IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09469/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 10th June 2015	**On 18th August 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ATTIAT UN NOOR ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed, Joules Law
For the Respondent: Mrs R Petersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Upson made following a hearing at Bradford on 18th December 2014.

Background

2. The appellant, who has a dependent daughter, is a citizen of Pakistan born on 9th November 1958. She arrived in the UK on 22nd January 2014 and claimed asylum on the basis of her Ahmadi faith. She has an adult son here who has been here granted refugee status.

3. The judge accepted the evidence that she was an Ahmadi but not that she has had any difficulties as a consequence of her faith in Pakistan, nor that she genuinely feared persecution on return.

The Grounds of Application

4. The appellant sought permission to appeal in detailed grounds which were relied upon by Mr Ahmed at the hearing.

5. First, it is said that the judge misapplied the country guidance case of MN and Others (Ahmadi country conditions risk) Pakistan CG [2012] UKUT 00389. It was accepted in the grounds that the judge had asked himself the right question in stating that he had to resolve the level of the appellant's commitment to her faith, but that he selectively concerned himself with paragraph 22 of MN which states that it has long been possible in general for Ahamdis to practice their faith on a restricted basis either in private or in common with other Ahmadis without infringing domestic Pakistan law. The judge's description of the appellant as a "low level Ahmadi" was erroneous and did not take into account, in particular, of relevant evidence from the Ahmadiya Muslim Association which was not referred to at all during the course of the judge's findings. The letter confirmed that the appellant's home was used as a place for female members meetings and as a prayer centre. Moreover there was no reference to the evidence from the appellant's son who had lived with her in the same house in Pakistan and had given detailed evidence of their activities. He had been found to be credible, having been granted asylum by UKBA. It was also argued that the judge had erred in accepting the respondent's submission that the appellant's asylum claim should be considered on an entirely separate basis from that of her son, that he had inappropriately relied on a lack of a past tangible threat and had made inappropriate findings in relation to her reasons for claiming asylum.

6. Finally, the judge had failed to consider the principles of HJ (Iran) and had failed in his duty to assess the evidence in relation to the Appellant's motive for practising her religion secretly.

7. Permission to appeal was granted for the reasons stated in the grounds by Judge Omotosho on 29 January 2015.

8. The determination was defended by Mrs Pettersen at the hearing.

Findings and Conclusions

9. The grounds acknowledge that the judge's approach to the question of whether the appellant as an Ahmadi would be at risk on return was consistent with the approach by the Tribunal in MN.

10. It is right that the phrase "low level Ahmadi" is not a particularly accurate shorthand for what the Tribunal said in that case, which was as follows:

(i) “An Ahmadi who has been found not to be reasonably likely or wish to engage in behaviour which would infringe domestic Pakistan law would not be at risk. If an Ahmadi is able to demonstrate that it is of particular importance to his/her religious identity to practice and manifest his/her faith openly in Pakistan, in defiance of the restrictions in the Pakistan penal code he or she is likely to be in need of protection.“

11. However, the judge’s approach is not outwith that guidance.

12. First, according to the letter from the Ahmadiya Association, it appears that the appellant was able to practice her faith as she wished in Pakistan without risk of persecution. The letter states that her house was being used for Lajana meetings and as a prayer centre. It goes on to say that the situation would escalate to social boycott because of the close proximity of a non-Ahmadi mosque to her house which would create difficulties, but no mention of whether such a boycott occurred. It also says that she served the community as deputy president of the local ladies organisation from 2008 to 2013 and was secretary for publications from 2010 to 2013.

13. There is no mention of any difficulties which she suffered as a consequence of her activities. Indeed it is not the appellant's case that she herself has suffered persecution in Pakistan as a consequence of her faith. It was a matter for the judge to decide what weight he put on the lack of past persecution. It is relevant to the assessment of future risk.

14. The judge specifically rejected the appellant's claim that it was the kidnapping of her brother-in-law which triggered her decision to claim asylum in the UK. Mr Ahmed criticised the judge for holding it against her that she failed to remember the year of the kidnap, because it is not disputed that it occurred, but that was a matter for him. Moreover the judge was entitled to take into account that the appellant returned to Pakistan in December 2013, after the kidnap had taken place.

15. The appellant has another son who remains in Pakistan and there is no suggestion that he is at risk. The judge was entitled to observe that the appellant was vague when being questioned about what ad happened to her in Pakistan and to note that she had lived, uneventfully, in Rawalpindi for thirteen years.

16. Second, it is right to say that there is no mention of the appellant's son's evidence in the judge’s findings. Mrs Petersen informed me that he was granted status on an entirely different basis i.e. that it was accepted that he had been proselytising in the UK. I therefore conclude, on the basis of the information provided by the respondent, that the appellant's case is wholly distinguishable and accordingly, not a material error for the judge not to have recorded it.

17. Finally, there was absolutely nothing in the evidence to establish that she had been able to practice her faith in the UK on any different basis to the

way she had practiced in Pakistan. Accordingly there can be no breach of the HJ (Iran) principles.

Decision

18. The original judge did not err in law and his decision stands. The appellant's appeal is dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Taylor