Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/06299/2012
AA/06301/2012
AA/06302/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6th September 2013	**On 19th September 2013**
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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ASHFAQ AHMAD BUTT – FIRST APPELLANT
USMAN AHMAD BUTT – SECOND APPELLANT
NOUMAN AHMAD BUTT – THIRD APPELLANT

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Hussain of Counsel instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are the Appellants' appeals against the decision of Judge Hemingway made following a hearing at Bradford on 31st July 2012.

Background

2. The Appellants are citizens of Pakistan and are all Ahmadi Muslims. They lived in Rawalpindi in Pakistan and their history has been accepted by the Secretary of State. On 5th March 2011 the first Appellant's eldest son and the second Appellant were attacked when returning home from an Ahmadi Muslim meeting by members of the Khatme Nabuwat. The police declined to assist them. On 14th August 2011 the second and third Appellants were abducted at gunpoint by members of the same organisation but were released. Again the police refused to assist. The first Appellant's wife was then attacked on 19th or 20th August 2011 after she was returning home from a meeting. The family left the area and went to stay in Taxila and then in Islamabad where they stayed until they left Pakistan.

3. The judge recorded that it was accepted that the three Appellants had given a truthful account with respect to the problems that they had had in their home area in Pakistan. The central issues were internal flight and whether the Appellants would need to hide their faith in order to avoid persecution. He accepted that if the Appellants returned to Rawalpindi they would be at risk. It was the Respondent's case that they could reasonably go to Taxila or Islamabad because they had not encountered problems there, or alternatively to other Pakistani cities such as Karachi or Faisalabad.

4. The judge considered the background information which had been placed before him and the applicable case law, at that time MJ and ZM Pakistan CG [2008] UKAIT 33. He accepted that the material, which he quoted in detail, suggested that matters had worsened since the case was decided but was not persuaded that they had deteriorated to such an extent that the country guidance determination should no longer be followed. It did not suggest, as was argued, a situation where Ahmadis who were simply open about their faith would be at risk of persecution or serious harm throughout Pakistan.

5. The judge considered the HJ argument, namely whether the Appellants would have to hide their faith upon return in order to avoid persecution. He said that none of the Appellants nor the witnesses gave any examples of their preaching or positively seeking to convert anyone. However they did indicate that if someone asked them about their Ahmadi faith they would talk about it. They would not deny that they were Ahmadis and would continue to go to their own Ahmadi mosques. That was, he said, sufficient to cause them to encounter problems in their home area but does not of itself mean that they would encounter the same difficulties elsewhere.

6. The judge rejected Mr Hussain's submission that they would be persecuted in other cities such as Karachi, Islamabad or Faisalabad or would be forced into modifying their behaviour specifically in order to avoid persecution. He considered whether internal relocation would be reasonable. He noted that the family were educated and that the first Appellant had run a business in the past and his wife had some experience of working as a general secretary for a local Ahmadi organisation. There were no

significant health problems within the family. They would be able to give moral support to each other and there was nothing to suggest that at least some of them would not be able to obtain some employment. He concluded that it would not be unreasonable or unduly harsh to require them to relocate and on that basis he dismissed the appeal.

The Grounds of Application

7. The Appellant sought permission to appeal on the grounds that the First-tier Tribunal had accepted that there had been past persecution and that the Appellants would disclose their faith if asked. Internal relocation could only be reasonable if it was likely there would be a sufficiency of protection to deter future attacks. No particular area was put forward by the Respondent as an area which might be suitable. The judge ought to have dealt with the accepted fact that the Appellants would not hide or conceal their faith when asked. There was a reasonable degree of likelihood that they would face similar persecution in the future; the previous persecution did not arise because of preaching activities.

8. Secondly it was argued that the judge failed to record the submissions of the Respondent in full and the concession that upon relocation, at best, they would suffer only extreme discrimination which did not amount to persecution. It was clearly arguable that extreme discrimination rendered internal flight unreasonable.

9. Thirdly, the judge erred by failing to place the Appellant's account of persecution within the context of supplied background evidence on discrimination, violence and persecution perpetrated against Ahmadis in Pakistan. He had not explained why the material did not show that the Appellants would not continue to face persecution.

10. Finally, the judge had not asked whether the Appellants would live discreetly on return and why they had lived in the manner that they did.

11. Permission to appeal was initially refused by Deputy Judge McWilliam but granted upon renewal by Upper Tribunal Judge Goldstein who stated that the comprehensive country guidance in MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 was promulgated after the determination but he was persuaded that it was appropriate to grant permission.

12. On 4th December 2012 the Respondent served a reply opposing the appeals in the following terms. The Appellants were not preachers nor inclined to do so and not fettered by discretion to avoid problems. The Respondent cited MN and Others and contended that, as these Appellants have not and do not seek to engage in behaviour which would contravene behaviour set out in the summary. It has however long been possible in general for Ahmadis to practise their faith on a restricted basis either in private or in a community with other Ahmadis without infringing domestic Pakistan law. The Respondent contended that these Appellants have not

and do not seek to engage in behaviour which would contravene the above and could return without risk to a different area.

Submissions

13. Mr Hussain relied on his grounds. He said that the judge had erred in not recording the Respondent's concession, made by the Presenting Officer at the hearing, that the Appellants would suffer ""extreme discrimination" on return. He also said that he had made submissions on the reasonableness of internal relocation which were not recorded in the determination. He submitted that the judge's findings were perverse in the light of the accepted facts, and, on the basis of the case law as it was at the time relocation was not reasonable.

14. Mrs Pettersen adopted her response. She said that at paragraphs 17 and 18 of the determination the judge recorded the Appellants' evidence about how they said they would behave on return to Pakistan. It was clear that he was well aware of the case law cited in the grounds.

15. At paragraphs 29 and 30 the judge recorded the submissions, and she provided the Presenting Officer's note. He then went on to deal with the HJ point and the question of internal relocation. The first Appellant was approaching 60 and it is likely that if he intended to preach in the future he would have done so in the past. Pakistan was a large country and it was not a part of the Appellant's case that the authorities were seeking to find them. It was open to the judge to find that they could safely relocate.

16. Mr Hussain repeated that if the Appellants refused to hide the fact that they were Ahmadi they would be recognised as such and would be at risk. They had been persecuted in the past which was good evidence of future persecution. He said that the judge recorded his submissions as referring to discrimination and it was unlikely that he would have done so had it not been flagged up by the Presenting Officer. The judge had also referred to a concession made by him in paragraph 31 of the determination.

Findings and Conclusions

17. There is no error of law in this determination.

18. In Mr Hussain's grounds he refers to a failure of the judge to record a submission of the Presenting Officer that,

> "Upon relocation at best they would suffer only extreme discrimination."

19. That submission is unsupported by the Presenting Officer's note, in which he writes,

> "Social boycott – not persecution/discrimination. Nobody is looking for them"

Mr Hussain said that he had no notes of the hearing. He sought to support the submission by quoting paragraph 31, where the judge writes,

> "The Respondent has accepted that the three Appellants have given a truthful account with respect to the problems they have had in their home area in Pakistan. I accept Mr Malarkey's concession."

20. It is clear however that the judge was referring to the concession in relation to the history of the Appellants and not to anything else. Mr Hussain is recorded as saying that the treatment the Appellant's received should properly be regarded as persecution rather than discrimination but that is not evidence of any concession by the Respondent.

21. Mr Hussain also sought to argue that the judge had erred by not taking into account all of his submissions. Not only was that not pleaded in the original grounds but Mr Hussain was very unclear as to what submissions he said that he made which had not been considered. In any event it is not an error of law for the judge to fail to record each and every submission.

22. Mr Hussain had some difficulty in distinguishing between a re-argument of the Appellants' case, which he did at some length, and the identification of an error of law in the decision. The judge clearly addressed the objective evidence relied upon by the Appellants in some detail, finding that there was no evidence to suggest that, if the Appellants did return to Pakistan to a place other than Rawalpindi, there would be any means of the Khatme Nabuwat discovering that they had returned. He then considered whether they would face persecution throughout Pakistan otherwise than at the hands of local members of the Khatme Nabuwat. The judge took into account the Appellant's personal circumstances and gave reasons for finding that relocation would not be unreasonable.

23. He reviewed the country guidance case law and, whilst he accepted that matters had worsened since 2008, he was not satisfied that Ahmadis who are simply open about their faith would be at risk throughout Pakistan. That was a conclusion perfectly open to him.

24. The judge also considered the HJ argument again in detail. The evidence before him was that the first Appellant did talk to others about his faith but he was not a preacher.

25. Nothing in the case law as it was before Judge Hemingway could have supported the submission, which seems to have been made, that any Ahmadi who suffered local persecution could not reasonably relocate because of discrimination by the state and non-state actors. Clearly there has been some change in the legal landscape since the judge made his decision. It is a matter for the Appellant and his advisers to decide

whether on the basis of the most recent case law a re-application would be appropriate.

Decision

The grounds disclose no error in this determination. The Appellants' appeals are dismissed.

Signed Date

Upper Tribunal Judge Taylor