



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: AA/00733/2015**

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Sent to parties on:**

**Newport**

**On 3 April 2017**

**On 12 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

**Between**

**A H**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan, instructed by Thompson & Co Solicitors

For the Respondent: Mr Hibbs, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan. She applied for a visit visa to enter the United Kingdom which was issued on 30 June 2010 and she entered on 28 July 2010. She then lived in Belgium for 4 years and her asylum application there was refused. On 19 September 2014 she returned to the

UK with an agent. She claimed asylum on 27 September 2014. The Respondent refused her application and made a decision to remove her as an illegal entrant under section 10 of the Immigration and Asylum Act 1999. The Appellant appealed that decision under section 82 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002). Her appeal was dismissed by First-tier Tribunal Judge Barrowclough in a decision promulgated on 3 June 2015 on asylum, humanitarian and human rights grounds.

2. The Appellant sought permission to appeal to the Upper Tribunal. Permission to appeal was refused by the First-tier Tribunal but granted on renewal to the Upper Tribunal. In granting permission Upper Tribunal Judge Plimmer stated:

“The First-tier Tribunal erred in law in failing to consider why the appellant acted in the manner she did and whether she did so in order to avoid persecution. It is also arguable that the FTT failed to take into account the evidence concerning the distribution of leaflets.”

3. The grounds contend that the First-tier Tribunal erred in noting that the Appellant did not fear persecution from the state as persecution from Ahmadis was primarily from the state; failed to address the correct question in addressing the Appellant’s evidence namely whether the Appellant would not intend to practise her faith in fear of prosecution; incorrectly concluded that the Appellant’s evidence verifying her religious activity in Belgium had only recently been introduced; misconstrued the guidance in **MN and others (Ahmadis - country conditions - risk) Pakistan CG** [2012] UKUT 00389 (IAC) by attempting to look for an Appellant whose religious activities fell into the category of public and open manifestation and compounded the error by commenting that this would not include the record of distributing leaflets and misinterpreted the term ‘preaching’. It is further submitted that it was procedurally unfair for the Judge to attach more significance to the period 2003 to 2010 when considering the Appellant’s religious activities in Pakistan when this aspect of the Appellant’s claim had never been challenged.

### **The Hearing**

4. Mr Khan referred me to paragraphs 4 and 5 of the Appellant’s witness statement at p2 of her bundle and said that her case was that she could not preach and proselytise in Pakistan due to legislative restrictions. The First-tier Tribunal examined the Appellant’s religious activities and cited them at paragraph 24 and concluded that the distribution of leaflets and was “internal activity”. At p7 of the same bundle the Ahmadiyya Muslim Association described her activities in the United Kingdom which included participation in preaching programmes which was an external manifestation of her religious activity. In the case of **MN** three out of the Appellants were distributing leaflets and if one looked at paragraph 145 of **MN** the Appellant in that case had been distributing leaflets. The Appellant had moderated her behaviour. At paragraphs 153 to paragraph 157 in **MN** the Upper Tribunal accepted that this was sufficient activity to trigger international protection.

It was impossible to preach in Pakistan. At paragraph 107 it was said that moderation was not the answer. At paragraph 25 of the decision the Judge was saying that he expected moderation of the Appellant's behaviour. The Appellant had established that she was in need of international protection. The second issue was in relation to the activities in the UK. With regard to preaching, proselytising and distribution of leaflets the relevant question was whether she could do this on return and she could not. Not only had she openly practised in the UK but also in Belgium. This case was clear and simple and she was saying that she could not openly preach and it was irrelevant whether she had threats or not. The Judge found that she had a restricted life but erred in finding that it was arguable that she should continue in that restricted way. He submitted that the appeal could be re-made allowing it.

5. Mr Hibbs relied on the Rule 24 response. He submitted that the grounds amounted to a dispute with the Judge's findings. The Appellant had highlighted certain factors without looking at the decision as a whole. It was easy to criticise but he heard oral evidence and made a judgment. The criteria had been correctly identified. In **MN** the Upper Tribunal confirmed that adverse findings may be relevant to risk on return. He correctly applied **MN**. He assessed then whether she met the criteria in **MN**. He had serious reservations about the reliability of the Appellant's evidence. In **MN** the Upper Tribunal concluded that that you needed to look at what the Appellant did before arriving in UK and whether or not preaching was important to manifestation of their faith. She was not preaching in Pakistan and therefore was not at risk and the question then became whether preaching was important as part of her faith and the Judge found that it was not important to her faith to preach. Far from being an error he had broken **MN** down, looked at past, present and credibility and found that it was not an important part of her faith to be preaching. At the end of paragraph 24 he found there was not the evidence that her activities were directed to the wider community. At paragraph 25 the Judge had identified the relevant evidence and he was entitled to his view of the evidence having heard it. Also if Belgium refused on third country grounds it had to be questioned why there was no copy of the decision from the authorities. The appeal should be dismissed.
6. Mr Khan submitted that the point regarding Belgium had not been raised before and should not be raised at this stage. The Judge's reasoning was subject to challenge and not the findings of fact and those parts of the determinations were subject to challenge. The appeal should be allowed.
7. Mr Hibbs said that if there were in error of law in should be remitted to the First-tier Tribunal because **MN** would not have been properly applied.

## **Discussion**

8. It was the Appellant's case that she and her family had been targeted, threatened and attacked by the Mullahs of KN over the years and that the

police had failed to protect her. The first ground asserts that the First-tier Tribunal misdirected itself in stating at paragraph 20 that the Appellant did not claim persecution from the state but rather individuals within it because, according to **MN**, persecution in relation to Ahmadis is mainly from the state.

9. In paragraph 2 (i) of **MN** the Upper Tribunal concluded that the background to the risk faced by Ahmadis is legislation that restricts the way in which they are able to openly practise their faith. The Upper Tribunal conclude that there is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. The ratio of that paragraph is not, as the grounds assert, that persecution emanates from the state and it was not the Appellant's case that she was persecuted by the state. I find there is nothing in this ground.
10. The grounds also impugn the First-tier Tribunal's reasoning in paragraph 23:

"I attach more weight and significance to the period between 2003 and 2010, and to what the Appellant says or doesn't say about her religious activities and their consequences whilst she and her husband were still in Pakistan. It seems to me that there is no good reason (certainly none has been put forward) why the Appellant's religious practices and observances should be any different now from what they were during that time; and if they led to persecution, harassment or other difficulties, then it is reasonable to conclude that they would do so again, were she to return to Pakistan".

11. The First-tier Tribunal had found, at paragraph 24, that the evidence in relation to the Appellant's activities in the United Kingdom was credible and reliable and that this evidence painted a picture of somebody who was an active and regular participant. He concluded that:

"Overall, the evidence seems to me to paint a picture of an active and regular participant, albeit not someone whose religious activities necessarily fall into the category of public and open manifestation. That category would not include, at least to my mind, the Appellant's record of distributing leaflets, attending branch meetings and manning stalls or cooking and serving food; attending seminar, exhibitions and training classes; or regular attendance at the mosque. All of those activities could I think be described as internal, in the sense that they are carried out within the expatriate Ahmadi community."

12. The First-tier Tribunal then found that the Appellant's evidence of being involved in preaching was less clear and could have been directed to those who were already in the Ahmadi faith. With regard to her activities in Pakistan, the First-tier Tribunal concluded that what was of significance was that the Appellant gave very few instances of having herself been targeted, harassed or persecuted for any religious reason during those years and that given what is known about the approach of KN towards openly religious Ahmadis it was not unreasonable to have expected some threats or actions during those seven years if it was important to her to engage in such activity. The First-tier Tribunal found that the evidence linking the threats to

her faith and religious activities was unpersuasive. He had concerns about her credibility and concluded at paragraph 28 that whilst she was genuinely of the Ahmadi faith, and the evidence showed that historically she had practised her religion and continued to do so privately and in a community with other Ahmadis, without infringing domestic Pakistan law and that she had not proved that it was of particular importance to her to do so publicly and openly.

13. The grounds assert that the First-tier Tribunal misinterprets the term preaching, and misconstrues the guidance in **MN** in requiring public and open manifestation of religious activities.
14. The First-tier Tribunal found the evidence in relation to the Appellant's activities in the UK to be credible and reliable. This consisted of a letter, dated 6 May 2015, at page 7 of the Appellant's bundle confirming that she had, inter alia, participated in preaching programmes of the branch including distribution of preaching literature and attended Tabligh Training Classes. She is described in that letter as an active member of the Ahmadiyya Muslim Community and to have exhibited long-standing strong links, participation and devotion to her faith. The letter states that this shows that she attaches a significant importance to her identity as an Ahmadi Muslim and that preaching in public, seeking converts, producing, publishing and dissemination of religious materials are essential and integral to the faith. According to the Schedule 1 to **MN**, which records the expert and other evidence, Tabligh and da'wa (preaching and propagation of the faith) are for Ahmadis the lifeblood and raison d'être of the movement.
15. There was a further letter from the Ahmadiyya Muslim Community at C1 of the Respondent's bundle dated 26 October 2014 based on information obtained from Karachi that her contact and cooperation with the Ahmadiyya Muslim Community were good and that she was a Secretary Tahrik Jadid.
16. I conclude that there is a tension between the findings of the First-tier Tribunal that the evidence of the Appellant's activities in the UK is credible and reliable and that the activities in which she has been engaged are internal rather than demonstrating public and open manifestation of her faith. The evidence, which was accepted, certainly shows an active involvement in the faith in the United Kingdom and an involvement the activities of preaching and distribution of preaching literature which prima face come within paragraph 2 (i) of **MN** rather than being, as the Tribunal concluded, an internal activity. In the circumstances I conclude that the Tribunal should have considered whether the Appellant had moderated her behaviour in Pakistan to avoid a risk of persecution and would have moderate her behaviour on return to avoid persecution. The absence of evidence past persecution is not an answer to this question. In the circumstances, whilst the First-tier tribunal adopted a structured approach which followed the guidance in **MN** I find that there was a material error of law.

17. In view of the fact that an inquiry is required into the intentions of the Appellant and appropriate findings will need to be made and the case law applied, I remit this matter to the First-tier Tribunal with no findings preserved.

**Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for re-hearing before a Judge other than Judge Barrowclough.

**Anonymity**

The First-tier Tribunal did not make an order but in view of the fact that there is a claim that the Appellant would be at risk of harm, in accordance with Presidential Guidance No 2 of 2011 I make order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated 10/05/2017

Deputy Upper Tribunal Judge L J Murray