



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

R (on the application of NJ and YJ) v Secretary of State for the Home Department IJR [2016]
UKUT 00032 (IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

**Heard at Birmingham Civil Justice Centre
On 6 November 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

**THE QUEEN (ON THE APPLICATION OF NJ)
THE QUEEN (ON THE APPLICATION OF YJ)**

Applicants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Applicants: Mr I Palmer instructed by Genesis Law Associates Solicitors Ltd
For the Respondent: Mr V Mandalia instructed by the Government Legal Department

JUDGMENT

Judge Grubb:

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the applicants who have claimed asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the applicants. Any

disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

Introduction

2. The applicants are sister and brother who were born respectively on 6 January 1987 and 24 February 1985. They are both citizens of Pakistan. They arrived in the United Kingdom on 22 April 2008 with their mother and younger sister with leave as visitors. On 23 April 2008, they all claimed asylum. On 27 October 2009 the first applicant's claim was refused. Her appeal was dismissed by the Asylum and Immigration Tribunal on 9 December 2009 and, following the grant of a statutory review, the Upper Tribunal dismissed her appeal on 9 November 2010. She subsequently unsuccessfully applied for permission to appeal to the Court of Appeal and she became appeal rights exhausted on 28 June 2011.
3. The second applicant's claim for asylum was refused by the Secretary of State on 7 October 2009. His subsequent appeal to the AIT was dismissed on 5 November 2009. Following the grant of a statutory review, the Upper Tribunal dismissed his appeal on 17 January 2011. Subsequent applications to appeal to the Court of Appeal were unsuccessful and he became appeal rights exhausted on 28 June 2011.
4. Although the applications of the applicants' mother and younger sister were initially refused and their appeals dismissed, it appears that they were subsequently granted discretionary leave.
5. The applicants made further submissions to the Secretary of State on 14 September 2011 and 4 April 2012. Those further submissions were rejected on 30 January 2011 and 17 April 2012 respectively and considered not to amount to fresh claims.
6. On 30 January 2013 and 28 March 2013, the applicants made further submissions. The Secretary of State rejected those submissions on 26 November 2013 and again considered that they did not amount to a fresh claim. Following a pre-action protocol letter sent to the Secretary of State on 13 January 2014, the Secretary of State issued a supplementary refusal letter on 22 January 2014 affirming her earlier decisions.
7. Judicial review proceedings were issued on 31 January 2014 challenging the Secretary of State's decisions but those proceedings were withdrawn, as I understand it, on the basis that the Secretary of State would reconsider the applicants' further submissions.
8. Those submissions were reconsidered and again rejected in individual decision letters in respect of the first and second applicants on 1 October 2014. It is those decisions which are challenged in this claim.
9. Following a pre-action protocol letter, on 14 November 2014 the Secretary of State responded maintaining her decisions.

10. Judicial review claims were issued on 31 December 2014 challenging the respondent's decision letters of 1 October 2014. On 23 June 2015, HHJ Bidder QC granted both applicants permission to bring judicial review proceedings and directed that their claims be listed and heard together.

The Applicants' Case

11. The applicants claim to be at risk on return to Pakistan because of their religion, namely that they are Ahmadis. Their claims are essentially based upon the same factual matrix.
12. The first applicant claims that she had been subjected to harassment, intimidation and violence by reason of her faith. She claims that she was seriously assaulted in 2006 by a friend of her brother who accused of preaching to his sister. She claims that her family home had been used as a 'mosque' for prayer meetings for Ahmadis. She claims that on 16 February 2007 her family home had been stoned by a mob and that she and her mother were attacked on 22 March 2007 as they were going to the local market. She was injured and was taken to hospital by her father. Thereafter, her family started to receive threatening telephone calls. The prayer meetings ceased because of the attacks and the threats.
13. Thereafter, the first applicant and her family left Lahore (where they lived) and moved to Rabwah in October 2007 where the first applicant continued to work for the Ahmadi community. On 10 January 2008 she was attacked by a group of Muslim women. Her father went missing on 30 January 2008 and had not been seen since then. Her brother, the second applicant, was arrested on 20 March 2008 and she and her mother went to the police station where he was held but were abused and harassed by the police. Her brother was released on payment of a bribe.
14. The first applicant claims that on 30 March 2008, mullahs from the Khatm-e-Nabuwat (the "KN") came to the family home and threatened her family but they left once local Ahmadis intervened. A few days later, the first applicant claims that an article was published in a local newspaper saying that a claim had been lodged in the courts against her family. Fearing persecution and prosecution, the first applicant and her family left their home and went to stay at a friend of her mother's house before arrangements were made for them to leave Pakistan and come to the UK.
15. Following the rejection of her asylum claim, the first applicant appealed to the AIT. Immigration Judge Harris, in a determination dated 9 December 2009, accepted that the first applicant was an Ahmadi. However, he did not accept that the first applicant's home had been used as a 'mosque' although he accepted that it may have been used for "the occasional Ahmadi meeting". The judge did not accept her account that she had been subject to a serious assault as a result of having preached to the sister of a friend of her brother. Further, the judge did not accept that mullahs from the KN had come to the family home and threatened the family as she claimed. Applying the relevant country guidance at the time, the judge concluded that the first applicant was an "unexceptional Ahmadi" and was not as a result at risk of

persecution on return (see IA and Others (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088); MJ & ZM (Ahmadis - risk) Pakistan CG [2008] UKAIT 0033 and KK (Ahmadi - unexceptional - risk on return) Pakistan [2005] UKIAT 00033 and.

16. The first applicant's appeal to the Upper Tribunal was dismissed on 9 November 2010 (DUTJ Alis) on the basis that the judge's findings were properly open to him on the evidence.
17. The second applicant's claim was that he had been persecuted as an Ahmadi. He had lost his job when his employers discovered he was an Ahmadi. In Lahore, he had worked for the Ahmadi Muslim Community in the publication department for the community's magazine. He claims that on one occasion he had been taken to the local police station having been found distributing the magazine and was only released after his money was taken from him and he was warned not to do it again. After his family moved to Rabwah, his father went missing.
18. On 20 March 2008 he was at a medical camp established by the Rabwah Ahmadi community when that camp was attacked by local mullahs and the second applicant was assaulted. After he was treated for his wounds, he claims that he was arrested by the police on the instigation of a mullah who claimed that the first applicant had been preaching. Whilst he was in detention, the second applicant claims that he was beaten and threatened. He was released on payment of a bribe.
19. Like the first applicant, he claimed that on 30 March 2008 mullahs from the KN came to his family house and started threatening him and they only left once the local Ahmadis intervened. Again, like the first applicant, he claims that a local newspaper article was published on 7 April 2008 claiming that he had preached the Ahmadi faith to a well-known local mullah. As a result of this publication, the second applicant along with his family, left Rabwah and subsequently Pakistan.
20. Following the rejection of the second applicant's claim, he appealed to the AIT together with his mother. His appeal was dismissed by the AIT and, following further appeal, the Upper Tribunal (DUTJ Alis) dismissed his appeal in a determination dated 17 January 2011.
21. Judge Alis accepted that the second applicant was an Ahmadi. However, the judge made an adverse credibility finding. He rejected the "core" of the second applicant's account. At para 108 he said:

"In summary, whilst I accept the family may have suffered some harassment in Lahore I am not satisfied that the significant incidents described by them as having occurred actually took place".
22. Further, Judge Alis did not accept what the second applicant claimed had occurred to him (and his family) in Rabwah, including the visit by the mullahs from the KN and the publication of an article in the local newspaper claiming that he had preached the Ahmadi faith. Judge Alis did not accept that the second applicant had preached his faith in Pakistan.

23. In reaching that conclusion, Judge Alis considered a letter from the Ahmadiyya Muslim Association UK (“AMA UK”) which purported to support the second applicant’s account of what had happened to his family and him in Pakistan. In the absence of anyone from the organisation attending the hearing as a witness, and as there was no evidence from Pakistan to support the contents of the letter, Judge Alis did not consider that the letter from the AMA UK assisted the second applicant.
24. Judge Alis concluded that the second applicant had failed to establish that he would be at risk on return to Pakistan and said this at para 122 of his determination:

“I have rejected much of his claims and what I am left with is a male who is an Ahmadi who successfully, without any real problem, followed his religion. He would be able to continue that on his return. I reject his claim that he is an ‘exceptional Ahmadi’ and applying the test in **HJ** above (albeit for gay claims) I am not satisfied he would be at risk of persecution as an Ahmadi”.

The Further Submissions

25. In their further submissions, both applicants relied upon letters from the AMA UK dated 19 January 2014 which listed their activities for the Ahmadi community in the UK. The letter in respect of the first applicant is at pages 129-130 of the bundle. At page 130 is set out the following:-

- “3. According to the information received from the President of our Clapham branch the above-named participates in the activities of her local branch and that of the Association. She has
- a. offered daily prayers regularly, Friday sermons/prayers (02 times per month), one Annual National convention, one gatherings of Lajna Imaillah (Ladies auxiliary organization in the community);
 - b. participated in the preaching programs of the branch, including distribution of the literature/leaflets about the community (that create an awareness of Islam and invite members of the public to the message of the Ahmadiyya Muslim community);
 - c. assisted in organizing local branch’s events including Qur’an exhibitions & preaching stalls (these exhibitions and stalls involves providing basic information to those interested and then inviting anyone with a further interest to other Ahmadi events);
 - d. attended Tabligh Coaching classes; (designed to provide members with knowledge and confidence so that they are able to complete tabligh in the community);
 - e. taken part in the general public welfare program of the branch like Meena Bazar; (to raise funds by selling something on the stalls in some gathering for charity purposes);
 - f. participated in the Charity Walk to raise funds for the local charities;
 - g. performed the duties assigned to her by the community officials;

- h. been working (& still working) as Secretary Tabligh (Preaching) of local ladies organization (Lajna Imaillah)".

The letter is signed by the "Acting Secretary of the AMA UK".

26. As regards the second applicant the letter from the AMA UK is at pages 131-132 of the bundle and at page 132 is set out the second applicant's activities as follows:

"3. According to the information received from the President of our Clapham branch in the United Kingdom the above-named participates in the activities of his local branch and that of the Association. He has

- a. attended congregational prayers 4 times a week, all Friday sermons/prayers, one Annual National convention, one Annual gathering of Khuddam-ul-Ahmadiyya (males between the age range of 15 to 40 years) and branch's general monthly meetings;
- b. taken part in the Charity Walk to raise funds for local charities;
- c. performed the duties assigned to him by the community officials like cleaning of the Mosque, Security duty at Fazal Mosque once a month.
- d. very co-operative with local youth organization (Majlis Khuddam-ul-Ahmadiyya) and performed the duties assigned to him".

27. In their further submissions, the applicants relied upon these letters and also the country guidance case of MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC). That decision superseded the previous country guidance cases, in particular MJ & ZM; KK and IA and Others which were applied in both the applicants' previous tribunal appeals.

28. On the basis of MN and Others, it was argued on behalf of both applicants that they were at risk as Ahmadis as they would not be able to practise openly their faith which, it was said, according to the new country guidance in MN and Others would put them at risk on return to Pakistan. The essence of the submissions was that this issue had not previously been considered in the appeal hearing as the then country guidance required, in effect, an Ahmadi to demonstrate that they were "exceptional" in the sense that they would openly preach or had a high profile in the Ahmadi community in order to establish that they would be at risk on return.

The Respondent's Decisions

29. The respondent's decision letters of 1 October 2014 in respect of both applicants are in similar terms although, when dealing with the relevant AMA UK letter, the decision letters differ to reflect the slightly different content of the AMA UK letters as to each applicant's activities in the UK.
30. I will begin with the decision letter in respect of the first applicant (at pages 87-94 of the trial bundle) which I will set out in more fuller form than that of the second applicant to avoid repetition.

31. Having set out the first applicant's claim that she and her family were being persecuted in Lahore for using their property as a mosque which had been rejected on appeal, the respondent initially made reference to MN and Others and the relevant *Country of Information Report* as follows:

"These further submissions have been considered alongside **MN and Others**. Your attention is brought to para 1.3.6 of the Country Guidance for Pakistan which states that the country guidance case of **MN and others (November 2012) para 119ii** confirms that it has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.

In para 1.3.2 of the Country Guidance it states that **MN and others** relies on whether the person was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. In para 1.3.3 it states that, '*Post-arrival activity will also be relevant. Evidence of this likely to be relevant includes:*

- *confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan; and*
- *confirmation from the local community in the UK where the person is worshipping (**MN and others paragraph 122**)".*

32. The decision then continues by setting out the history of the first applicant's claim, including earlier submissions of letters from the AMA UK. In that context, the respondent referred to the Upper Tribunal's decision in AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 00511 (IAC) which dealt with the proper approach to letters of support from the AMA UK. The respondent then said this:

"It is noted that you previously submitted letters from the Ahmadiyya Muslim Association UK (AMA) which were dated 27 October 2009, 17 August 2011 and 20 December 2012 and confirmed your involvement with the Ahmadi religion in Pakistan. The letter confirmed involvement in the UK.

It is noted that when your appeal was dismissed on 9 November 2009, the IJ took into account a letter from the AMA dated 27 October 2009. However, since your appeal, you have provided additional letters dated 17 August 2011, 20 December 2012 and 19 January 2014 from the AMA. It is noted that information including your Ahmadi involvement whilst in the UK is contained in the letters from December 2012 and January 2014. This corresponds to the case law of MN which states that, '*Post-arrival activity will also be relevant*'.

Our refusal letter of 24 October 2011 states, '*Regard has been given to the letter dated 17 August 2011 from Ahmadiyya Muslim Association UK. It is noted that similar letters were submitted from the same organisation at your family's appeal hearing, which the Immigration Judge went on to consider. You have not provided any evidence to contradict the findings made by the Immigration Judge in regards to the previous letters submitted, for example, why the letters did not conform to the information provided in the guidance submitted, why nobody from the organisation attended at your appeal hearing in support of your claim, or why the information you have now submitted was not before the Immigration Judge at the time of your family's appeal hearing*'.

The letter continues, '*It is acknowledged that you have now submitted a further letter form the Ahmadiyya Muslim Association UK in an attempt to address some of the credibility findings*

raised by the Immigration Judge in regards to the previous letters submitted. However, the letter does not contain any new evidence to support your claim to be at risk on return to Pakistan. Your religion, as an Ahmadi, was not in dispute ... The other letters from the Ahmadiyya Muslim Association UK submitted at your appeal also stated that your family's house was used for congregational prayers and meetings and made financial contributions. However, the Immigration Judge went on to conclude that little weight could be given to these letters. It is therefore reasonable to conclude that the Immigration Judge would have come to the same conclusion with this further letter from the same organisation as he did with the previous letters. Therefore, it is considered that this letter would not create a realistic prospect of success before another Immigration Judge'.

In the letter dated 20 December 2012 the Ahmadiyya Muslim Association state that you served as the secretary of preaching for the females of the Clapham branch. Furthermore, the letter states that you attended congregational prayers, annual gathering of females, annual convention and branch meetings. You have also participated in the preaching programmes of the branch including door to door distribution of leaflets and assisted in holding Tabligh (preaching) stalls. The letter goes on to state that you are a moosi (a member who has promised to follow the faith closely) and for one year you were the secretary Tabligh for the Manchester North branch.

Our refusal letter of 26 November 2013 refers to the letter from the AMA dated 20 December 2012 in which various activities are related concerning your membership of the AMA. Our letter states, *'Your client has also failed to produce any other evidence to further strengthen this claim, and as such it is believed that this is a self serving document designed to enhance her claim for asylum. As the basis of your client's claim is that as an Ahmadi who preaches to others, she fears persecution on return to Pakistan, it is reasonable to conclude your client would have submitted the above documents and letters to show her involvement with the Ahmadi Association in United Kingdom as soon as she had the opportunity'.*

'It is noted that your client became Appeal Rights Exhausted on 28 June 2011. It is also noted that his document was not available at your client's appeal, has only been requested following the dismissal of her appeal and does not state when your client started her claimed activities in the UK. The fact that the letter for the Ahmadiyya Muslim Association UK dated 20 December 2012 about the activities your client participates in relates to the local branch in UK were not mentioned in her previous further representation dated 14 September 2011 and 4 April 2012, further proves that your client has not shown any evidence that she has been actively preaching the Ahmadi faith and participating in community related activities since her arrival in the UK, but only since the recent publication of the MN case law in order to enhance her claim and bring it within the requirements of MN'.

'It is therefore concluded that the documents have been submitted to bolster a weak claim for asylum; as such it is not considered that your client holds a legitimate intention or wish to manifest his faith contrary to the Pakistan Penal Code and openly on return to Pakistan. Preaching or practising in such a way has not been established as of particular importance to your client'.

*'In considering your client's case, reference has been made to the caselaw **AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 511 (IAC)**. In this case the appellant had submitted a letter from the AMA which stated that the appellant's involvement with the AMA in the UK included the appellant observing prayers in congregation regularly, attending the mosque regularly for Friday prayers, preaching to his friends and contacts in London and distributing introductory leaflets about Islam at Tabligh (preaching) stalls. In dismissing the appeal the IJ stated:*

'In a case such as the present where credibility is a significant issue, the more that a letter from the Ahmadiyya Association UK as to an individual's activities here can be supported with specific information the more likely they are to be given greater weight. We would

expect the Association to be in a position to explain the source of the information given in the letter, how the source is able to speak to such matters and what records are kept of the activities referred to in the letter. Overall we are not persuaded by the evidence that there is a reasonable degree of likelihood that the appellant is a spiritually active Ahmadi who is committed to preaching or similar acts of proselytising in Pakistan and has a well founded fear of persecution arising therefore' (paragraph 44).

'Therefore, in light of the above case law even though the AMA have not provided evidence to show what records have been kept to monitor your client's activities in Pakistan and the UK, some weight has been given to the letters dated 20 December 2012. Furthermore, taking into account your client has been in the UK for 5 years and 6 months, the letters from the AMA UK do not show when your client started being actively involved in the Ahmadi faith in the UK. The AMA letters does not identify with any rigour how your client's activities in the United Kingdom were investigated or on what basis they set out and describe those activities.

It is therefore concluded that your client has provided the letter of support dated 20 December 2012 from the AMA UK as an after thought to enhance her asylum claim''.

33. The respondent then turned to the AMA UK's letter of 19 January 2014 which formed part of the basis of the most recent further submissions and said this:

"The letter of 19 January 2014 does not provide any new evidence to support your claim. It claims that you have offered daily prayers, attended one gathering of Lajna Immaillah (Ladies auxiliary organization in the community), assisted in organizing local branch's events including Qur'an exhibitions, attended Tabligh Coaching classes (designed to provide members with knowledge and confidence so that they are able to complete tabligh in the community), taken part in the general public welfare program of the branch like Meezn Bazar (to raise funds by selling something on the stalls in some gathering for charity purposes), participated in the Charity Walk to raise funds for the local charities, performed the duties assigned to her by the community officials and worked as Secretary Tabligh for local ladies organisation (Lajna Immaillah). The letter does not confirm when you began this activities in the UK. It discusses that you have attended only one gathering of Lajna Immaillah, although at that time you had resided in the United Kingdom for almost 6 years.

The letter from the AMA recites information 'according to the information received from the President of our Clapham branch,.' This indicates that the Association has very little personal knowledge of your activities in the UK as an Ahmadi. There is no personal support from the President of the Clapham branch who it is presumed would know you and your Ahmadi activities well. However, the letter gave no reference to when you became actively involved with the AMA when you arrived in the United Kingdom. You had not provided evidence of your AMA activities within this country until the letter of December 2012, issued at a time when you were all appeal rights exhausted.

Your attention is drawn to Para 43 and 44 of AB caselaw which states that, 'There was no evidence before us as to how the Ahmadiyya Association undertakes its inquiries as to an individual's UK activities or on what basis they set out and describe those activities. In so far as this appellant is concerned the lack of any corroborating evidence, such evidence being readily available if it existed together with the contradictions in the evidence before us and what appears in the letter, results in us placing little weight upon the description of the appellant's activities in the UK'.

The letter of 19 January 2014 is not corroborated and offers no new evidence which has not already been considered. It is therefore considered that your submissions in this regard do not create a realistic prospect of success before another Immigration Judge".

34. In respect of the second applicant, the letter (at pages 79-86 of the trial bundle) followed a similar pattern setting out first the second applicant's claim, namely that he fears the KN because he has previously preached the Ahmadi faith followed by reference to MN and Others and para 1.3.2 of the *Country of Information Report* referred to in the first applicant's refusal letter. The decision then continues with a history of the second applicant's claim and previous reliance upon AMA UK letters as follows:

"It is noted that you previously submitted letters from the Ahmadiyya Muslim Association UK (AMA) on 27 October 2009, 17 August 2011 and 20 December 2012 confirming your involvement with the Ahmadi religion within the UK. The AMA letter of 20 December 2012 states that you have, 'attended congregational prayers, annual conventions, annual gatherings of Khuddam and branch's [sic] meetings and functions. Mr J has participated in the preaching programmes of the branch including door to door distribution of leaflets and has assisted in holding Tablih stalls. He has performed sincerely the duties assigned to him by the community officials during annual conventions and various other events of the community. On a number of occasions he has participated in the charity events and has collected funds for Charities. In 2010 he served as an organizer of education for the Khuddam (males under the age of 40 years) of North West region. At present he is serving as the organizer of self-reformation for the Khuddam of Clapham branch in London'.

The letter states that, 'According to the information received from the President of our Clapham branch in the United Kingdom the above-named participates in the activities of his local branch and that of the Association. He has attended congregational prayers 4 times a week, all Friday sermons/prayers, one Annual Nation convention, one Annual gathering of Khuddam and branch's general monthly meetings'. The activities quoted are similar in both letters, although a year separate the letters. The letter of 20 December 2012 refers to 'annual conventions' although the 19 January 2014 letter refers to 'one Annual Nation convention'. It is considered that you attended just one Annual Nation convention between December 2012 and January 2014. As stated, the two letters outline similar activities but the new AMA letter does not refer to any new activities that you have undergone since the letter of 20 December 2012 was considered and refused. The 2014 letter continues by stating that you have, 'taken part in the Charity Walk to raise funds for local charities, performed the duties assigned to him by the community official like cleaning of the Mosque, Security duty at Fazal Mosque once a month. Very co-operative with local youth organization (Majlis Khuddam-ul-Ahmadiyya). It is noted that your activities with the Khuddam's education have diminished since December 2012.

It is noted that the letters dated 27 October 2009 and 20 December 2012 from the AMA have already been considered as a fresh claim and refused. Our letter of 26 November 2013 states that, 'It is noted when your client's appeal was dismissed on 17 January 2011, the IJ took into account a letter from the AMA dated 27 October 2009. However, since your client's appeal, he has provided letters dated 20 December 2012 from the AMA.

The letter dated 20 December 2012 states that your client is serving as the organiser of self-reformation for the Khuddam of Clapham branch. Furthermore, the letter states that your client attended annual gathering of Khuddam (males under the age of 40 years), annual convention and branch meetings. The letter goes on to state that in 2010 he served as an organiser of education for the Khuddam of North West region'.

The letter continues, 'It is not known why your client's activities in the UK were not mentioned in the letter dated 27 October 2009 which was submitted at your client's appeal. Furthermore it is not known why the additional activities mentioned in the letter dated 20 December 2012 were not mentioned in the letter dated 17 August 2011.

With regards to your client's Ahmadi activities in Pakistan, IJ Brookfield noted the following in the determination dated 05 November 2009

'The appellant has provided evidence that his Ahmadi activities in Pakistan comprised of the delivery of the monthly magazine to Ahmadi homes in Lahore assistance at a medical camp near Rabwah on the 20th March 2008 where he handed out free medicine and did not undertake any preaching. The appellant has never claimed he has tried to convert any person to the Ahmadi religion or that he has tried to propagate his religion to any one from outside his own faith. I conclude the appellant has not established he would seek to proselytise on his return to Pakistan and his evidence suggests he is able to use discretion in carrying out his Ahmadi activities. I note the appellant has established he has a well developed sense of self preservation by leaving Pakistan and travelling to the United Kingdom. I am therefore not persuaded that this appellant would attempt to undertake any Ahmadi activities that would bring him to the adverse attention of anyone in Pakistan. The appellant has not provided any evidence to suggest he has any profile within the Ahmadi faith' (paragraph 14(xviii) of the determination).

It is therefore concluded that the documents have been submitted to bolster a weak claim for asylum; as such it is not considered that your client holds a legitimate intention or wish to manifest his faith contrary to the Pakistan Penal Code and openly on return to Pakistan. Preaching or practising in such a way has not been established as of particular importance to your client'.

It is not considered that you have submitted any new evidence within these letters of 19 January 2014 to support your claim for a fresh asylum application".

35. The letter then continues with a reference to AB and an extract from the earlier decision of 23 November 2013 as follows:

"In considering your client's case, reference has been made to the caselaw AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 511(IAC).

In this case the appellant had submitted a letter from the AMA which stated that the appellant's involvement with the AMA in the UK included the appellant observing prayers in congregation regularly, attending the mosque regularly for Friday prayers, preaching to his friends and contacts in London and distributing introductory leaflets about Islam at Tabilgh (preaching) stalls. In dismissing the appeal the IJ stated:

'In a case such as the present where credibility is a significant issue, the more that a letter from the Ahmadiyya Association UK as to an individual's activities here can be supported with specific information the more likely they are to be given greater weight. We would expect the Association to be in a position to explain the source of the information given in the letter, how the source is able to speak to such matters and what records are kept of the activities referred to in the letter. Overall we are not persuaded by the evidence that there is a reasonable degree of likelihood that the appellant is a spiritually active Ahmadi who is committed to preaching or similar acts of proselytising in Pakistan and has a well founded fear of persecution arising therefrom' (paragraph 44).

Therefore, in light of the above case law even though the AMA have not provided evidence to show what records have been kept to monitor your client's activities in Pakistan and the UK, some weight has been given to the letters dated 20 December 2012. Furthermore, taking into account your client has been in the UK for 5 years and 6 months, the letters from the AMA UK do not show when your client started being actively involved in the Ahmadi faith in the UK. The AMA letters does not identify with any

rigour how your client's activities in the United Kingdom were investigated or on what basis they set out and describe those activities".

36. The letter then turns its attention to the letter from the AMA UK dated 19 January 2014 submitted as part of the second applicant's most recent further submissions as follows:

"Likewise, the AMA letter you have submitted from 19 January 2014 were written 'according' to information from the Clapham branch which indicates that the Association has very little personal knowledge of your activities in the UK as an Ahmadi. Again, no reference was given to when you became actively involved with the AMA when you arrived in the United Kingdom. There is no supporting evidence from the Clapham branch of AMA describing your activities whilst in the United Kingdom. You have not at any time confirmed the date when you first became involved with the organization.

You are reminded that our previous letter states that, 'It is noted that the letter from the AMA UK dated 20 December 2012 stating that your client is active in his Ahmadi faith in the UK has been obtained since your client's appeal and it is significant to note that your client has failed to submit the AMA letter along with his previous further submission dated 04 April 2012. Your client has not explained why it has taken so long to produce the evidence. As the basis of your client's claim is that as an Ahmadi who preaches to others, he fears persecution on return to Pakistan, it is reasonable to conclude your client would have submitted the letters to show his involvement with the Ahmadi faith in Pakistan and the UK as soon as he had the opportunity, prior to the promulgation of MN on 05 July 2012.

It is therefore concluded that your client has provided the letter of support dated 20 December 2012 from the AMA UK as an after thought to enhance his asylum claim'.

Your attention is drawn to Paras 43 and 44 of **AB** caselaw which states that, 'There was no evidence before us as to how the Ahmadiyya Association undertakes its inquiries as to an individual's UK activities or on what basis they set out and describe those activities. In so far as this appellant is concerned the lack of any corroborating evidence, such evidence being readily available if it existed together with the contradictions in the evidence before us and what appears in the letter, results in us placing little weight upon the description of the appellant's activities in the UK'.

Finally, the respondent concludes:

"It is therefore considered that your submissions in this regard do not create a realistic prospect of success before another Immigration Judge".

The Grounds

37. The applicants' grounds, which were summarised and relied upon by Mr Palmer in his oral submissions, are as follows. First, the Secretary of State has failed properly or at all to consider MN and Others. Secondly, the respondent irrationally rejected the most recent letters from the AMA UK which provided evidenced detail of the two applicants' activities in the UK and thereby failed properly to consider under MN and Others the relevant questions of whether the two applicants would openly practise their faith in Pakistan or would not do so for fear of persecution.
38. Mr Palmer submitted that the earlier appeal decisions were based upon now outdated country guidance that risk on return was limited to "exceptional" Ahmadis.

39. Mr Palmer submitted that on public law principles the Secretary of State had unlawfully come to the conclusion that the applicants' claim had no realistic prospect of success before a Judge of the First-tier Tribunal on appeal.
40. On behalf of the respondent, Mr Mandalia adopted the composite detailed grounds of defence. He submitted that the "nub" of the case was whether the Secretary of State was entitled to reach the decision she did in relation to the two letters from the AMA UK. He submitted that the Secretary of State had plainly referred to MN and Others and applying AB (especially at [43]–[44]) the Secretary of State was entitled not to give weight to the letters and to conclude that the applicants had no realistic prospect of success before a judge on appeal and that their further submissions did not amount to a "fresh claim".

The Law

41. The relevant law is not in dispute. Para 353 of the Immigration Rules (Statement of Changes in Immigration Rules, HC 395 as amended) defines a "fresh claim" as follows:
- "353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
- (i) had not already been considered; and
 - (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection".
42. In WM (DRC) v SSHD [2008] EWCA Civ 1495 the Court of Appeal set out the proper approach to para 353 and the role of the court or tribunal in judicial review proceedings.
43. First, the Secretary of State has (1) to consider the new material together with that previously submitted and determine whether the material is significantly different from that already considered and (2) to take all the material together and determine whether objectively it creates a "realistic prospect of success" before a judge on appeal. At para [11], Buxton LJ said:
- "The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return ... The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting-point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind".

44. In AK (Sri Lanka) v SSHD [2009] EWCA Civ 447 at [35] Laws LJ said that a “realistic prospect” of success was one which was more than “speculative”.
45. Secondly, the Secretary of State is required to apply “anxious scrutiny” in determining whether there is a “realistic prospect of success” before a judge on appeal.
46. Thirdly, that test is a “somewhat modest” one as the judge will only need to be satisfied that there is a real risk to the individual.
47. Fourthly, the Court of Appeal held that the Secretary of State’s decision could only be challenged on public law principles, essentially on the basis of Wednesbury principles.

Discussion

48. There is no doubt that since the decisions of the Upper Tribunal dismissing each of the applicants’ appeals in November 2010 and January 2011 respectively, the relevant country guidance concerning the risk to Ahmadis on return to Pakistan has significantly changed. No longer does a claimant have to establish that they were an “exceptional” Ahmadi to succeed. The new country guidance in MN and Others establishes that a risk may exist to an Ahmadi who openly (rather than privately) practises their faith.
49. At para 2(i) of the head note in MN and Others, the restrictions on Ahmadis practising their faith is summarised:
 - “2(i) The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one’s religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one’s place of worship as a mosque and to one’s religious leader as an Imam. In addition, Ahmadis are not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.”
50. However, at para 2(ii) of the head note the Upper Tribunal noted that practise of faith in private is different:
 - “2(ii) It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.”

51. At para 3(i) of the head note of MN and Others, the potential risk to those falling within para 2(i) is identified:

“3(i) If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in paragraph 2(i) above, he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution under section 295C for blasphemy”.

Further, following HJ (Iran) and Another v SSHD [2010] UKSC 31, in MN and Others it is recognised at para 3(ii) of the head note that:

“(ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above (‘paragraph 2(i) behaviour’) to avoid a risk of prosecution”.

52. At paras 5 and 6 of the head note, the two questions or steps which must be undertaken or answered are set out.

53. First, in para 5 it is recorded that the decision maker must identify whether the individual is genuinely an Ahmadi:

“5. In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping”.

Of course, in this case it is accepted that both applicants are Ahmadi.

54. Then in para 6 the second step is set out relating to the individual’s intentions or wishes as to their faith if returned to Pakistan:

“6. The next step (2) involves an enquiry into the claimant’s intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph 2(i) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection”.

55. In para 8, the Upper Tribunal entered a cautionary note for those seeking to bring themselves within para 6:

“8. Ahmadis who are not able to show that they practised their faith at all in Pakistan or that they did so on anything other than the restricted basis described in paragraph 2(ii) above are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return, as described in paragraph 2(i) above.”

56. The importance of *sur place* activity in the UK to the issue of an individual’s intentions on return to Pakistan is recognised in MN and Others at para 9 as follows:

“9. A *sur place* claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant’s local United Kingdom Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant’s account as a whole may be relevant to the assessment of likely behaviour on return”.

57. In this case, both applicants in their further submissions argued that they fell within the risk category identified in para 3(i) (read with para 2(i)) of the head note in MN and Others and, despite the adverse credibility findings made in their appeals, on the basis of the letters from the AMA UK sought to argue that their activities in the UK demonstrated that they were Ahmadis who would openly practise or manifest their faith in Pakistan.

58. Having carefully considered the respondent’s two decision letters and the grounds and submissions made by the parties, I have concluded that the respondent’s decisions were unlawful. My reasons are as follows.

59. First, although the respondent does make reference to MN and Others in each of the decision letters, it is far from clear to me that the Secretary of State has fully considered or taken into account the import of the new country guidance and its disavowal of the need to establish that an individual is an “exceptional” Ahmadi in the sense used in AK.

60. In each of the applicants’ cases, the decision letters begin by setting out their respective claims as originally presented to the Secretary of State and on appeal to the Tribunals. There, each applicant, effectively argued that they were “exceptional”. This was based upon the first applicant’s claim that she and her family had suffered ill-treatment as a result of using their house as a mosque and had been visited by the KN as a result of the second applicant’s preaching. The second applicant’s claim, largely similar, focused upon his claim to have been accused of preaching. Whilst these aspects of their claims were rejected on appeal, there were clear findings that they were Ahmadis and that they did pursue their faith. Their respective claims at the time of their most recent submissions and the respondent’s decisions was now that they fell within the risk category identified in MN and Others. It was, therefore, incumbent upon the Secretary of State in applying “anxious scrutiny” to their claim to directly address and to do so explicitly their claim that they were at risk because they would practise their faith in Pakistan in circumstances which fell within the risk category in MN and Others.

61. Secondly, highly relevant to that issue, was the evidence from the AMA UK in their letters of 19 January 2014, which I have set out above, cataloguing the two applicants' activities in the UK. The importance of evaluating sur place activity follows from para 9 of MN and Others.
62. Mr Mandalia submitted that the respondent's adverse view of this evidence was entirely lawful. In effect, he submitted that the respondent had rationally concluded that this evidence could not establish a realistic prospect of success before a judge on appeal. He relied upon the approach in AB at [43]-[44] where the Upper Tribunal said this:
- “43. There is no challenge to that evidence in this appeal, but this appeal concerns not whether someone is an Ahmadi, but the extent to which someone who was not an active member of the faith either in Pakistan or first arriving in the United Kingdom has now become one, since arrest and detention for a serious criminal offence. Whilst it is possible that a combination of his father's murder and his awakening spiritual needs in detention have made the appellant into a fundamentally different person, we must also be alert to the possible re shaping of his asylum claim in the light of the MN decision. We have found the appellant's own testimony written and oral not to be persuasive; although we found Mr Zahar to be a credible witness we have found the limited evidence he could give about the appellant's personal commitment and activities significant. The 6th June letter does not identify with any rigour how this appellant's activities in the United Kingdom were investigated. Much of what is said is reportage and assertion and the evidence before us does not sustain those assertions to the extent that it appears that some may be in error: for example the appellant preaching to contacts, leafleting in Surrey and elsewhere each week. There was no evidence before us as to how the Ahmadiyya Association undertakes its inquiries as to an individual's UK activities or on what basis they set out and describe those activities. In so far as this appellant is concerned the lack of any corroborating evidence, such evidence being readily available if it existed together with the contradictions in the evidence before us and what appears in the letter, results in us placing little weight upon the description of the appellant's activities in the UK as set out in the 6th June letter.
44. In a case such as the present where credibility is a significant issue, the more that a letter from the Ahmadiyya Association UK as to an individual's activities here can be supported with specific information the more likely they are to be given greater weight. We would expect the Association to be in a position to explain the source of the information given in the letter, how the source is able to speak to such matters and what records are kept of the activities referred to in the letter”.
63. In that case, the Upper Tribunal was not persuaded that the evidence showed a “reasonable degree of likelihood” that that appellant was a spiritually active Ahmadi who preached or carried out similar acts or proselytising in Pakistan.
64. In my judgement, the Secretary of State was not entitled to conclude that, in effect, a judge on appeal could not accept that the evidence of the two applicants' activities in the UK was first, established and, secondly, indicative of how they would carry on their spiritual lives as Ahmadi in Pakistan. A judge on appeal would, no doubt, take into account, as did the Secretary of State, the history of the applicants' claims and the timing of submission of supporting letters from the AMA UK. The judge would also, no doubt, take into account the provenance of the information set out in

the letters. Mr Mandalia submitted that it was not sufficient simply to repeat in the letters the information obtained from the president of the Clapham branch. He pointed out that Judge Alis, in respect of the second applicant's appeal, had rejected reliance upon supporting evidence from the AMA UK presented by the second applicant in part because of its provenance. Nothing in AB is inconsistent with the AMA UK's letters in this case being entitled to some weight: they are relatively detailed and the information is sourced. Further, the AMA UK's letters are less likely to be persuasive on past events in Pakistan than they are in relation to matters in the recent past and currently in the UK. In the earlier appeal, Judge Alis was concerned with the credibility of the second applicant's claim in respect of events in Pakistan. Here, the respondent was concerned with the credibility of the applicants' claims for activities in the UK and the implications of that for their behaviour on return to Pakistan.

65. In my judgement, the Secretary of State has failed to give 'anxious scrutiny' to all the evidence in concluding, in effect, that there was no realistic prospect that a Judge would accept the evidence from the AMA UK about the applicants' activities in the UK and, taking that material into account, would find that there was a real risk that the applicants would openly practise and manifest their faith in Pakistan and as a consequence, following MN and Others, be at real risk of persecution in Pakistan.
66. Standing back from the detail of the submissions, there is no doubt in my mind that the applicants' claims based upon MN and Others have not been fully and properly considered yet. That has, no doubt, resulted from the "shifting sands" of the country guidance in respect of Ahmadis in Pakistan. Both applicants are entitled to have their claims properly and fully considered.

Decision

67. For these reasons, the claims succeed. The respondent's decisions of 1 October 2014 in respect of both applicants were unlawful. The appropriate remedy is that both decisions are quashed.

Signed

A Grubb
Judge of the Upper Tribunal