



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

Appeal Number: AA/08347/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2016**

**Decision and Reasons
Promulgated
On 25 February 2016**

Before

DEPUTY JUDGE DRABU CBE

Between

M R

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp of counsel instructed by Joules Law, Solicitors
For the Respondent: Ms J Isherwood, Senior Presenting Officer.

DECISION AND REASONS

1. The appellant in this appeal is a national of Pakistan. She was born to Ahmadi parents in Pakistan on 3 August 1963. Following her marriage in 1984 she joined her husband in the UEA in 1987 as he was working in the UEA. Their son was born in July 1998. They also have a daughter who is married and settled in UEA. The appellant and her family lived in the UEA until the appellant's husband was notified on 5 December 2014 that his employment had been terminated. As the right of residence for the appellant and her son was dependant on that of her husband, they considered their options. They did not go to Pakistan to live as they

thought that they would face persecution as Ahmadis there. The family had not lived in Pakistan for twenty-seven years.

2. The family – the appellant, her husband and their son arrived in the United Kingdom on 17 December 2014 and claimed asylum on arrival. The application was refused by the respondent for reasons given in letter dated 11 May 2015. Their appeal against the decision was heard by Judge Sharkett at Manchester on 2 November 2015. At the hearing before him, oral evidence was given by the appellant, her husband their son and the appellant’s brother. For reasons given in his determination promulgated on 1 December 2015, Judge Sharkett of the First Tier Tribunal dismissed the appeals.
3. The appellant sought and obtained permission to appeal to the Upper Tribunal. In granting permission First Tier Tribunal Judge Zucker in his decision dated 6 January 2016 said, “However it is arguable on the basis of the grounds before me that the Judge has misapplied the guidance in **MN [2012] UKUT 00389** and gave insufficient weight to the appellant’s activities in support of her Ahmadi faith when in the UAE.” I note that the grounds for seeking permission to appeal were detailed and extensive and included a strong challenge to the adverse credibility findings made by Judge Sharkett and the Judge’s failure to engage with the claim under Article 8 of the ECHR.
4. I heard submissions from Mr Fripp and Ms Isherwood. Mr Fripp, as expected of a Counsel of his standing and experience, most ably took me through the parts of the determination of Judge Sharkeet as are relevant to the grounds of appeal and concluded by asking me to allow the appeal as the decision was in material error of law. In her turn, Ms Isherwood argued that the reasons given by the Judge for the decision were perfectly adequate and his assessment of evidence had been full and fair. She, in fairness, conceded that the Judge had not given his reasons for finding that the appellant’s activities in the UK had been in bad faith.
5. I asked the parties how would they wish me to dispose off the appeals if I were to find that the determination of Judge Sharkett is in material error of law. Both parties agreed that it would be best to remit the matter to the First Tier Tribunal for a full and fresh hearing. I reserved my decision which I now give with reasons as below.
6. Judge Sherkett found the appellant to be an Ahmadi but used the wholly inappropriate test for determining whether she would be at risk of facing persecution in Pakistan on grounds of her faith. I agree with Mr Fripp and Judge Zucker that the Judge misapplied the guidance in **MN [2012] UKUT 00389**. **MN** decision states, “Such behaviour includes open discourse with others not merely preaching or proselytising” The first ground of appeal is made out. The second issue is the reference point that the Judge used for determining credibility. I note that in paragraph 30 of his determination the Judge states, “The main issue in this appeal is the credibility of the Appellant’s claim that she is in need of international protection.” However,

in determining credibility the Judge has taken little account of the fact that the appellant is being returned to Pakistan and not to the UAE and the impression that the Judge articulated that since the appellant had lived in peace as an Ahmadi in the UAE, her claim that she would be at risk of persecution in Pakistan was not credible. The Judge, with great respect, failed to engage fully and fairly with the evidence of the three witnesses he heard. In paragraph 56 the Judge has said that “despite having been in the UK for approximately 6 weeks by the time she attended her asylum interview she had attended a mosque on only four occasions and by her own evidence had not started to preach to anyone.” The Judge says this in the context of the appellant’s assertion that she regards open practice of her faith and preaching of that faith to others as an important part of her religion. What the Judge fails to give any consideration to is that the appellant was at the time being moved around by the State as an asylum seeker and despite that she had attended the mosque four times in the six weeks’ period. Attendance at mosques for congregational prayers is only once in a week (Friday) and in the circumstances therefore the appellant has demonstrated her serious commitment to her faith by attending four times out of six. The Judge does not appear to have realised that not all Muslim mosques are open to Ahmadis in the UK. The Ahmadis have their own mosques and most towns do not have Ahmadi mosques.

7. The Judge’s conclusions in paragraphs 58 and 63 are without any evidentiary foundation and reasoning. The Judge’s engagement with and analysis of the contents of letter from Ahmadiyah Muslim Association is also seriously flawed (Paragraph 59). The expectation that the letter should have given information about the appellant’s activities as an Ahmadi in Pakistan was wholly unrealistic in that the appellant has not lived in Pakistan for 27 years! The AMA is regarded as a bona fide organisation of Ahmadiyahs in Britain and it does not appear to have been given the weight that its letter in support of the appellants’ claim was given. The Judge does not appear to have taken account of the current situation of Ahmadis in Pakistan. It is certainly not the same as it was in 1987.
8. I allow this appeal and remit it for fresh hearing before the First Tier Tribunal by a Judge other than Judge Sherkett.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
22 February 2016