



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03824/2012
AA/03826/2012

THE IMMIGRATION ACTS

Heard at Bradford
on 1st August 2013

Determination Sent
on 2nd August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NAJAM ZAHOR
SOBIA NAJAM
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering instructed by Parker Rhodes Hickmotts Solicitors.

For the Respondent: Ms Pettersen Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. Following a hearing before Judge Coker on the 13th March 2013 it was found that First-tier Tribunal Judge Saffer had made an error of law when dismissing the appellants' appeals against the refusal of their claims for asylum and a variation of their leave to remain in the United Kingdom.
2. The matter comes before me following the making of a judicial transfer order for the re-making of the decision.
3. Judge Coker directed the following to be preserved findings:
 - i. The appellants' are Ahmadi.

- ii. The second appellant is from a family of Ahmadis some of whom have been recognised as refugees due to their faith and some of whom have died in Pakistan.
 - iii. The *sur place* activities of the appellants have been undertaken with a view to bolstering their asylum claim.
 - iv. The first appellant has not encouraged anyone in Pakistan to become an Ahmadi.
 - v. There have been no findings as to what the appellant will actually do as a consequence of their faith.
4. The current country guidance case in relation those of the Ahmadi faith is [MN and others \(Ahmadis - country conditions - risk\) Pakistan CG \[2012\] UKUT 00389\(IAC\)](#) in which the Tribunal held:

(i) This country guidance replaces previous guidance in **MJ & ZM (Ahmadis - risk) Pakistan CG [2008] UKAIT 00033** and **IA & Others (Ahmadis Rabwah) Pakistan CG [2007] UKAIT 00088**. The guidance we give is based in part on the developments in the law including the decisions of the Supreme Court in **HJ (Iran) [2010] UKSC 31**, **RT (Zimbabwe) [2012] UKSC 38** and the CJEU decision in **Germany v. Y (C-71/11) & Z (C-99/11)**. The guidance relates principally to Qadiani Ahmadis; but as the legislation which is the background to the issues raised in these appeals affects Lahori Ahmadis also, they too are included in the country guidance stated below;

(ii) (a) 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) (b) 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;
- (iii) (a) 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 behavior described in paragraph (ii)(a) 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;
- (iii)(b) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph (ii)(a) above (“paragraph (ii)(a) behaviour”) to avoid a risk of prosecution;
- (iv) 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;
- (v) 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;

- (vi) 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 (ii)(a) 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;
- (vii) 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 (ii)(a) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation;
- (viii) Ahmadi 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(a) above;
- (ix) 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;

- (x) Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(a) 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.

Discussion

5. The answer to the first question “whether the claimant genuinely is an Ahmadi” has to be answered in the affirmative. It is a preserved finding that the appellants are Ahmadi and that the second appellant is from a prominent Ahmadi family.
6. In relation to the second question, the appellants intentions or wishes as to his or her faith, if returned to Pakistan, both appellants attend prayers, the evidence of the first appellant is that he has told others about his faith whilst in Pakistan [A’s appeal bundle to the UT, page 6 para 6]. The first appellant’s oral evidence regarding the Tabligh (spreading the message) shows this is of importance to him which will place him at risk in light of the Anti-Ahmadi legislation in Pakistan.
7. I accept the evidence that the first appellant has been active in the United Kingdom which is an indicator for how he would wish to act if has able to do so on return. In his witness statement [A’s bundle, page 6, para 7] he states he would not initially in conversation in Pakistan admit he was Ahmadi as he would have been arrested. It was only if a person showed an interest in his faith that he would discuss the matter further. In paragraph 13 he states:
 13. I am able to openly preach in the UK. There is no sense of fear that I will be arrested, imprisoned or tortured. In Pakistan there was a constant fear for my life and the lives of my family. In Pakistan if I was to openly speak to someone about the faith, they may report me to the police I would face arrest and imprisonment. As a result my family and I are not able to live freely in Pakistan.
8. There is evidence to corroborate the claim by the second appellant that her younger brother Ali Ahmad has been granted refugee status in the United Kingdom as has her maternal uncle and his family based upon their religion as Ahmadi.
9. I find the evidence relating to religious activities in the United Kingdom, the evidence the first appellant was unable to practice and speak of his faith openly

in Pakistan as a result of a fear of persecution, and the evidence that but for the on going fear he would wish to continue to speak about his faith and be active in spreading the word about his faith in the future if returned, to be credible. The letter from the Ahmadiyya Association confirms the first appellant’s sur place activities.

- 10. I also take into account the fact the second appellant is from a high profile Ahmadi family, members of whom have been recognised as refugees.
- 11. I am satisfied the appellants have substantiated their claim to be entitled to be recognised as refugees in light of MN. I find they face a real risk of harm sufficient to amount to persecution on account of their religious identity from which the state will provide no protection.

Decision

- 12. **The First-tier Tribunal Judge has been found to have materially erred in law and his determination set aside. I remake the decision as follows. This appeal is allowed.**

Anonymity.

- 13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order as there was no application made for anonymity and no grounds established for such an order.

Signed.....
Upper Tribunal Judge Hanson

Dated the 2nd August 2013