



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL
APPEAL NUMBER: PA/04976/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 April 2019

Decision and Reasons Promulgated
On: 01 May 2019

Before
Deputy Upper Tribunal Judge Mailer

Between
[S J]

ANONYMITY DIRECTION MADE

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms F Harris, counsel, instructed by Thompson & Co

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Pakistan, born on 17 July 1990. She appeals with permission against the decision of First-tier Tribunal Judge Talbot dismissing her asylum and human rights claims in a decision promulgated on 20 February 2019.
2. She claimed that she faced persecution in Pakistan on account of her religion and her membership of a particular social group, namely women in Pakistan. Her marriage to her husband, Imran Rafique, was not accepted by his family as she is an Ahmadi Muslim. She was verbally, physically and sexually abused by various members of their families in Pakistan when their secret marriage came to light.
3. She also claimed to have been openly practising her Ahmadi faith in the UK. Her husband had also now converted to the Ahmadi faith. On 20 December 2018, she and her husband had a meeting with His Holiness Mirza Masroor Ahmad. On 24 December 2018 she shared a photograph of this meeting on Facebook. This she claims led to her in laws finding out about it [14].
4. On 2 January 2019 her mother in law published a notice of disclaimer of inheritance in "Har Lamha", a Pakistani daily newspaper, the effect of which was to bar her husband from his inheritance.
5. There was also a notice published in the same newspaper on 10 January 2019 regarding their opposition to their son's marriage. In addition, her brother in law has obtained a fatwa from a Sunni seminary declaring both the appellant and her husband to be apostates and infidels, accusing them of engaging in illicit sexual activity [14].

The decision of First-tier Tribunal Judge Quinn

6. Judge Talbot referred to the decision and findings of First-tier Tribunal Judge Quinn promulgated on 14 September 2017. This was an appeal by the appellant and her husband against the respondent's decision date 8 March 2016 refusing their applications for leave to remain. He noted his "very negative credibility assessment" including the making of false statements in visit visa applications [19]. He noted that there was no reference in Judge Quinn's decision regarding their fear of return because either of them were following the Ahmadi faith. It is unlikely that he would have failed to refer to this if it had been put forward [24].
7. Judge Quinn did not believe the husband's claim that he had not known anything about asylum or that he had been misadvised by the previous solicitors. They had changed solicitors and still did not make an asylum claim. He did not find it credible that they would not have made an asylum claim on arrival if they had genuinely feared for their lives. Nor was any medical report produced substantiating the claim that she had suffered torture [19]. Judge Talbot set out the reasons for refusal at [18].
8. Judge Talbot stated at [35], that whilst accepting that the appellant and her husband have formally joined the Ahmadi community in the UK, he was not satisfied that

this was out of genuine conviction, nor was he satisfied that they would have any intention to follow this faith on return to Pakistan, as their primary motivation for their behaviour was to advance their asylum claim.

9. Even if the newspaper postings are genuine, he was not satisfied that these postings alone, which would have been motivated solely by the wish to pursue the asylum claim, would be sufficient to lead to the couple suffering any serious harm, unless they proceeded to be actively engaged in practising and publicly propagating their claimed Ahmadi faith [35].
10. He was not satisfied that it is the intention of either of their families to actively pursue the couple or to cause them serious harm [36]. They had the option of moving to another part of Pakistan. They were both educated and the appellant's husband had substantial business experience.
11. He was not satisfied that the appellant would face very serious difficulties in re-establishing her life in Pakistan where she and her husband have lived for the majority of their lives [38]
12. Ms Harris, who also represented the appellant before the First-tier Tribunal, submitted that the Judge failed appropriately to assess the Facebook evidence and the newspaper articles.
13. The original newspaper articles were produced at the hearing on 4 February 2019. Ms Harris produced them to the Upper Tribunal. This includes the photograph produced of the appellant with her husband and His Holiness Mirza Masroor Ahmad and the declaration that the appellant is Ahmadi. That photograph was published on Facebook.
14. She referred to [32] where the Judge stated that he treats all this recent evidence with "... serious doubts as to its authenticity (including the newspaper articles)". Further, it is highly likely that this evidence has been produced simply as a very last minute attempt to bolster the appellant's asylum claim.
15. She submitted that although the original newspapers containing these articles were provided, the Judge did not make a finding that the articles were never published in Pakistan or that the newspapers have been forged or produced by the appellant. Nor has any reason been given to justify any such implied finding.
16. She referred to appellant's bundle at C434, which shows the photograph in the newspaper published in Sri Lanka of the appellant together with the leader of the Ahmadiyya faith and her husband. That article was published in a newspaper in Pakistan. There is also a large photograph produced at page 30 showing the appellant, her husband and the Ahmadiyya leader.
17. That photograph showing them with the leader of the Ahmadiyya was published on Facebook: C417. There are also comments of a hostile nature identified on that page. This includes comments such as "may you die with Allah's will", "these people are infidels", "liable to be killed".

18. The authenticity of these publications was not challenged.
19. Ms Harris referred to the Judge's finding at [35] that even if the newspaper postings are genuine, he was not satisfied that the postings alone, which are motivated solely by the wish to pursue the asylum claim, would be sufficient to lead them to suffer any serious harm unless they proceeded to be actively engaged in practising that faith. She submitted that the Judge failed to consider this against relevant country information.
20. The Home Office CPIN Pakistan: Ahmadi, June 2018, produced at C28, noted at 6.5.10 that the Ahmadiyya Muslim community explained that whilst propagation of faith was important to them, this took many forms from direct to indirect Tabligh. In fact, the Ahmadiyya Muslim community mentioned that being identified as an Ahmadi in Pakistan is Tabligh itself.
21. Further, the very essence of Tabligh is dependent upon the circumstances. There are some circumstances where it would be direct and open, whilst in others it would be indirect or discreet. She also referred to the section at page 82 of the CPIN, which is headed "societal treatment" where the decision of the Upper Tribunal in MN and others is set out.
22. Societal discrimination and hate speech propaganda against the Ahmadi community is widespread. Further, the exclusion of Ahmadi from non-Ahmadi shops and businesses is set out from 2.4.16 and following. It is noted that societal treatment and attitudes towards Ahmadi may reach the threshold of persecution and/or serious harm depending on its nature and repetition.
23. A person who converts to another faith, or is seen to renounce Islam, can be targeted for blasphemy which carries the death sentence. Pakistani society is in general extremely hostile to converts, with reports of converts being harassed, attacked and tortured.
24. Ms Harris submitted that in that context, the photographs and postings in the newspaper as well as on Facebook are important. This is particularly so having regard to the fact that it is a publication together with the head of the Ahmadiyya group. Even if they were not intending to proselytise, or even assuming that they were being opportunistic, those publications would nevertheless put them at risk.
25. She referred to the fatwa at C414. The marriage is considered as illicit sexual activity. Nikkah of apostate men or women is not permissible at all, no matter that they have the same faith.
26. On behalf of the respondent, Mr Tarlow relied on the Rule 24 response.
27. He submitted that the Judge has given a careful assessment regarding their credibility. The essence of the decision was that the Judge did not accept that they were committed or that the publications were anything more than an attempt to bolster their asylum claim. There is accordingly insufficient evidence to support the asylum claim. Internal relocation is a safe option.

28. Ms Harris submitted in reply that even if it is not accepted that they will proselytise, they will still be subject to being targeted in Pakistan.

Assessment

29. The First-tier Judge was not satisfied that any of the evidence regarding the appellant's experiences in Pakistan can be relied on. This included her Ahmadi background on her mother's side, or the claimed violent persecution suffered by her and her husband at the hands of her in laws.
30. However, with regard to her life in the UK he accepted the supporting evidence from the Ahmadiyya Association that she and her husband formally joined the Ahmadi faith in 2018 and attended meetings and religious events of that organisation. That he found was not out of genuine conviction but rather as an attempt to obtain refugee status.
31. He stated with regard to the recent evidence of Facebook postings and its repercussions, that he gave no weight to the documentary evidence in the form of the religious edict and the notice of disinheritance. Even if the notices were actually posted in the newspaper, this would have been done purely to bolster the asylum claim [33].
32. There had never been any challenge to the authenticity of the Facebook postings. With regard to the newspapers, the originals were produced. The Judge accepted that if they were actually posted in the newspaper or in Facebook, that would have been done to bolster the asylum claim.
33. However, he did not adequately consider the country information which I have set out. The appellant and her husband did not merely make a public declaration of their faith as Ahmadi Muslims, but there was also a photograph published in the newspaper circulating in Pakistan as well as on Facebook showing the appellant together with the leader of the Ahmadiyya organisation.
34. Moreover, as noted, the respondent's guidance on proselytising states at 6.5.10 that the Ahmadiyya Muslim community mention that being identified as an Ahmadi in Pakistan is tabligh itself.
35. Even assuming that their activities may have been opportunistic, there was no contention that the publications did not take place. The issue therefore was whether the publications would create a real risk on return. Being identified as an Ahmadi can be sufficient to cause such risk.
36. In the circumstances, the Judge failed to properly assess whether the impact that the publication of the appellant's faith as an Ahmadi in the Pakistani newspaper as well as the Facebook postings, would give rise to a real risk on return from both the state and non-state actors to impute the Ahmadi religion to the appellant and her husband.
37. In the circumstances I find that the decision of the First-tier Tribunal involved the making of an error on a point of law. The parties agreed that if that decision was

made, the decision should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made.

38. I am satisfied that the extent of judicial fact finding which is necessary for the decision to be re-made is extensive. In the circumstances I find that it is appropriate to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law.

Having set aside the decision, I remit the appeal to the First-tier Tribunal (Taylor House) for a fresh decision to be made.

Anonymity direction made.

Signed

Date 27 April 2019

Deputy Upper Tribunal Judge C Mailer