



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/03640/2015

THE IMMIGRATION ACTS

**Heard at Taylor House (Field Decision & Reasons Promulgated House)
On 7 October 2015** **On 10 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**KHAWAJA IQBAL AHMAD BUTT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Javed, Legal Representative

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

Introductions

1. The present appeal in the Upper Tribunal is a result of a grant of permission to appeal given by Deputy Upper Tribunal Judge Archer on 4 August 2015.

Background

2. The appellant is a citizen of Pakistan born on 3 March 1943. He came to the UK on 15 January 2014 and applied for asylum on 21 March 2014. The basis of his application was that he claimed to fear persecution from the authorities in Pakistan because he is Ahmadi. He also feared that the state of Pakistan adequately to control those who wished to adopt a hostile attitude to those of the Ahmadi faith.
3. He completed a screening questionnaire on 21 March 2014 and was interviewed about his application through an interpreter on 16 January 2015.
4. Essentially, the appellant's case at the time of those interviews and now is that he could not openly proclaim his faith in Pakistan because he had suffered persecution in the past and would continue to do so in the future. His ability to practice his faith had been compromised. Since childhood Muslim clerics had agitated against Ahmadiyya and he had become an easy target for them. In May 2010 as a result of a "meticulously planned attack" by sectarian terrorists on Ahmadi worshipers was carried out. Before the appellant left Pakistan he was forced to leave his job as a lawyer to protect himself and his wife from future attacks. He did not consider that the Pakistani government would help him at all, indeed it positively discriminated against Ahmadis.
5. The respondent refused his application in the light of all the evidence available and dismissed the application on the basis that the appellant's protected human rights were not engaged; the respondent noted that the appellant claimed to be a retired district judge in Pakistan and a prominent member of the Ahmadi community in Sialkot (question 41 in interview). He claims to have lived all his life in that area, residing with his brother prior to his coming to the UK. He claimed that his eldest brother, Khawaja, was attacked in 1988. He also claimed, in reply to question 23 in interview, that he could not openly practise his faith in Pakistan. However, the respondent noted the lack of problems he had experienced as a lawyer with reference to the answer the appellant gave to question 40 in interview.
6. The respondent also considered the claim that the appellant had been informed by third party sources that, as a prominent member of the Ahmadi community he would be targeted, was not accepted. However it was accepted that members of the Ahmadi community suffered "problems practising their faith only in Pakistan" but not that the appellant had provided sufficiently credible evidence as to the alleged third party sources. It was not accepted that the appellant had provided sufficient detail of the people who were alleged to have caused him to be in danger. The appellant had not been able to demonstrate that his life was at risk in Pakistan and, the respondent noted, the appellant's brother, with whom he resided, had not experienced such problems.

7. The respondent considered the appellant was not at risk on return. The respondent also considered whether Section 8 of the Immigration and Asylum (Treatment of Claimants) Act 2004 applied and decided that it did. The appellant had not claimed asylum on entry into the UK and this, the respondent considered, showed that he was a person who feared a genuine risk of persecution. The appellant had not been actively preaching in the UK and she did not consider that he faced any threat to his well-being as a result of any activities since he had been in the UK.
8. The respondent also considered whether the appellant had established any family and private life in the UK but decided that he had spent insufficient time here for paragraph 276ADE of the Immigration Rules to apply. The appellant did not have an automatic right to choose where to pursue his family or private life and there was an insufficient basis for him to be allowed to remain in the UK for that reason.

The Appeal Proceedings

9. The appellant appealed first to the First-tier Tribunal (FTT) on 4 March 2015, stating that the respondent had failed to consider the appellant's right to life under Article 2 of the ECHR. Furthermore, the appellant had suffered harassment, threats and inhuman treatment which crossed the threshold of Article 3 of the ECHR.
10. Further, the appellant claimed, the current situation in Pakistan was unsafe. Religious extremism was rife and religious minorities are treated indiscriminately. This would result, he said, in him being persecuted.
11. First-tier Tribunal Judge Andrew ("the Immigration Judge") dismissed the appeal as he considered the evidence to be insufficient. He fully took account of the oral evidence from the appellant and his son (Noman Ahmad). The Immigration Judge concluded that the appellant could discreetly practise his faith in Pakistan and furthermore he had not left that country in fear of persecution. The Immigration Judge was satisfied having considered all the evidence before him that the appellant would be able to practise his faith in Pakistan as he had done before he came to the UK. The Immigration Judge was satisfied as well that some deception had been used to the ECO in response to question 87 in the interview. This affected the appellant's credibility.

The appeal to the Upper Tribunal

12. The appellant's claim in his grounds that the Immigration Judge had failed to assess the evidence in the light of the country guidance, failed to take account of objective evidence that the Ahmadi Association is highly organised and any activities in the UK were to be monitored by Pakistan. It was necessary for the appellant to be given international protection because he was a devoted Ahmadi and his religious identity would become known. There was insufficient evidence that the appellant could practise his faith discreetly. The evidence pointed to the appellant continuing well

established links and devotion to the Ahmadi faith. These matters should be taken into account by the Upper Tribunal.

13. Upper Tribunal Judge Archer considered the grounds to be arguable and gave permission to appeal.
14. Subsequently, the respondent considered her Rule 24 response. In that document the respondent reiterates that the appellant had been able to practice his faith discreetly in the UK and there was no fear of persecution on return to Pakistan. There was no reason why the appellant should be at risk on return.
15. At the hearing I heard submissions by both representatives. All the grounds of appeal were relied on. Next, the case of **MN** (a country guidance case) was relied on. That case suggests that a “holistic” explanation for an Ahmadi's identity is required. Engaging in discussions and preaching are normally part of this. The appellant was an influential Ahmadi who would bring himself within a category of being at risk. I was referred to page 27 of the appellant's bundle and it was suggested that much of the information in this case was consistent with the **MN** decision. Paragraphs 3-5 of the grounds of appeal set out the guidance in **MN**. The Ahmadiyya Association is a highly organised one capable of providing sophisticated information on members. It was capable of providing confirmation regarding the activities relied on in Pakistan. The evidence as to the Ahmadiyya Association would have been given relevant weight by the Immigration Judge. The evidence suggested the appellant had a devoted attitude to this religion which is indicative of the fact that he could not practice his faith “discreetly”. Having openly declared himself to be an Ahmadi this went to the heart of his case.
16. The grounds also allege the Immigration Judge failed to apply the case of **HJ (Iran) [2010] UKSC 31**. It was submitted he should have asked why the appellant was acting discreetly in the practice of his faith. It was an error of law to treat the appellant as a discrete worshipper when this was in fact not the case. Also, the fact-findings were inadequate. In the event that I was with the appellant in his appeal, it would be possible to remake the decision based on the evidence before the FTT subject to updating that evidence in relation to any activities carried on in the UK since the hearing before the FTT.
17. The respondent pointed out that the appellant's claim was not identical to the claim put forward in the letter at pages 23 – 25 of the bundle. The first-hand evidence at the hearing did not show the appellant in quite the same light. It was submitted that the questions the Tribunal needed to ask itself were:
 - (i) is the appellant an Ahmadi?
 - (ii) It is reasonable for him to return to Pakistan?

(iii) Were he to do so would he be able to practise his faith discreetly?

18. The Immigration Judge looked at the evidence and concluded that there would be no such risk. No error of law had been identified but, if I was against the respondent on this point, I was invited to re-make the decision on the evidence that had been given before the Tribunal below.
19. There were no further submissions by the appellant but I noted that both parties agreed that if an error of law were found a further hearing would be needed to update matters.
20. I reserved my decision as to whether or not there was an error of law and if so what steps should be taken to rectify matters.

Discussion

21. The appellant relies on a letter from the Ahmadiyya Muslim Association of the UK (AMA). That letter suggests that the appellant was a “devout preacher” who “regularly participated in preaching activities”. The appellant's brother, according to the letter, was the district deputy president for the Armir area. He had another brother who was “an advocate” for the Ahmadiyya “community”. According to the documents annexed to that letter there is a growing level of persecution of Ahmadis within Pakistan. Indeed, their persecution is now enshrined in law.
22. During the course of argument I was referred to the case of **MN**. In that case a three judge Upper Tribunal confirmed (see paragraph 2(ii) of the head note) that it has, for some time, been possible for Ahmadis to practise their faith on a restricted basis without infringing Pakistan law. The burden rests on an appellant to show that it is “of particular importance to his identity as an Ahmadi to engage in behaviour ‘in defiance of the legislation’” before he will be regarded as likely to be in need of international protection. In such a case it would be appropriate to enquire of the appellant his intentions as to his faith. Each case will require careful evidential “analysis”.
23. The respondent did not accept the appellant's claimed activities as an Ahmadi in Pakistan (see paragraph 12 of the refusal letter dated 20 February 2015). Nor did the respondent accept that the appellant was at risk on return. At paragraph 16 of her refusal the respondent noted that his brother had not experienced problems. The letter from the AMA was considered by the respondent as part of the evidence in the case but she noted it did not state how the appellant had practised his faith, and at paragraph 18 of her refusal the respondent pointed out that she would not give the evidence concerned much weight. The claimed activities, for example attending Friday prayers, did not amount to very much and were insufficient to place that appellant within an “at-risk” category. It was the respondent's view that the appellant was not a genuine refugee or person in need of humanitarian protection having delayed significantly in advancing his claim and having first come to the UK for reasons

unconnected with his Ahmadi faith. In particular, he stated in answer to question 87 in interview that he wanted to “see his son”. Having arrived on a visa the appellant then decided to make an opportunistic claim for asylum. In any event there was no substantial evidence to support his alleged practice of the faith in Pakistan.

24. The respondent rejected the appellant's case in its entirety. The Immigration Judge pointed out in paragraph 13 of her decision that she had considered the evidence as a whole, but nevertheless had to make an assessment of the reliability of the appellant's account. She also pointed out more than once in her decision that she needed to make an evaluation of all the evidence and ask herself whether it demonstrated an intention on the part of the appellant to practise his faith openly. Having accepted that the appellant was a well-known Ahmadi the Immigration Judge went on to reject the evidence that the appellant preached to any others. Thus he only preached to his relatives or those he knew. Any “chalking” was not directed at the appellant personally but aimed at those of the Ahmadi faith generally. The Immigration Judge shared the concern expressed by the respondent as to the timing and opportunistic nature of the appellant's claim which, by the appellant’s own admission in interview, was motivated by a desire to stay in the UK to maintain contact with his son. The Immigration Judge also expressed a degree of scepticism over the threats allegedly made to the appellant and having considered the letter from the AMA found that the appellant had not left Pakistan because he was in fear of persecution but for other reasons. His activities in the UK were not as significant as had been claimed.

Conclusion

25. The Immigration Judge was entitled to make her own assessment as to the credibility of the appellant's account. She heard both the appellant and his son give evidence. She fully weighed the letter from the AMA into the balance but in the end did not accept that the appellant had come to the UK for genuine reasons. His activities *sur place* were considered (for example at paragraph 25 of her decision) but she found them to be “limited”. The appellant was not thought to have given a wholly credible account of his activities in Pakistan. The fact that he had apparently used deception to the Entry Clearance Officer on his admission to the UK, by claiming to be coming here for a visit when in fact he was coming here to settle, damaged his credibility. Overall, these were findings that the Immigration Judge was entitled to make on the evidence. Her decision was one she was entitled to come to, therefore. The present challenge to that decision before the Upper Tribunal amounts to a disagreement with the conclusions reached by the FTT but I am unable to identify any material error of law.

Decision

26. For these reasons I find there is no material error of law in the decision of the First-tier Tribunal. Accordingly, that decision stands.

27. It follows that the decision of the respondent to refuse leave to remain in the UK remains.
28. No anonymity direction was made by the FTT and this Tribunal makes no such direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury