judge's consideration.

Discussion and conclusions

14. The judge found that the Appellant and her husband were not credible witnesses because there was clear and proven deceit on the part of the Appellant and her husband in an application for entry clearance made in 2011. The Appellant had lied about her situation and her husband's affidavit was misleading. Further, the Appellant's evidence was inconsistent with that of her husband in several significant respects (paragraph 31 of the decision).
15. At paragraphs 33 and 34 the judge made the following findings:
 - "33. I am satisfied that neither the evidence of the Appellant nor that of her husband is reliable. The situation is slightly more complicated with Mohammad Younas. He claims to be a former president of an Ahmadi Mosque which is linked to the Ahmadi Association the UK. He is also related to the Appellant's husband. He gave plausible evidence about the Appellant registering as an Ahmadi. Whilst I have profound difficulties with the Appellant and her husband's credibility, giving her every benefit of the doubt, I am prepared to accept that she has registered as an Ahmadi convert. That was done when she came to the UK. There is no evidence of such registration with the organisation in Pakistan, or of any activity on her part that would make her stand out as being an Ahmadi since birth. This is particularly so as her husband, who claims to have been an Ahmadi since birth, has travelled to and from Pakistan, even establishing a business there without any

apparent difficulty. If he is an Ahmadi then he has for the best part of 22 years been able to live there on and off without difficulty travelling back and forth as he has chosen. Whilst I accept that the Appellant has registered as an Ahmadi, I do not accept that she was preaching in Pakistan or that she is leafleting in the UK. She did not claim that she was in her oral evidence before me.

34. In summary therefore I make the following credibility findings. The Appellant and her husband's evidence in relation to her experiences in Pakistan is wholly unreliable. They have history of attempting to deceive and have produced documents which suit their purpose. I therefore do not accept any of the documentary evidence which they put forward. They produced false documents in 2011 to support an application for entry clearance. No document which emanates from this couple can be relied upon. Consequently I do not accept that the Appellant's wife is a genuine convert to Ahmadi to whom it is important to manifest and practise her religion openly. If she is an Ahmadi, she has chosen to hide that from others, as she practised Islam for over 17 years without feeling it necessary to convert. Similarly her husband had travelled freely to Pakistan without any problems. The only finding I am able to make with regard to her claims regarding her conversion is that she is registered as an Ahmadi with the Association in the UK."

16. The judge went on to apply the country guidance to her findings of fact and concluded at paragraphs 39 and 40:

"39. The evidence before me shows that for many years, the Appellant's husband was able to travel to and from Pakistan without any difficulty. Although the Appellant claims that this changed once she converted to the Ahmadi faith, I do not accept her evidence that her family found out that she has converted. She was asked about whether the wedding was attended by her family and she confirmed that it was. If the Appellant and her husband are Ahmadi, then they have remained quiet about their religion, otherwise it would simply not be possible for them to have remained in Pakistan on the basis that they say they did.

40. For all these reasons even if the Appellant is a genuine convert to Ahmadi, I am satisfied on the evidence that it is not of particular importance to her to practise her religion openly. I do not accept her claims of proselytising or leafleting or attendance at meetings on a regular basis in Pakistan, or indeed in the United Kingdom."

17. I find that the judge's conclusions were open to her on the evidence before her and she gave cogent reasons for her adverse credibility findings. Even though the Appellant was registered as an Ahmadi, the judge found that she was not a genuine convert. The judge took into account the evidence of Mohammad Younas in coming to this conclusion.

18. Notwithstanding the judge went on to consider return on the basis that the Appellant and her husband were Ahmadi. On their own evidence, applying the country guidance case of MM neither the Appellant nor her husband were at risk on return. They had not tried to preach or proselytise in the past and they would not do so in the future.

19. The judge's findings at paragraph 39 were not perverse. The Appellant claimed that she had converted to the Ahmadi religion on her marriage. However, her family had attended the wedding and her husband had travelled to and from Pakistan for many years. If the Appellant or her husband were openly practising their faith they would not have been able to do this.
20. The judge considered the case in the alternative, accepting the Appellant and her husband were Ahmadi and she properly directed herself in accordance with the country guidance at paragraphs 35 to 38 of her decision. The Appellant's case was not put forward on the basis of HJ (Iran) as alleged in the grounds of appeal. The Appellant had been living in Pakistan and her husband had visited her frequently without difficulty. They had not tried to preach or proselytise and there was no evidence before the judge on what she could conclude that they had deliberately not done so in order to avoid persecution.
21. Accordingly, I find that there was no error of law in the First-tier Tribunal decision and I dismiss the Appellant's appeal. The decision of 24th April 2015 shall stand.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed

Date 31st July 2015

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 31st July 2015

Upper Tribunal Judge Frances