



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08434/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28th August 2018

Decision & Reasons Promulgated
On 18th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

NAHEED [G]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 2nd February 1966. The Appellant first entered the UK on 23rd April 2014 under a visitor's visa valid from 22nd May 2013. On 23rd April 2014 the Appellant was named as a dependant on the asylum claim of her husband, [SA] and was served with IS96 on the same date. That application was

refused on 20th October 2014. On 4th November 2014 an appeal against the refusal of asylum was lodged which was dismissed on 10th March 2015. Further submissions in respect of this claim were submitted on 6th November 2015 and they were rejected on 12th November 2015. The Appellant however claimed asylum as a lead applicant on 29th January 2016. That application asked for the Appellant to be recognised as a refugee and to have a well-founded fear of persecution on the basis of her religion as an Ahmadi.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Grimmatt sitting at Birmingham on 2nd March 2017. In a decision and reasons promulgated on 27th March 2017 the Appellant's appeal was dismissed.
3. Grounds of Appeal were lodged to the Upper Tribunal on 15th February 2018. Those Grounds of Appeal were accompanied by a witness statement explaining the lateness of their lodging. On 12th March 2018 Judge of the First-tier Tribunal Froom whilst noting that the application to appeal was significantly out of time granted permission and set out his reasons. Thereafter Judge Froom considered that it was arguable that the First-tier Tribunal Judge had erred in law, in that having made findings of fact which included that the Appellant had converted three women to the Ahmadi faith in Pakistan it was arguable that she then failed to apply the country guidance of *MN* correctly. He considered that it was arguable that the First-tier Tribunal Judge should have regarded the Appellant's activities as showing it was of particular importance to her religious identity to practise and manifest her faith openly in Pakistan notwithstanding the fact she exercised caution about those whom she approached.
4. The appeal first came before me on 17th May 2018 to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. At that hearing the Appellant was instructed by her Counsel, Mr Turner, and the Secretary of State by his Home Office Presenting Officer Miss Kenney. In finding there was a material error of law I accepted that it was material in that the judge did not set out and apply *MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)* albeit I acknowledged that in one short sentence she had made reference to it. I noted that the test was now at a low level and that the judge had failed to give due and proper consideration to the activities of the Appellant. On that basis I found that there was a material error of law and gave directions reserving the matter to myself in the Upper Tribunal and recording that based on the factual findings of the First-tier Tribunal Judge the issue extant was whether or not the Appellant fell within the risk categories set out within the headnote of *MN and Others*. I directed that the matter was to be dealt with by way of submissions only.
5. It is on that basis that the appeal comes back before me for rehearing. Again, the Appellant appears by her instructed Counsel Mr Turner. The Secretary of State appears by his Home Office Presenting Officer Ms Isherwood.

Country Guidance

6. The relevant case law is to be found in the detailed authority of *MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC)*. The headnote is important to the submissions made in this matter.

- “1. 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.
2. (i) 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) 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.
3. (i) 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 behaviour described in paragraph 2(i) 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.

- (ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above (“paragraph 2(i) behaviour”) to avoid a risk of prosecution.
4. 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.
 5. 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.
 6. 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 2(i) 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.
 7. 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 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
 8. 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(i) above.

9. 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.
10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) 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."

Submissions/Discussions

7. Mr Turner has presented a very thorough skeleton argument to me. The history of this matter is set out in some detail therein at paragraphs 4 to 11. His submissions are to be found at paragraphs 16 to 22. I have considered all of these in some detail. It states that there are two types of Ahmadi those who practise their faith openly and those who practise it privately. He takes me to the headnote of *MN* pointing out it is accepted law that 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. However he thereafter takes me to paragraphs 3 and 9 of the headnote of *MN* and submits that based on the positive findings of the First-tier Tribunal Judge the Appellant meets both limbs of the criteria to qualify for asylum pointing out that she has been positively active in recruiting Ahmadis both in Pakistan and in the UK where she has carried out sur place activities.
8. He submits that it has been accepted by the First-tier Tribunal Judge that the Appellant may have converted three women to the Ahmadi faith and submits that this is a situation of open conversion of people who were previously not Ahmadis.
9. He submits that the test to be applied is what would happen if the Appellant is returned to Pakistan. He relies on the evidence from the Ahmadi Association confirming that the Appellant is part of the community and is following a programme. He further submits that proper consideration given to that letter would bring the Appellant within the remit of paragraph 2(i) of *MN and Others*.
10. Mr Turner points out that the factual scenario of the Appellant's activities in the UK which are not challenged, clearly indicate that the Appellant has stepped up her activities. He reminds me that the threshold is low that having carried out the conversions of women in Pakistan she is, he submits, clearly an active Ahmadi and

consequently as a matter of law in order to avoid risk in the future she would have to curtail her activities.

11. He submits that the heart of the claim is to be found in the finding of the First-tier Tribunal Judge at paragraph 22. That states:

“The Appellant practised her faith in that way for very many years before coming to the United Kingdom. I do not believe that she will change her way of practising her religion if returned. Other than being able to attend a mosque in the United Kingdom there is no evidence that the Appellant has made her faith publicly known to others who are not of her faith since arriving in the United Kingdom save for leafleting and letting others know of the basics of the faith.”

Mr Turner submits that that finding albeit against the Appellant is actually wrong in law and that she falls within paragraph 2(i) of the headnote of *MN*. He submits it is clear that it is accepted that the Appellant has sur place activities in the UK and that she has converted women in Pakistan to the Ahmadi faith and that if the Appellant is openly handing out leaflets and advocating the Ahmadi faith this is an activity that has been accepted by the First-tier Tribunal Judge. He reiterates that this is what she has done and that she could not do that in Pakistan and consequently if she returned she would be at risk. In such circumstances he asks me to find that the Appellant falls within the headnote of *MN* and to allow the appeal.

12. Ms Isherwood in response asked me to dismiss the appeal and take into account the fact that the Appellant’s late husband’s claim had previously been dismissed. She submits that within that claim both the Appellant’s husband and son had not been found to be credible and that there had been inconsistent evidence with regard to contact made with his children. She accepts that the Appellant’s sons remain in Pakistan. She contends that the Appellant does not fall within paragraph 2(i) of the headnote of *MN* on the facts and that the judge has carried out an evidential analysis. She further contends the letter from the Ahmadi community in the UK does not assist the Appellant. She does however acknowledge that the Appellant does form part of a close-knit community which would bring her within paragraph 50 of *MN* but that she could be returned to Pakistan.
13. In brief response Mr Turner points out that the First-tier Tribunal Judge had the benefit of Judge Smith’s determination on the Appellant’s late husband’s claim but reminds me that the claims were separate and points out that it is clear that the Appellant’s faith has developed in the UK and that it has been accepted that she is now openly practising her faith by handing out leaflets. He claims she would not be in a position to do so if returned and that in itself he submits must lead to her claim succeeding.

Findings

14. The issue before me solely relates to whether the Appellant meets the criteria of the headnote of *MN*. There has been a lot of semantic argument on both sides relying on interpretation of words and deeds. I accept that the threshold is a low one and I also accept based on the submissions made and on the preserved findings that this is a case

where the Appellant has not only practised her faith at home but has continued to do so. In addition she has expanded her religious activities within the United Kingdom and as such she cannot be expected to curtail them if returned to Pakistan and consequently falls within the guidance given in the headnote of *MN* as someone who would be at risk on return.

15. It is accepted that she is an Ahmadi, that she has converted women in Pakistan, that she attends the mosque in the United Kingdom, that she practises openly in the United Kingdom and that she distributes leaflets as part of her faith. Those findings are sufficient to bring her within the headnote of *MN*. In doing so I give little credence – as I am asked to – to the letter provided by the Ahmadi Association and I also consider that whilst the decision of Immigration Judge Smith on her late husband’s claim is a starting point, it is not in any way definitive as to the facts of this particular case. It certainly does not mean that the Appellant cannot succeed on the individual’s specific facts of her case. For all the above reasons I am satisfied that the Appellant would be at risk to the lower standard of proof if returned to Pakistan as a practising Ahmadi and that she meets the conditions by which she can succeed in such a claim as set out in *MN*.

Notice of Decision

The Appellant’s appeal is allowed on asylum grounds.

No anonymity direction is made.

No application is made for a fee award and none is made.

Signed

Date 14 September 2018

Deputy Upper Tribunal Judge D N Harris