



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

Appeal Number: AA/08024/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 June 2015**

**Decision & Reasons Promulgated
On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ANNA AWAIS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vaughen, NBS Solicitors

For the Respondent: Mr Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Anna Awais, was born on 29 July 1986 and is a female citizen of Pakistan. She has two dependent daughters with her in the United Kingdom who were born respectively in 2009 and 2011. The appellant's mother-in-law and brother-in-law also live in the United Kingdom and are refugees. The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 24 September 2014 refusing to grant her asylum and making directions for her removal from the United Kingdom. The First-tier Tribunal (Judge Birkby) in a decision

promulgated on 16 December 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is an Ahmadi. At [35], Judge Birkby found:

“However, because of the finding that the appellant has been targeted by the KN in Pakistan and indeed that she is of the Ahmadi faith, despite the fact she had not claimed that she has or would proselytise that faith, I find that were the appellant to return to the area where she previously lived, even though the appellant’s brother-in-law appears to believe that the KN do not know the address of the appellant’s husband, which will have been the appellant’s address, the appellant would be at risk of persecution because of her Ahmadi faith.”

3. The judge went on to consider the internal flight alternative. He noted that “the husband as I find probably still works in Pakistan. I am told the family has savings. The family would be able to re-establish themselves in a part of Pakistan away from their home area and in safety”.
4. I find that, notwithstanding the preparation of a very detailed and thorough decision, Judge Birkby has erred in law. He has done so by omitting to consider the operation of the principles of *Hj (Iran) 2010 UKSC 31*. The judge found that the appellant had not and would not proselytise her faith in Pakistan (a finding which I find no reason to set aside). However, the judge failed to deal with the appellant’s evidence (which he recorded at [25]) that “if she returned to Pakistan she would have to conceal her faith”. Although the appellant would not proselytise her faith openly, the judge has not considered whether she might engage in “open discourse” with non-Ahmadis (see *MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC)*). It is unclear from the determination whether the appellant should be recognised as a refugee because any reluctance she may have to engage in open discourse (falling short of open proselytising which Judge Birkby found she would not undertake) would be the direct result of a fear of persecution on account of her religious faith.
5. In normal circumstances, I would consider remitting this appeal to Judge Birkby to complete his analysis. However, I was informed by Mr Vaughn, for the appellant, that the appellant’s husband has now travelled to the United Kingdom and has claimed asylum. No decision has yet been made by the respondent in respect of his claim. This development raises new questions regarding the likely risk to the appellant if she were to return to Pakistan as a lone female. I consider it appropriate, therefore, that the appeal should be considered by a judge other than Judge Birkby; if the husband’s claim for asylum is rejected by the respondent and her husband appeals, it would make obvious sense for any appeal he may make to the First-tier Tribunal to be consolidated with this appeal and heard by the same judge. I set aside the First-tier Tribunal determination but preserve the findings of fact save that relating to the internal flight alternative. That issue will need to be re-examined by the First-tier Tribunal in the light of what I have said regarding *Hj (Iran)*. By setting aside the judge’s

decision, I certainly do not rule out the possibility that the next Tribunal may conclude that it would not be unduly harsh to expect the appellant to live elsewhere in Pakistan. However, that will be entirely a matter for the First-tier Tribunal.

Notice of Decision

The determination of the First-tier Tribunal promulgated on 16 December 2014 is set aside. The appeal should be remitted to the First-tier Tribunal (not Judge Birkby) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 10 June 2015

Upper Tribunal Judge Clive Lane