



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00400/2015

THE IMMIGRATION ACTS

Heard at Field House
On 3 May 2017

Decision & Reasons Promulgated
On 10 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

[N N]

~~(ANONYMITY DIRECTION MADE)~~

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Selwood of Counsel
For the Respondent: Mr Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, born on [] 1965. She appealed against the respondent's decision dated 18 June 2015 to refuse to grant her asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Housego in a decision promulgated on 4 January 2017.
2. Permission to appeal was at first refused by First-tier Tribunal Judge Grimmett on 2 February 2017 and subsequently allowed by Upper Tribunal Judge Reeds stating that

all grounds are arguable, in particular that it was accepted by the parties that the appellant is an Ahmadi Muslim in Pakistan. It is arguable that past persecution and the failure to consider evidence of witnesses and evidence concerning the manifestation of the appellant's faith brought her within the guidance given in *MN and others (Ahmadi's - country conditions - risk) Pakistan CG [2012] UKUT 00039*.

3. The First-tier Tribunal Judge in his decision made the following findings which I set out in summary. The appellant's immigration history is that she applied for a family visit visa 18 November 2014 which was refused. On 11 December 2014, she made another application and was granted a visit visa valid from 18 December 2014 to 18 June 2015. The appellant entered the United Kingdom on 8 January 2015 and on 4 February 2015 she returned to Pakistan. On 5 May 2015, the appellant returned to the United Kingdom and on 3 June 2015 the appellant claimed asylum. On 18 June 2015, her asylum claim was refused and she appealed against that decision. On 17 May 2016, the appeal was unsuccessful as a first-tier Tribunal hearing. On 8 August 2016, the decision was set aside and the matter remitted for rehearing at the First-tier Tribunal.
4. There is no real risk or genuine subjective fear for the appellant to return to Pakistan. In light of the findings of facts there is no risk to the appellant on return to Pakistan, beyond that faced by the millions of Ahmadi Muslims living in Pakistan. The husband of the appellant continues to live and work in Pakistan. The appellant is not proselytising Ahmadi and there is no reason to think that she is at any more risk than is he.
5. The appellant is no longer capable of such an activity by reason of her cognitive decline. The latest medical evidence by Prof Katona in his dated 24 October 2016 speaks of the likelihood of dementia is because of substantial worsening of her cognitive disorder since his previous report. The report states that the appellant can discuss matters only at a superficial level. It is not possible to contemplate her undertaking any significant activity such as that it might cause her to fall within the *MN's* guidance for grant of asylum.
6. Even taken at its highest, the claim of the appellant is to have been the victim of one very unpleasant incident two years ago before she left Pakistan. Her account of men gathering outside her house soon after her return to Pakistan, in February 2015 does not reach the level required for the grant of asylum or humanitarian protection.
7. The letters from the Ahmadi Muslim Association UK are doubtless accurate in setting out the appellant's past history, but they are of limited assistance to assess the risk as of today's date. The letters contain much generic information, including confirmation of the nature of the head scarf of an Ahmadi lady which may render her religion identifiable. In terms of *MN* the appellant falls within 2 (ii) and 6. The appellant is said to be of limited capacity, and was unable to give evidence at her appeal hearing. Her activities in the United Kingdom are relevant to how she might practice her religion on return to Pakistan. Other than attending mosque, her role has been limited to carrying

leaflets for others to give out, and that sporadically. The medical evidence that her deterioration is now such that she is unable to carry out anything other than private prayer, when reminded of the time to pray.

8. Accordingly, the appellant cannot be considered to be a refugee and is not entitled to humanitarian protection. Her removal would not breach her rights under article 2 or 3 of the European Convention on Human Rights nor under Article 33, that non-refoulment will be breached by her return to Pakistan.
9. The appellant's husband is in Pakistan and she can return to live with him and resume family life. The appellant's relationship with other family members are between adult relatives which does not evoke Article 8. There must be something more than ordinary familial love between them. It is not disproportionate for the appellant to be required to return to Pakistan, particularly when this will result in the restoration of her marital life and family life with her other family members in Pakistan.
10. The appellant's immigration status in the United Kingdom has been precarious and section 117A, B and D of the Nationality Immigration and Asylum Act 2002 apply. There is no claim that medical condition of the appellant would breach her right under Article 3 of the European Convention on Human Rights.
11. At the hearing, I heard submissions from both parties as to whether there is an error of law in the determination of the First-tier Tribunal.
12. Mr Selwood on behalf of the appellant relied on five grounds of appeal. In respect of the first ground, he submitted that the judge did not take into account material evidence to determine whether the appellant was persecuted before she came to the United Kingdom. The First-tier Tribunal Judge failed to assess and determine the evidence of the appellant's son, daughter and sister and the statement from her husband. If the Judge had considered this evidence, he would not have found that the incident where boiling water was thrown at the appellant could not have happened or that if it did, it was a kitchen accident. The appellant's witnesses attested to this incident which happened in 2012. The appellant's daughter gave evidence of this incident and notified her sister in the United Kingdom immediately. The appellant's son rushed home after the attack and arranged for medical treatment to be given to the appellant, in hospital. At paragraph 40 the Judge stated that he does not doubt the sincerity of the witnesses, which are positive findings. This was highly probative evidence and not having taken into account, is material and that the decision would be different.
13. The second ground is that the Judge gave a material misdirection in law when he found at paragraph 61 and 64 of the decision, that the boiling water incident of 2013 was low-level harassment. The Judge failed to take into account other incidents such as threats to the appellant of disfigurement when she was threatened that next time they would throw acid on the appellant and not boiling water. The Judge failed to take into account that the police refused to lodge a complaint. Although the Judge sets out the

Qualification Directive at paragraph 12, all these incidents taken cumulatively are acts of persecution and fit the description. The corroborative evidence came from Prof Katona that the appellant has significant anxiety and PTSD.

14. The third ground is that the Judge failed to take into account all the material facts in the appeal. At paragraph 62 and 66, the Judge did not take into account that the appellant has been an active Ahmadi since birth and preached to those who came to her house. It was submitted that there were seven other manifestations of her religion. These are that she preached at home and this was fundamental to manifestation of a religion. She would practice as her faith openly, she referred to the place of worship as a mosque and the call to prayers as Azam and salutations of greeting each other were in the Ahmadi manner. The appellant encouraged her son to preach and helped her daughter in the United Kingdom to distribute leaflets. The Judge failed to take into account the letter from the Ahmadi Association which summarises the appellant's Ahmadi activities and her family's long history. He relied on the case of *AB (Ahmadi Association UK: letters) Pakistan [2013] UKUT 00511 (IAC)* where it was held that where there is specific information about the appellant's activities in the United Kingdom, the letter is to be given weight. She has also been identified as an "Aqusi" which is an honour given to exceptional Ahmadis. The psychiatrist report does not say that the appellant cannot preach in her mental condition.
15. The fourth ground of appeal is the Judge's evaluation of the country guidance case of *MN* which requires that a number of findings to be made by the Judge. The first enquiry is whether the appellant is in Ahmadi. Second whether she will manifest her religion in a public way contrary to the Pakistan penal code. The Judge focused on whether the appellant had preached in the past and would do so in the future. *MN* states that preaching is only one factor and that if the appellant has to preach her faith privately, the Judge must ask himself why she would do that. The case of *HJ Iran* applies that if a person has to preach their faith privately for fear of persecution, that qualifies. It was decided that weight should be given to Ahmadi Association letters. The letter was detailed and therefore the Judge's conclusion that it was of limited assistance was flawed. The second letter of the Ahmadi Association was highly probative but not referred to by the judge. Weight should be given to the second letter of the Ahmadi Association.
16. Mr Tarlow in his submissions relied on his rule 24 response and said that the decision is carefully worded and deals in some detail with the issue of persecution and there is no material error of law in the decision and that the appeal should be dismissed.

Is there a material error of law in the decision of the First-tier Tribunal

17. I have to consider the First-tier Tribunal's decision, the arguments of the parties, the skeleton argument and I find that the Judge has made no material error of law in the decision. The issue that the Judge found that he had to decide is whether the appellant could return to Pakistan as an Ahmadi Muslim given her circumstances. That is the issue that he concentrated on and made his findings. He considered all the evidence in

the appeal even though he did not set out every piece of evidence in his decision. The decision is clear and understandable.

18. The Judge considered the evidence about the appellant's future risk if she is returned to Pakistan. The complaint against the Judge is that that the Judge did not consider the past persecution as an indication of future persecution and relied on the incident which happened in Pakistan where boiling water was thrown at the appellant with threats that it would be acid that will be thrown, the next time. While it is trite law that past persecution must be considered when determining future risk, it is not always the case that past persecution means future persecution. The appellant's circumstances have changed since she was last in Pakistan.
19. The Judge considered the changed circumstances of the appellant and considered the medical evidence of Prof Katona dated October 2016 to which he was entitled to give considerable weight. The report speaks of the likelihood of dementia because of substantial worsening of the appellant's cognitive disorder since his previous report. The report states that the appellant can discuss matters only at a superficial level. It is not possible to contemplate her undertaking any significant activity such as that it might cause her to fall within the *MN*'s guidance for grant of asylum. The Judge stated that the appellant's cognitive decline was to such an extent that it rendered her incapable of giving evidence before the First-tier Tribunal. The Judge considered that the appellant's mental condition precludes her from living the life that she did in the past. The judge then went on to consider the impact of her mental condition would have on her future ability to engage in conduct which might bring her within the risk category. The Judge was entitled to find that on the medical evidence that the appellant was not able to conduct herself in the same manner as she did when she was last in Pakistan. The issue then became whether the appellant can return to Pakistan as an ordinary Ahmadi Muslim who is incapable, due to her cognitive decline, of engaging in activities which would bring her within the realm of *MN*, where she needs International protection.
20. The Judge might have made an error when he did not set out and resolve the evidence of the witnesses who stated that boiling water was thrown on the appellant in Pakistan and that this was because she was an Ahmadi Muslim who preached her religion. The Judge considered the country guidance case of *MN* is to decide whether the appellant falls into the category of an Ahmadi who would be persecuted in Pakistan and is entitled to international protection. Paragraph 2(i) of *MN* states that the risk faced by Ahmadis is legislation in Pakistan that restricts the way in which they are able openly to practise their faith. The case states that the risk faced by Ahmadis is legislation in Pakistan 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. There is clear evidence that this

legislation is used by non-state actors to threaten and harass Ahmadis. This was the evidence that the Judge considered when he referred to the country guidance case.

21. The Judge accepted that the appellant is an Ahmadi which was the first question to be decided in the appeal. The next question involved an inquiry into the appellant's intentions or wishes as to 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 in *MN*. It was for the appellant demonstrate her intention or wish to practise and manifest aspects of the faith openly and whether she is physically able to do so even if such intentions are genuinely held and of particular importance to the appellant to preserve her religious identity. The Judge evaluate all the evidence and found that the appellant was medically incapable of engaging in behaviour set out in *MN* and which will breach the penal code of Pakistan. Therefore, it was open to the Judge to decide that the appellant due to her medical condition was not able to manifest her faith or conduct herself in a manner which will draw adverse attention to her for violating the penal code of Pakistan. These findings were open to the judge to make on the evidence.
22. At the hearing, there were submissions that the Judge did not take into account the witness's evidence that boiling water was thrown on the appellant in the past in Pakistan for preaching at home but this does not mean that it will be thrown at her again in the future. Even if in the past, the appellant preached at her home, the Judge was entitled to find that the appellant's practical inability to do so in the future due to her cognitive decline. It is not the case that every Ahmadi Muslim is at risk on Pakistan but only those who preach and conduct themselves in certain ways. The Judge referred to *MN* which says that not every Ahmadi Muslim requires protection. A person must have conducted himself in such a way as to attract the consequences of the Pakistan legislation.
23. Given the appellant's state of mind and her inability to even give evidence before the First-tier Tribunal demonstrates that she would not be able to do any of the things which would bring her to the attention of the authorities. The Judge's approach to any future risk to the appellant in Pakistan did not depend on his analysis of past persecution and the witness statements which attested that boiling water was thrown on the appellant. Even if he had considered the witness statements of past persecution, this would not have affected his decision because the issue before the Judge was future persecution. Similarly, the letters from the Ahmadi Association setting out the appellant's past conduct would not assist her in any analysis of future conduct.
24. The Judge was also entitled to find that the appellant's husband lives in Pakistan and has not come to any harm and the appellant can return to live with him safely, and continue family life with him and her other relatives in Pakistan. The appellant lived in Pakistan for a very long time as an Ahmadi Muslim and came to no harm other than in 2013 when the incident of the boiling water happened. She continued to live in the country and came to the United Kingdom on a visitor's visa and returned. It was only when she returned to the United Kingdom, she claimed asylum based partially on the

incident which happened in the year 2013. It was argued for the appellant that the appellant conducts herself in other ways which also identify her as an Ahmadi such as that she wears her headscarf in the Ahmadi Muslim manner and called her place of prayer a mosque and other conduct peculiar to Ahmadi's. The Judge was entitled to find that the appellant lived in Pakistan for a very long time conducting herself in this manner and came to no harm, until recently. When she was in the United Kingdom she returned to Pakistan which she would not have done if she felt that she was in danger due to her being an Ahmadi Muslim.

23. There is no material error in the decision in respect of the findings made by the Judge on the evidence before him. I also find that the Judge's conclusion that the appellant can be returned to Pakistan safely is without error. There is no material error of law and I uphold the First-tier Tribunal's decision. I also find that no differently constituted Tribunal would come to a different conclusion on the evidence in this appeal.

Notice of Decision

I therefore uphold the decision of the First-tier Tribunal Judge and I dismiss this appeal.

Signed by,

Date 6th day of May 2017

A Deputy Judge of the Upper Tribunal
Mrs S Chana