Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08412/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 October 2017	**On 24 October 2017**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

A M

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Khan, counsel instructed by Thompson & Co Solicitors
For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

DECISION

1. The parties are, of course, well aware of the case advanced by the appellant and the reasons given by the respondent for refusing his asylum and human rights claim and so there is no need for me to reproduce that here again.

2. Having directed himself in terms of the country guidance given in *MN & Ors (Ahmadis-country conditions-risk) Pakistan CG* [2012] UKUT 00389 (IAC), the judge dismissed the appeal, on the basis that this appellant

had no intention or wish to practice and manifest aspects of his faith openly in a manner not permitted by the Pakistan Penal Code. Having rejected the appellant's factual account of his experiences in Pakistan, the key findings of the judge in this respect were as follows:

> "… I find that the appellant is someone has not preached or proselytised in public and that the evidence indicates, not least including the appellant's own account, that he has always preached in private since 1974. I find that the appellant has failed to discharge the burden to demonstrate any intentional wish to practice and manifest aspects of his faith openly which would not be permitted by the Pakistani penal code.
>
> I find the appellant has demonstrated significant caution and discretion in the way that he has practised his faith and that he would be able to do so further…"

3. This line of reasoning is plainly problematic because it appears that the judge had misunderstood what the appellant's evidence was about these issues. In his witness statement the appellant said that in Pakistan he had been active in preaching activities until 1974 when the changes to the Penal Code meant that he could no longer do so openly without facing criminal sanctions. Thus, on his account, his use of caution and discretion in the practice of his religious beliefs was not a matter of choice but in order to avoid being subjected to persecution. Having moved to the United Kingdom the appellant said he was no longer constrained in his public manifestation of his faith and he was able to preach openly as was required by his religion, something he would be unable to do if he were required to return to Pakistan because, as he put it, he would have "fear of backlash". The judge, however, appears to have relied upon the decision of the appellant to cease the open practice of his religious beliefs in 1974 as evidence that the appellant had no wish or intention to practice those beliefs openly.

4. This error was compounded by an error of fact made by the judge in his understanding of the evidence that was before him. At paragraph 56 of his determination where he said of the letters from the Ahmadiyya Muslim Association UK:

> "Both of the Association letters are acknowledged by the appellant to contain information which the appellant has provided to them, and which I therefore find are self serving and of very limited evidential weight."

But the statement in one of those letters about the appellant's activities in the "preaching programme" in the United Kingdom was not provided by the appellant himself but, as is clear from the letter, is something that was confirmed by the President of the appellant's own local branch of the Association.

5. Thus, not only did the judge fall into error in relying upon the cessation of the open practice of his religion by the appellant in Pakistan following the 1974 changes to the Penal Code as evidence that he had chosen to exercise "caution and discretion" in the practice of his faith, but he had also misunderstood the nature of the evidence concerning the appellant's involvement in the United Kingdom in what has been referred to, correctly or otherwise, as preaching activities.

6. This was potentially important, and so material, because in assessing whether the appellant has discharged the burden of demonstrating his intention or wish to openly practice his religion on return to Pakistan the Tribunal observed at paragraph 122 of *MN & Ors* that evidence of an enquiry of the Association is likely to be relevant and, at paragraph 123:

> "… Behaviour since arrival in the UK may also be relevant…"

7. There are other errors disclosed by this determination. In his witness statement the appellant spoke of how his son and daughter were both recognised as refugees in the United Kingdom. But there was no corroborative evidence of that. The judge said, at paragraph 58 of his determination:

> "I find that the absence of such evidence again serves to undermine the appellant's credibility …"

   This morning Ms Ahmad did not seek to suggest that the appellant's assertion that his son and daughter had been recognised as refugees was incorrect and so it appears that the judge was simply wrong to find the appellant's credibility damaged as a consequence of him having said that they were. There is no reason to suppose that finding of the appellant's damaged credibility did not feed into and inform the finding of the judge that the appellant's stated intention and wish to practice his religion openly should he return to Pakistan was not genuinely held.

8. Drawing all of this together, I am entirely satisfied that the judge has fallen into material legal error. He appears not to have engaged, at all, with the appellant's evidence of the reasons for the change in his behaviour in 1974 and it was not reasonably open to the judge to reach the conclusions he did, having left that out of account, to then point to the discretion and caution exhibited by the appellant while in Pakistan, and then to take no account of his involvement in the "preaching program" in the UK, mistakenly believing that there was no independent

confirmation of those activities. It does not follow, of course, that just because the appellant asserts an intention that must be accepted as genuinely held, but if it is to be rejected as not being genuinely held, that must be on the basis of a correct and fair assessment of the evidence as a whole. That has not happened in this appeal and so the decision of the judge cannot stand.

Summary of decision:

9. First-tier Tribunal Judge Greasley made material errors of law and his decision to dismiss the appeal must be set aside. His determination is to be set aside in its entirety.

10. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed

Upper Tribunal Judge Southern
Date: 23 October 2017