Upper Tribunal
(Immigration and Asylum Chamber)

KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 August 2017	
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Before

THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

KB (FIRST APPELLANT)
AH (SECOND APPELLANT)
(ANONYMITY DIRECTION MAINTAINED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Fripp, Counsel, instructed by Turpin Miller, Solicitors (Oxford)
For the Respondent: Mr T Wilding, Home Office Presenting Officer

1. The 'Credibility Indicators' identified in the Home Office Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015 (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility), provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune.

2. However, any reference to a structured approach in relation to the subject matter of credibility assessment must carry a number of important (interrelated) caveats, among which are the following:

-the aforementioned indicators are merely indicators, not necessary conditions;

-they are not an exhaustive list;

-assessment of credibility being a highly fact-sensitive affair, their main role is to help make sure, where relevant, that the evidence is considered in a number of well-recognised respects;

-making use of these indicators is not a substitute for the requirement to consider the evidence as a whole or 'in the round';

-it remains that credibility assessment is only part of evidence assessment and, as Lord Dyson reminded decision-makers in ***MA (Somalia) v Secretary of State for the Home Department*** *[2010] UKSC 49 at [33], 'the significance of lies will vary from case to case';*

-in the UK context, use of such a structured approach must take place within the framework of EU law governing credibility assessment, Article 4 of the Qualification Directive in particular; and,

-also in the context of UK law, decision-makers (including judges) by s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are statutorily obliged to consider certain types of behaviour as damaging to credibility.

3. Consideration of credibility in light of such indicators, if approached subject to the aforementioned caveats, is a valid and useful exercise, based squarely on existing learning.

DECISION AND REASONS

1. In this decision we seek to say a few things aimed at promoting a more structured approach to evidence and credibility assessment.

2. The appellants are nationals of Pakistan born in 1950 and 1979 respectively and are of the Ahmadi faith. The first appellant is the second appellant's son. Five days after arrival in the UK on visit visas on 14 December 2014, they made an application for asylum and humanitarian protection. The basis of their case has always been that they are both committed Ahmadis who fled Pakistan following an incident in December 2014 when members of Khatme Nabuwaht damaged the first appellant's shop in Rawlapindi and made threats to harm him. When he and the local branch president of the Ahmadi community went to the police to report the incident the latter showed no interest. He and his mother left for the UK three days later. On 17

June 2015, the respondent accepted that they were Ahmadis but refused their applications. Their appeals came before First-tier Tribunal (FtT) Judge Oakley who on 6 November 2015 dismissed their appeals. On 21 March 2016 Deputy Upper Tribunal Judge (DUTJ) Sheridan set aside Judge Oakley's decision for error of law and remitted it to the FtT. On 13 October 2016 FtT Judge E B Grant again dismissed their appeals, but that decision too was set aside by Upper Tribunal Judge (UTT) O'Connor on 3 February 2017 with a direction that it should be re-made in the Upper Tribunal.

3. Before UTJ O'Connor, Mr Fripp requested that the case proceed as a vehicle for further country guidance on Ahmadis. UTJ O'Connor gave him permission to draw up a note in support of his position. Subsequently, on consideration of that note, the Upper Tribunal decided that the case should not proceed as potential country guidance.

4. At the hearing Mr Fripp called three witnesses, Mr Mansoor Shah, Vice President of the Ahmadiyaa Muslim Association UK (AMAUK), the first appellant and Mr A B, a relative of the appellants. The Tribunal had already been informed that the second appellant would not attend to give oral evidence as she was unwell. The evidence of the three witnesses is summarised in Appendix A.

Oral submissions

5. Mr Wilding said the appellants' case turned in large part on their credibility. If they were not credible, that was the end of it. If they were credible about the shop incident, but not about the causes of it, they would not be at risk on return because the shop incident could not be differentiated from an ordinary criminal incident. If however, we believed the shop incident and that it was religiously motivated then they were entitled to succeed in their appeals, as, given their evidence, they would fall within the terms of the country guidance given by the Tribunal in **MN and others (Ahmadis - country conditions - risk) CG [2012] UKUT 00389 (IAC)**. (For convenience the headnote to **MN** is reproduced in Appendix B.)

6. Mr Wilding submitted that we should find the appellants not credible because it was implausible that if the first appellant and his local branch president had gone to the police station in December 2014 to report the attack they would have left after only an hour of waiting. Nor was it plausible that within three days he and his mother would have left Pakistan in response to the incident leaving his wife and children behind.

7. Mr Wilding submitted that even if we accepted the shop incident happened, the first appellant had not established it was a religiously motivated attack. Even though the first appellant was in the shop at the time, nothing happened to him. The evidence of the AMAUK made clear their procedures relied very much on self-reporting. There was only limited filtering of people who asked for reports and there was no monitoring of whether attacks/incidents were religiously motivated. It was just as likely the shop incident was an ordinary criminal matter. The first appellant's

evidence was that there were Khatme Nabuwaht posters in a number of places around the area.

8. Mr Wilding asked that we count against the appellants that despite claiming to leave Pakistan within three days of the incident, the appellants had not claimed asylum on arrival. The significance of the first appellant's answers to questions asked of him about why he had left his wife and children behind was not his failure to try and sponsor them, but the dubious lack of concern it showed about their circumstances. They were still living close by in the same area.

9. Even if we found the appellants were at risk in their home area, when assessing internal relocation we should attach weight to the fact that his own wife and children still lived nearby without it being suggested they were at risk.

10. Mr Wilding clarified that the appellants' case was not one about whether return would require them to suppress their religious orientation, since, on their own evidence, they had not hidden their Ahmadi identity and activities when in Pakistan.

11. As regards the reference by Mr Fripp in his written skeleton argument to "five general points" (see below paragraph 20), he broadly accepted them except that he conceded that the guidance by the Tribunal in **MN** about the "particular importance" of Ahmadi faith to individuals was simply to be given its ordinary meaning. As regards Ahmadi women and children, whilst their situation might cause them to face extra difficulties (e.g. in not being able to undertake communal worship) their cases would turn on particular facts. There was not a heightened risk in every case.

12. In reply to questions from the bench, Mr Wilding said he accepted that the first appellant had given a consistent account and that he raised no challenge either as to the sufficiency of detail of his account. The respondent's challenge was purely to plausibility. Mr Wilding said that if the Tribunal found the appellants were telling the truth about the shop incident and it was satisfied that the attack was religiously motivated, then the appellants were entitled to succeed.

13. Mr Fripp submitted that the appellants' account was credible. The first appellant's account of the incident in his shop as the culmination of years of threats and harassment was consistent with the objective evidence regarding the situation of Ahmadis in Rawalpindi and elsewhere in Pakistan. Non-state actors such as Khatme Nabuwaht conducted a widescale and highly organised campaign against Ahmadis with the complicity of the state. The appellants' case sought to rely squarely on existing country guidance as set out in **MN** whose principal findings were encapsulated in the statement that Ahmadis were "an oppressed religious minority".

14. As regards credibility, the AMAUK evidence lent support to the appellants' case in relation to the appellants' level of engagement with the Ahmadi community. The first appellant held substantial office in his local Ahmadi community in Pakistan over a number of years. The evidence described him as an active member of the Ahmadi community committed to his faith, someone who was both a 'Musi' (teacher) and a 'Quaid' (leader). That evidence also went to explain why he had come to the adverse

attention of the malvis. The AMAUK evidence regarding the first appellant was singular in that the report produced did not just state what the local president had been told; it said he had accompanied the first appellant to the police station to report the incident. This showed that the local branch took the matter seriously. The difficulties the first appellant encountered in getting police protection were corroborated by the UNHCR Eligibility Guidelines for Assessing the Protection Needs of Members of religious Minorities from Pakistan, January 2017. Viewed in the context of there being a pattern of ineffective police protection of Ahmadis in Pakistan, the fact that the first appellant and the local branch president left the police station after an hour before any report was formally recorded was entirely plausible. Another feature of the first appellant's account was that it was not exaggerated; he did not say violence had been inflicted on his person.

15. Mr Fripp urged the Tribunal not to accept Mr Wilding's submission that it was implausible the first appellant would have left Pakistan leaving his wife and children behind yet taking his mother. The fact was he and his mother were the only ones who had visas. Additionally, once the two appellants came to the UK and claimed asylum there was no basis whilst their claims were pending on which a visa for his wife and children could have been applied for: the advice they obtained was correct.

16. As for Mr Wilding's scepticism about the causes of the shop incident, it was appropriate to recall what was said by Lord Hoffman in **Shah and Islam** [1999] UKHL 20 about Jewish shopkeepers in Nazi Germany: one had to look at the surrounding circumstances and not simply focus on the incident itself.

17. Mr Fripp said that even though the second appellant had not given evidence because of health difficulties, her previous written and oral evidence was consistent with what is known about the situation faced by Ahmadi women, unable to practise her faith communally because the Ahmadi community had forbidden it as a protective measure. The second appellant was also relatively elderly and in poor health.

18. Asked by the bench what response he had to Mr Wilding's submission that the appellants had a viable internal relocation alternative, Mr Fripp said he relied on what was said in **MN** about the nationwide pattern of hostilities towards Ahmadis. In this regard the first appellant's profile as an active Ahmadi was also relevant; he could not be expected to conceal his Ahmadi practices.

The evidence

19. Bearing in mind that this case has been before the Upper Tribunal once before, it is salient to note that we had a very considerable body of written evidence before us. In addition to the witness statements of the appellants, and the various reports from AMAUK (enumerated in Appendix A to this decision) there were a number of copy photographs showing what was said to be the damage done to the first appellant's shop in December 2014 and what are said to be the posters put up by the Khatme Nabuwaht on the first appellant's shop over the relevant period.

Our assessment

Country guidance

20. Mr Fripp has requested in his skeleton argument that in deciding this case the Tribunal take the opportunity of giving further guidance arrived at supplementing that given by the Tribunal in **MN**. He identified five points on which he considered further guidance was needed. We decline to do so. The Tribunal made clear on 16 May 2017 that this case would not proceed as potential country guidance. Further, Mr Wilding conceded that if we accepted the core account of the first appellant regarding the shop incident and that it was religiously motivated, then the appellants fell squarely within the category of those Ahmadis identified in **MN** as likely to be at risk on return. Mr Fripp in turn accepted that his case stood or fell on our decision as regards its factual matrix. In such circumstances, it would be otiose to attempt to make general observations not germane to the decision we have to make on the appeal.

Principal issues of fact

21. We would, however, see it as an oversimplification to treat the principal issue of fact we have to decide as being whether the December 2014 shop incident happened as described by the first appellant. On the first appellant's account, there was no assault on his person and going by the photographic evidence the damage to his property was not substantial. Whilst the two malvis who caused the damage did make threats to his life, it would appear from one of the photos of the posters put up by Khatme Nabuwaht that the latter at least sometimes promoted themselves as conducting a "peaceful protest" against Ahmadis and no evidence has been adduced to show that around this time either of the appellants or other Ahmadis in the area had been victims of physical violence at the hands of Khatme Nabuwaht or others. Hence, were we to take the December 2014 incident in isolation, we would at least hesitate as regards whether it was sufficient to establish a "severe violation of basic human rights" contrary to Article 9(1)(a) of the Qualification Directive (QD) 2004/83/EC. However, that same Article also provides at Article 9(1)(b) for a second way in which acts can constitute acts of persecution, namely if it be "be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a)".

22. In this wider context account must be taken of the fact that on the appellants' evidence the first appellant had been subject to acts of harassment and threats over a period of a number of years since he opened the shop, albeit infrequent, and the fact that over the same period the second appellant had received verbal abuse when she went to market. On the appellants' evidence (if we accept it) the shop incident, although in itself not a major attack, represented an escalation of the measures the malvis had been taking against the first appellant. We bear in mind as well that for persecution to exist it is not necessary that there be concrete acts: direct threats of persecution also constitute acts of persecution of sufficient severity. The threat to kill made during the shop incident must be considered together with the malvis' poster campaign whose messages sometimes included ones that, whilst falling short of

death threats, contained veiled threats of harm intended to create uncertainty about what further actions might follow. The fact that such posters co-existed with others that referred to "peaceful protect" cannot be determinative.

23. Accordingly, whilst we accept Mr Wilding's concession (to the effect that if we believe (a) that the shop incident happened; and (b) that it was religiously motivated, the appellants are entitled to succeed in their asylum appeals), we take that to be made by reference to the wider context as described by the appellants.

24. We also take Mr Wilding's submission (that if we believe the appellants and also accept that the shop incident and the background harassment were religiously motivated the appellants are entitled to succeed in their appeals) as a concession that it is not necessary to analyse separately the extent of the appellants' commitment to the Ahmadi faith and practices. If we accept the evidence of the appellants and the AMAUK then, whilst the first appellant did not openly preach or proselytize in any direct way, he was a particuarly active Ahmadi and so in that way came within the terms of paragraph 2(i) and (6) of the headnote in MN.

25. The central issue remains as to whether we accept that the appellants have given a credible account and that is one concerning persons who have been victims of religiously motivated acts and so victims of past persecution. If we accept past persecution then by virtue of Article 4(4) of the Qualification Directive (paragraph 339K of the Immigration Rules) this fact "will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

Assessment of credibility

26. Here again we regard it as important to begin with Mr Wilding's submissions and in particular his acceptance that the challenge he makes to the appellants' credibility is solely on the basis of lack of plausibility. That, it seems to us, amounts to an important concession for two reasons. First of all, it represents an acknowledgment that the respondent accepts that in all other respects the appellants' account passes muster. It is integral to the respondent's own Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015 at paragraph 5.4 that:

> "if after looking at all the evidence and keeping the relatively low standard of proof in mind, the claimant's statements and other evidence about the facts being established can be accepted if they are:
>
> ► of sufficient detail and specificity
> ► internally consistent and coherent (to a reasonable degree)
> ► consistent with specific and general COI
> ► consistent with other evidence (to a reasonable degree)
> ► plausible
>
> all indicators must be applied, and the credibility of the account examined in the round ...".

27. Applying this instruction to Mr Wilding's own concessions, the first appellant's account is one that was sufficiently detailed and specific; and internally consistent. Mr Wilding does not dispute either that the appellants' evidence is also externally consistent, i.e. consistent with specific and general COI and with the other evidence. Given that the Instruction bids caseworkers to apply all these indicators, it appears that Mr Wilding relies exclusively on just one of them. Put another way, his submission entails acceptance that the appellants can have counted in their favour all of the identified "Credibility Indicators" (further expanded upon in paragraph 5.6 of this Instruction) bar that concerned with plausibility.

28. Second, Mr Wilding's concession rests the respondent's case on [lack of] plausibility, an indicator or factor that has been seen by the Tribunal and the courts – as is indeed reflected in this same Instruction - as one that, although in itself valid, requires a certain degree of caution in its application. Thus in **HK v Secretary of State for the Home Department** [2006] EWCA Civ 1037 case at [28]-[30] Neuberger LJ stated:

> "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
>
> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
>
> > 'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
>
> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala –v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by…Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

29. Reflecting much the same caution, paragraph 5.6.4 of this Home Office Instruction invokes, inter alia, what was said in **Y v Secretary of State [2006] EWCA Civ 1223**:

> "[I]n [**Y**] the Court of Appeal stated that in regarding an account as incredible the decision-maker must take care not to do so merely because it would not be plausible if it had happened in the UK. Again, underlying factors may well lead to behaviour and responses on the part of the claimant which run counter to what would be expected."

30. The reference by Neuberger LJ at [28] of **HK** to the need to consider factors related to plausibility along with "other familiar factors… such as consistency" is also illustrative of the need to avoid basing credibility assessment on just one indicator. We would add that even when focusing just on plausibility, it is not a concept with clear edges. Not only may there be be degrees of (im)plausibility, but sometimes an aspect of an account that may be implausible in one respect may be plausible in another.

31 It seems to us that the indicators identified in the Home Office Instruction (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility) provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune. We note that this Instruction draws heavily on case law authorities. However, any reference to a structured approach in relation to the subject matter of credibility assessment must carry a number of important (interrelated) caveats, among the most important of which are as follows.

32 First, such "Credibility Indicators" have to be understood as just that: a mere set of indicators, factors or indiciae. They are far from being a set of necessary conditions or requirements. To seek to apply them as if they were determinative would be unduly prescriptive as well as fatal to the need to ensure a full examination of the individual circumstances.

33 Second, such indicators are not to be taken as an exhaustive list: for example, the list given in the Home Office Instruction does not include demeanour. In our view, that is consistent with established case law which considers that in asylum appeals it will rarely be safe to attach significant weight to demeanour as a factor (see e.g. **B v Secretary of State for the Home Department (Democratic Republic of Congo)** [2003] UKIAT 00014, para 10: "judging demeanour across cultural divides is fraught with danger"); indeed, we shall mention below what we made of the demeanour of the first appellant. On the other hand, we do not think it possible to exclude that in certain circumstances demeanour may be relevant.

34 Third, it must never be forgotten that credibility assessment is a highly fact-sensitive affair. Whilst having regard to a set of "Credibility Indicators" assists in making sure that, where relevant, the evidence is considered in a number of well-recognised ("familiar") respects, it does not prevent a decision-maker reaching a decision without going through such indicators step-by-step. For example, their use may be

otiose if an individual's account rests wholly on a physical impossibility (e.g. that he jumped a 6 metre wall unaided) or is riddled with major inconsistencies. Conversely, if for example the individual is a vulnerable person whose account is strongly supported by expert medical evidence, it may not always matter that it contains inconsistency and lack of detail.

35 Fourth, making use of these indicators is not a substitute for the requirement to consider the evidence as a whole; it is rather a way of helping decision-makers organise their assessment 'in the round' so as to ensure they do not fail to properly take into account, where relevant, every factor that might tell in favour of or against an applicant (on the importance of taking into account factors telling for (and against) claimants see **R (YH) v Secretary of State for the Home Department** [2010] EWCA Civ 116, 4 All ER, 448 at [24]).

36. Fifth, although not germane to this case, we should not forget, as Lord Dyson reminded decision-makers in **MA (Somalia) v Secretary of State for the Home Department** [2010] UKSC 49 at [33], 'the significance of lies will vary from case to case'. Credibility assessment is only part of evidence assessment. Even when the accounts put forward by applicants are not credible, it is still possible in certain (albeit unusual) circumstances for their applications for international protection to succeed.

37. There are also two considerations specific to the context of EU law and UK law.

38. One is that use of such a structured approach cannot entirely capture what it is necessary for decision-makers (including judges) applying EU law to undertake when assessing credibility. They are required to base their assessment on Article 4 of the Qualification Directive (paragraph 339J of the Rules) whose terms include an obligation to take into account "all relevant facts as they relate to the country of origin…" (Article 4(3)(a); paragraph 339J(i)) and "the individual position and personal circumstances of the person" (Article 4(3)(c); 339J(iii)). If a finding of past persecution has been made, Article 4(4)(paragraph 339K) requires a particular approach to assessing the risk of repetition. When it comes to deciding whether to excuse a failure by an applicant to confirm their statements by supporting evidence, they must apply the conditions set out in Article 4(5) (paragraph 339L). Article 4(5)(d) QD (paragraph 339L(iv)) requires that 'the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so').

39. The other is that in the UK context, by s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, decision-makers are statutorily obliged to consider certain types of behaviour as damaging to credibility.

40. We have referred the "Credibility Indicators" of sufficiency of detail, internal consistency, external consistency and plausibility as being "well-recognised" (or in Neuberger LJ's words in **HK**, "familiar"). We do so because they are broadly the same as those indicators identified in a number of reputable background studies, for example, by UNHCR in ***Beyond Proof, Credibility Assessment in EU Asylum***

Systems: Full Report*, May 2013;** by the IARLJ in ***Assessment of Credibility in Refugee and Subsidiary Protection Claims under the EU Qualification Directive, Judicial Criteria and Standards*,** IARLJ, Credo Project, 2013, p. 35; and by a number of academics, including James Hathaway and Michelle Foster, ***The Law of Refugee Status, 2nd edition, Cambridge University Press 2014, p.139. We regard consideration of credibility in light of such indicators, if approached subject to the aforementioned caveats, to be a valid and useful exercise, based squarely on existing learning.

41. It will be apparent from the above that we do not understand assessment of credibility by reference to credibility indicators to be at odds with the tasks set out in Article 4 of the Qualification Directive; rather their application is simply a way of furthering a more structured approach to those tasks. And, in light of Tribunal and Court of Appeal authority on the proper application of s.8 (**SM (Section 8: Judge's process)** Iran [2005] UKAIT 00116; **JT (Cameroon) v Secretary of State for the Home Department** [2008] EWCA Civ 878), the categories of behaviour that this section identifies as damaging to credibility cannot be determinative: as Pill LJ said at [21] of **JT (Cameroon**) [2008] EWCA Civ 878, it is "no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility."

The credibility of the appellants

42. Returning to consider the appellants' evidence in the round in the light of Mr Wilding's concessions, it is necessary to ask what are the considerations that count for and against them as regards the credibility of their accounts?

43. Mr Wilding's concessions have significantly (and somewhat unusually) circumscribed the ambit of the credibility assessment we need to undertake in the appellants' case. We take his concessions to entail that we are entitled without further ado to count in favour of the appellants their consistency (internal and external) and their sufficiency of detail and specificity. We would observe that it would have been our own finding in any event that their evidence possessed these qualities. In our view the significant degree of internal consistency of the first appellant's account would have carried particular weight because there have been a number of occasions in the course of proceedings over the past two or so years when he has had to face questions and provide explanations. (We will return to the matter of the second appellant's consistency and credibility in general later.) Leaving aside that Mr Wilding no longer sought to rely on the respondent's reasons for refusal letters, we would observe further that in any event they were flawed by a mistaken reliance on the appellants adducing unreliable "First Information Report (FIR) evidence". It is now accepted that the appellants had never submitted such evidence. These refusal letters also failed to adhere to the Home Office Instruction to which we have already made reference on "Credibility Indicators" – they did not address, in particular, whether the first appellant should have been given any credit for providing a consistent account.

44. Turning to consider factors we count against the appellants, we shall first of all address one that Mr Wilding did not label as a plausibility consideration as such, namely the appellants' failure to claim asylum on arrival. This is not behaviour falling within s.8 of the 2004 Act, but when considering any aspects of the appellants' statements not supported by documentary or other evidence we are required by Article 4(5)(d) of the Qualification Directive, when deciding whether to excuse lack of confirmation of statements, to take into account, inter alia, whether "the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so". Given that (i) the delay in claiming was only a few days; (ii) the first appellant was not asked in his asylum interview to provide good reason for the delay; (iii) when the second appellant was asked in her asylum interview for a reason, she stated that she was ill – a matter which Mr Wilding does not dispute; and (iv) the respondent did not rely on any lack of good reason in her reasons for refusals letters in respect of either appellant, we are prepared to accept that there was a good reason for the delay. Even if we had not found that to be the case, we would not have considered it a matter of sufficient importance in assessing the core elements of their claim, which are indeed supported by documentary or other evidence.

45. Turning then to plausibility, we do regard it as to some degree implausible that the appellants should have left Pakistan so soon after the shop incident. If the first appellant felt that the safety of his wife and children could be secured by them merely moving to live with her mother some 45 minutes away, then the question has to be asked as to why he and his mother also did not see moving away from their house but remaining in Rawalpindi as at least as an interim measure. On the other hand, we consider that it is important when considering the circumstances surrounding their departure to recollect the Court of Appeal guidance in the **Y** case. Based on the fact that the shop incident represented an escalation in the level of adverse attention directed by the malvis against the first appellant (he said they threatened to kill him), it is equally plausible that he would have seen fit to leave Pakistan quickly. On this matter, therefore, it seems to us that plausibility considerations cut two ways.

46. We see some, albeit limited, force in Mr Wilding's submission that it was implausible that the first appellant and the local branch president would have left the police station after only an hour and without having their complaint recorded. From the AMAUK evidence, it appears important to the Ahmadi community to have adverse incidents with the authorities reported to the authorities, even if they do not consider that to do so results in effective protection. At the same time, the first appellant's and the AMAUK's evidence was that the police reaction to their complaint did not inspire confidence and it is at least understandable that they took the view that having informed the police what had happened, little else was to be gained by waiting around, particularly as the first appellant was the one who had to decide how to respond to the threats made to kill him that same day.

47. There is still the matter of the fact that the first appellant does not suggest that by moving 45 minutes away his wife and children were left vulnerable to adverse attention from the malvis. Is that a significant factor pointing against accepting the

credibility of the first appellant's account? We have decided it is not because of the very different profile of the first appellant as compared with his wife and children, who, in accordance with Ahmadi community rules, limited their activities outside their own living quarters. Given that the first appellant had been elected local "Quaid" (leader) in charge of 42 people, we consider it is reasonably likely that he would understand the matter of his own safety as being very different, given that if he remained anywhere in Rawalpindi, the same group of malvis were extremely likely to locate him and re-commence their adverse attention. We do not find it accurate of Mr Wilding to submit that the appellants have never suggested that the family members remaining in Rawlapindi were still at risk: it was the first appellant's evidence that his brother, who remained in Rawlapindi and in charge of the shop although employing a non-Ahmadi to run it, was "lying low and still looking for an opportunity to escape".

48. Put shortly, we do not consider that application of the Plausibility indicator to the evidence in the appellants' case significantly damages the credibility of their account.

49. The only other matter of potential significance that we consider can be counted against the appellants is that the first appellant's sister and brother in the UK did not attend to give evidence nor submit a witness statement. We do not think it good enough for the first appellant to seek to excuse this by saying she would have come if he had asked. He was put on notice earlier that the failure of close family to attend as witnesses may be viewed adversely. At the same time, the appellant's witnesses did include a cousin, Mr B, whose evidence we had no reason to reject and it did provide some degree of corroboration (as to the events surrounding the appellants' rapid departure from Pakistan) from within the first appellant's family circles in the UK.

50. We alluded earlier to the possible relevance of demeanour in assessment of credibility and stated our own view that it would rarely if ever be of importance in asylum appeals. Illustrative perhaps of why, it was our own reaction to the first appellant's evidence that throughout he seemed uncomfortable and not always able to give answers to the specific question being asked of him (a number of questions had to be repeated for that reason). However, viewing the evidence as a whole, we bore in mind that we were receiving his evidence through an interpreter and that these features of his oral testimony were as likely to be personality traits not connected to matters going to credence. Hence we decided to attach little negative weight to such shortcomings.

<u>The AMAUK evidence</u>

51. It will be apparent from our analysis thus far that we consider the AMAUK evidence produced in this case to lend support to their core claims. Mr Wilding has not sought to undermine it. We hasten to add, however, that our acceptance of it is specific to the evidence we had in this case. Given that Mr Shah's evidence accepted that for the most part the only real filtering that took place of requests by persons for help with reports from Pakistan was in deciding whether they were genuinely of the Ahmadi faith, and that the local branch presidents in Pakistan for the most part simply reported what they were told, we certainly see no reason to treat such evidence as

having any elevated status. When considering what was said about AMAUK letters in **MN** we also take into account the subsequent reported decision of the Upper Tribunal in **AB (Ahmadiyya Association UK letters**) Pakistan [2013] UKUT 511 (IAC) which also rejected endowing such letters with any elevated evidential status.

The second appellant

52. Hitherto we have largely focused on an assessment of the evidence of the first appellant and the issue of his credibility. A principal reason for doing so is that it was not disputed by Mr Wilding that the second appellant is elderly and has health difficulties. We did, however, have a record of the evidence she gave in September 2016 before FtT Judge E B Grant. In broad terms. that evidence was consistent with what she has said in her witness statements and also with the first appellant's account. During the evidence of the first appellant the bench asked him about two aspects of his evidence which were at odds with that given by the second appellant in her asylum interview, regarding how long after the shop incident he had told his mother about it and whether the police had ever provided any degree of protection to his shop. Given the medical evidence we have regarding the second appellant's psychological problems, we are minded to accept the first appellant's explanation for these discrepancies in terms of her lack of understanding. We note that Mr Wilding did not suggest we do otherwise. In any event Mr Wilding's concession as regards consistency and sufficiency of detail was made in respect of both appellants.

53. The essence of the second appellant's evidence was that in Pakistan she had been an active Ahmadi, having the status of "Musi". Although her ill-health prevented her from going out much, she had encountered abuse directed at her as an Ahmadi when she went to the marketplace.

54. In light of the above, we conclude that the core account given by both appellants as regards their experiences in Pakistan and their reasons for leaving are credible.

Causes

55. Mr Wilding's submission was that even if we accepted the appellants' evidence as credible, it did not establish that the shop incident was religiously motivated. It was not entirely clear whether his submission was directed at arguing that the shop incident was not persecutory because it could just as likely have been an ordinary criminal act (an Article 9 QD issue) or at arguing that there was no Convention reason or ground for the adverse attention (the Article 10 Qualification Directive issue). We shall consider it as embracing both issues.

56. Even so, we are unable to agree with this submission. Having accepted the first appellant's evidence about the background of harassment and threats from Khatme Nabuwaht against the first appellant as credible, we find no difficulty in accepting that he had been targeted for harassment and verbal threats by the malvis, not just when he was at his shop but on journeys from home to get there. We note that the first appellant's evidence was that they also knew where he lived.

57. That Ahmadis who are visible to Khatme Nabuwaht can be targeted for threats and intimidation and sometimes violence is borne out by the background evidence, not just that considered and evaluated by the Tribunal in **MN** but by the aforementioned UNHCR Eligibility Guidelines of January 2017.

58. Accordingly we conclude it reasonably likely that the adverse attention experienced by the first appellant was religiously motivated, and the same goes for the lesser degree of taunts and abuse directed against the second appellant when she went to the marketplace. That in our judgement differentiates the shop incidents from an ordinary criminal incident and also suffices to establish a reason for persecution within the meaning of Article 10 QD.

Future risk

59. We have already highlighted the test we must apply when satisfied (as here) that appellants have proved past persecution, namely that this fact "will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated" (Article 4(4) Qualification Directive (paragraph 339K of the Immigration Rules). Implicit in Mr Wilding's concession that if credible about the shop incident and causes the appellants were entitled to succeed in their appeals, was recognition that, on the basis of the first appellant's account his role as an active Ahmadi, serving a role locally as "Musi" and "Quaid", afforded good reasons to consider that such persecution will be repeated. That in any event, is our assessment, particularly bearing in mind the fact that the first appellant (and to a lesser extent the second appellant) falls within the terms of paragraph 2(i) of the guidance in **MN**.

Internal relocation

60. Mr Wilding submitted that we should conclude that the appellants would have a viable internal relocation alternative based on the fact that the first appellant's wife and children appear to have achieved safety by moving 45 minutes' drive away and the fact that the first appellant's shop appears to have remained in operation with the help of his brother although now manned by a non-Ahmadi. We reject this contention. In the headnote and at point 7 of the headnote and [124] of **MN** the Tribunal stated that:

> "[T]he 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 n paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation."

61. We also note that the **Home Office Country Information and Guidance: Pakistan: Ahmadis**, Version 2.0, May 2016 states at 2.4.2 that:

> "**MN and others** held that, in light of the nationwide effect in Pakistan of the anti-Ahmadi legislation, the option of internal relocation, previously considered

to be available in Rabwah, is not in general reasonably open to a person who genuinely wishes to practise and manifest their faith openly in Pakistan contrary to the restrictions of the Pakistan Penal Code ...".

62. We recall further our earlier note that the first appellant's evidence in his latest witness statement of 8 September 2016 was that whilst his brother continues to live in Pakistan he is "lying low and still looking for an opportunity to escape".

63. In our view what we stated earlier regarding the mixed plausibility of the first appellant's decision to leave Pakistan also has a bearing here. Unlike his wife and children, the first appellant would be returning as an active Ahmadi whose level of involvement in the Ahmadi faith was at a significant level. In our view, wherever he went in Pakistan, it is reasonably likely he would sooner or later attract the same kind of adverse attention. In making this assessment we bear in mind not only what was said on the subject of internal relocation by the Tribunal in **MN,** but also what was said in the UNHCR Eligibility Guidelines.

64. The aforementioned UNHCR Eligibility Guidelines, January 2017 note at Part 5 (p. 22) that: -

> "[l]ittle or no protection is reportedly afforded by the state authorities. It appears that crimes and acts of violence against Ahmadis are not consistently investigated, allegedly due to pressure from Islamic fundamentalist groups, and perpetrators of such crimes are reportedly not brought to justice"

and at Part VI (p. 42) that:

> "For Ahmadis who practise their faith openly or who have been the target of threats and/or attacks by fundamentalist Sunni groups, such as Pasban Khatme-Nabuwaht, there is no viable IFA/IRA [Internal Flight Alternative/Internal Protection Alternative] given the countrywide reach of such groups, compounded by the reported lack of effective state protection ...".

Notice of Decision

65. The decision of the FtT judge has already been set aside for material error of law.

66. The decision we remake is to allow the appellants' appeals on protection (asylum) grounds.

Signed Date: 22 November 2017

Dr H H Storey
Judge of the Upper Tribunal

Appendix A: summary of oral evidence

1. The first witness called was Mr Mansoor Shah, Vice President of the Ahmadiyaa Muslim Association UK (AMAUK). He said he had read the reports on the first appellant dated 6 January 2015, 13 October 2015, 25 February 2016, 5 September 2016 and 9 August 2017. He explained that the procedure followed by his association in the event of a request from a member wanting help with an asylum claim was to send it to their Department for Internal Affairs in Pakistan who then contacted the local branch president in the appellant's home area who then either personally or through delegation drew up a report regarding what was known about the applicant's Ahmadi activities. Asked by Mr Fripp if there had ever been misuse of this procedure, Mr Shah said in his experience only once or twice had there ever been a minor error relating to a person's precise name or age or where information received from someone had possibly been misrepresented. How complete the records held by local branch presidents were depended on the individual holding the post. If some matter was not reported to the local branch president he could not confirm it; he could only report what had been reported to him locally. He (Mr Shah) had no reason to doubt the integrity of the local branch president who wrote a report on the first appellant. The appellants' case was an illustration, he said, of the situation whereby sometimes, in response to an applicant's request for further help, the local branch president would be asked to produce a supplementary report. When there was the need to go to the local police to notify an incident against an Ahmadi reported to the local branch president, he would go himself or send someone to attend on his behalf; but the Ahmadi community organisation at this local level had limited resources. Mr Shah said he had given evidence in appeal cases two or three times.

2. In reply to questions from Mr Wilding, Mr Shah said he had not been personally involved in the procedure whereby a report regarding the appellants was requested by his association to the headquarters in Pakistan. The association's procedure upon receipt of any report from Pakistan was to keep it on file as a confidential document. It would only be made available to appeal authorities in certain cases. He said it was one of his association's missions to promote the Ahmadi faith and bring to public attention what was happening to Ahmadis in Pakistan. However, the association did not encourage Ahmadis to settle in other countries and was not in the business of supporting Ahmadi asylum claims in general. His association believed it had to adopt rigorous procedures in order to ensure, for example, that it was not infiltrated by terrorists.

3. Asked further about the association's procedures, Mr Shah said that when individuals approached the association for help there was a filter: the association had to be satisfied the applicant was an Ahmadi; only then would the association proceed. The information request typically concerned matters such as whether the individual was known to the local Ahmadi community in Pakistan, whether he or she held any Ahmadi office there, whether they made any financial contributions etc.

4. Asked by Mr Wilding whether there had ever been incidents where the association thought an individual was lying, Mr Shah said there had been although they were rare. He gave the example of someone who became an Ahmadi in the UK who said he had been an Ahmadi in Pakistan, but the Pakistan headquarters could find no proof. He gave another example where someone said he had been the victim of an incident in Pakistan in which they said they were beaten, but no such incident had been reported to the local branch president.

5. Mr Wilding sought more detail regarding the contents of the reports drawn up by local branch presidents. In general, said Mr Shah, the local branch would just confirm that an incident had been reported to them; they did not seek to pass judgment on whether the incident was an ordinary crime or religiously motivated. Their reports did not confirm causes. The extent to which the writer of the report was able to say from their own knowledge that an incident had happened or an individual had been attacked would depend on the local branch resources and on whether members on the ground in the area had witnessed such things. Even if a report writer had no personal knowledge that an incident had happened, they would still report it: "We do not seek external evidence every time". Whilst the reports drawn up did not attempt to confirm causes, it was widely known within their community that "a lot of things happened as a result of our religion".

6. In re-examination Mr Shah was asked to explain an earlier reference he had made to Ahmadis who were "Musi" (it was the evidence of both appellants that they were Musis). Musis were, he said, persons whose level of commitment to the association was strong and who dedicated their entire lives to their faith. They made greater financial contributions but these were not enough on their own to make one a Musi. People had to apply to become Musis; it took one year for an application to be dealt with. A "Quaid" (it was the first appellant's evidence that he was also a Quaid) was someone who was a leader and whose role was to set a good example of dedication to the community.

7. Mr Shah said the fact that the further report on the appellants dated 25 February 2016 mentioned that the branch president had accompanied the first appellant to the police station showed that the former attached particular importance to the matter.

8. The next witness was the first appellant. Having confirmed his witness statements were true and correct, he said that he was present when the Khatme Nabuwaht "malvis" trashed his shop in December 2014. He was sure they did so because of his faith. He knew this because he had received harassment and threats since the day he began his business in 1999. There had also been minor incidents, gluing of locks and putting up posters. Sometimes they just argued. On the day of the trashing of his shop they had said "You are an infidel. Run, otherwise we will kill you". Sometimes they stopped him on his way to the shop. He informed his jamaat (place of worship) who advised him to change his route. He had not seen the two men who came and trashed his shop before. Straight after the incident he went and told his local branch leader and the latter accompanied him to the police station. They told the police that his shop had been attacked; the police made them sit and wait. The police did not go to see the shop or say that they would. He believed that was because they knew he

was an Ahmadi. They were at the police station for an hour. Asked by Mr Wilding why they had left after such a short time, the first appellant said it was because they knew the police would not help. After they left the police station he went home and talked to his mother. Asked if the malvis had ever attacked or threatened him at his home, he said they knew where he lived. They also used to stop him on his way to work.

9. Mr Wilding asked about why, if he was aware his attackers knew where he lived, he had not fled together with his wife and children. The first appellant said he would have taken them but only he and his mother had a visa. Since the shop incident in December 2014, his wife and children had not applied for a visa. He had inquired about how they might join him but had been advised by immigration consultants "it would not be good". His wife and children had moved to her parents' house 45 minutes drive away. It was not possible to leave his mother behind; his attackers would have abused her; when his mother went to the marketplace the malvis would abuse her. There had been incidents of arson and beatings directed at Ahmadis in his local area. His brother lived in the same area.

10. Mr Wilding asked the first appellant about his mother's health. He said she had been having health problems in Pakistan and took medication. She would also go sometimes to hospital for blood transfusions. He denied that the real reason he and his mother had come to the UK was to get her medical treatment. He had come to the UK as a visitor in early 2014, he stayed with his sister and other relatives. They had learnt from a telephone call from his mother about the shop incident.

11. Mr Wilding asked why had the sister or other relatives had not attended to give evidence on his and his mother's behalf. He said "if I called she [his sister] would have come". His mother had visited the UK four or five times without problems. She did not need medical treatment in the UK because of any money shortage. It was very difficult for him to live in the UK having left his wife and two small children in Pakistan.

12. The first appellant was asked again about the December 2014 shop incident. He said that up to then the malvis who had come and threatened him were not always the same people. Over his time at the shop about eight to ten different people had come. They called him "Mirzi" as a term of insult.

13. In re-examination the first appellant said the posters put up by the malvis had been put on his shop front. The messages on them called for people to "boycott" his shop. He had witnessed his mother being abused when she went to the marketplace.

14. The first appellant was asked by the bench whether he had told his mother about the shop incident that same day. He said he had. It was put to him that his mother had said in her asylum interview that she only learnt about the shop incident two days later. He said she was not aware of these things; her understanding was poor.

15. The third and final witness was Mr A B who was granted refugee status in the UK December 2014. He said he was a cousin who knew the appellants when they lived

in Rawalpindi. He knew both appellants to have been Musis in Pakistan. He had learnt about the December 2014 incident from his wife who had been informed by the first appellant's mother. His wife had heard about it after a telephone call from Pakistan to his mother.

Appendix B: headnote to MN and others (Ahmadis - country conditions - risk) CG [2012] UKUT 00389 (IAC):

"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. T*he 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 n paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.*

8. *Ahmadis 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.*