



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02862/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 5th March 2015

Decision & Reasons Promulgated
On: 3rd November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Nasira Rasheed

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr O’Ryan, Counsel instructed by the Greater Manchester
Immigration Aid Unit

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 11th November 1940. She appeals with permission¹ the decision of the First-tier Tribunal (Judge Lever) to dismiss her asylum and human rights appeal².

¹ Permission granted on the 4th August 2014 by First-tier Tribunal Judge Molloy

² The appeal is brought against a decision to remove the Appellant pursuant to s10 of the Immigration and Asylum Act 1999 dated 22nd April 2014

2. The basis of the Appellant's case is that she is an Ahmadi who has and will suffer persecution in Pakistan for reasons of her religious belief. The past persecution alleged included having death threats, having members of her family assaulted and their property attacked and stolen. She claims that whilst living in Pakistan she was open about her faith and would speak about it to other women in her neighbourhood.
3. The Respondent rejected the claim and gave her reasons for so doing in a letter dated the 14th April 2014. It was not accepted that the Appellant had ever "preached" (ie advanced the Ahmadi faith to friends and neighbours) because the Appellant had been unable to correctly answer detailed questions about Ahmadi history and theology that were put to her at interview. The Respondent did not find her level of knowledge commensurate with that of someone who had been preaching. Further it was noted that the Appellant's passport identified her as a Muslim rather than "Ahmadiyya" or "Qadiani" which the Pakistani passport authorities would have recorded if she were Ahmadi. As to the Appellant's account of her past persecution by Khatme Nabuwaat and others, the Respondent found it to be vague and contradictory.
4. When the matter came before the First-tier Tribunal Judge Lever had an opportunity to hear oral evidence from the Appellant and her son. Applying the lower standard of proof it was accepted that the Appellant is Ahmadi but it was not accepted that she had openly "preached" or had suffered any past persecution as a result of her faith. A number of negative credibility findings were made about the Appellant. The Tribunal found that her "account and examples of discrimination or persecution were virtually non-existent" and that for most of her life "she has been able to live without much difficulty or problem within Pakistan". The appeal was dismissed.

Error of Law

5. The written grounds of appeal are that the First-tier Tribunal had erred in the following material respects:

- i) *Failing to take relevant evidence into account.*

Paragraph 26 of the determination indicates that the Tribunal thought the account of difficulties in Pakistan began in 2012. Paragraph 33 appears to indicate that the Tribunal was conducting its risk assessment on the basis that nothing had happened to her prior to that date. The determination notes that the Appellant had "provided little or nothing by way of example or detail concerning her alleged preaching over many years" and that any examples of persecution or discrimination were "virtually non-existent". The Appellant submits that these comments suggest that the Tribunal has failed to address a large part of the evidence, which concerned instances of the Appellant advancing her faith, of suffering discrimination, societal hostility and persecution as far back as 1996.

ii) *Failure to apply MN v SSHD (Pakistan) CG [2012] UKUT 00389*

Because the Tribunal did not consider the evidence about how the Appellant had engaged in preaching in the past, its finding that she was unlikely to do so in the future was flawed.

iii) *Error of fact amounting to an error of law.*

At paragraph 27 the determination appears to conflate two different incidents described in the account and conclude that the Appellant had changed her evidence about an incident that occurred in October 2012 to say that it happened in May 2012. This was an error of fact and it led the Tribunal to make unfair findings

iv) *Failure to give adequate reasons*

It is submitted that in reaching negative credibility findings the Tribunal has given irrational or otherwise inadequate reasons for rejecting the account.

6. The Respondent accepted that the determination contains an error of fact but it was submitted that this did not infect the reasoning overall. It was submitted that the First-tier Tribunal has given good reasons for rejecting the Appellant's account concerning the incident that led her to flee from Pakistan, and that there was no error in characterising the Appellant's evidence as "vague" because it was.
7. On the 13th November 2014 I heard further oral submissions on whether the making of the decision involved an error of law. In a written decision dated 19th November 2015 I found as follows:

"I deal first with the alleged error of fact.

At paragraph 26-27 the determination discusses an amendment to the Appellant's account, made in her witness statement. At interview the Appellant had mentioned two incidents. One was when her son-in-law had been beaten up and his property stolen. The other was when she was personally threatened, spat at and verbally abused by a "mullah". The interview transcript shows that both these incidents are said to have occurred in October 2012. The determination records that the Appellant sought to amend this evidence in her witness statement, stating that the "threatening incident" in fact occurred in May 2012. The Appellant contends, and the Respondent accepts, that the Tribunal was here mistaken. The Appellant has consistently stated that she incident where she was personally threatened occurred in October 2012. Her witness statement changed the date of the assault on her son-in-law, not the date of her own assault.

This error of fact is only an error of law if it can be shown that it led to a material unfairness. I find that it is clear from paragraph 27 that the mistake as to the date formed part of the Tribunal's risk assessment. Although the Tribunal attached no weight to the fact that the Appellant had changed her evidence, it was thought material because this incident was said to be the catalyst in her deciding to leave Pakistan. If the incident was in May rather than October it would have meant that she had "remained in Pakistan for several months thereafter without further

incident or difficulty". I find that this error of fact did therefore infect the overall risk assessment.

The central complaint, contained in grounds i) and ii), is that the determination fails to address a good deal of evidence given by the Appellant. Mr O’Ryan has set out in detail the evidence upon which he relies to rebut the findings in the determination that the account contained “little or nothing by way of example” about the Appellant’s faith and was similarly scant in terms of persecution. He points, for instance, to the Appellant’s claim that her door was marked “atheist” and that graffiti was sprayed indicating that it was lawful to kill the occupants³; that Khatme Nabuwaat organised a ‘social boycott’ against the family and orchestrated a hate campaign which included death threats being put through the door⁴; that she and her husband were regularly confronted in the street by Sunni extremists during the 1990s; that stones were thrown at the house and rubbish left at the door⁵. The Appellant had also consistently stated that she had been “preaching” in Pakistan for a long time and that she had been doing this, and suffering the consequences, when her husband was alive⁶ (her husband died in 1996). After her husband died she continued to preach to local non-Ahmadi women under the direction of the lajna jamaat⁷. This had led to Khatme Nabuwaat telling her to desist otherwise they were going to set fire to her home and kill the whole family⁸. In her interview the Appellant was asked about why she persisted in preaching in these circumstances:

“Q45: Was he the only person in your family who was preaching?

A: no, I was doing that as well. Him and me.”

Q46. When did you start preaching?

A: For a long time I've been telling my neighbours about my religion.

Q47. Roughly how long?

A: Since I grew up, I used to tell other people about my religion.

Q48. What did you preach to people?

A: We are proper and right Muslims.

Q49: How did you decide who to preach to?

A: To the people who are my neighbours living in my locality and I thought they would listen to me.

...

Q131. Did you preach to anyone other than your neighbours?

³ Screening interview at 4.1 [A8]; Statement of Additional Grounds ‘SAG’ para 5 [C3]

⁴ SAG at para 3 [C2], Witness statement (23.5.14) para 9

⁵ SAG at para 7 [C3]

⁶ See Interview under caution (17.8.13) at [B2]; SAG at para 3 [C2]

⁷ SAG para 7 [C3]

⁸ SAG para 9 [C4], Witness statement (23.5.14) para 11

A: No, only the neighbours. But also if I had met other persons I would tell them as well.

Q132: Please explain what you mean by other persons?

A: Neighbours and if I went to visit someone.

Q 133: Is it important to you to preach?

A: Yes, when we take BAIT, a promise, we promise we will pass our religious message to other people."

In her witness statement she explains the kind of conversations she was having:

"When I say that I used to preach our neighbours about the Ahmadi faith I mean that I used to address the main problems that Muslim extremists have with our faith, explain the differences between our faith and why we are Muslims as well. I tried to change people's perception of our faith based on Muslim extremist interpretation. I used to speak about this to women who were our neighbours who I met in our house or I was invited to go to their house. I would only speak to people that I knew who were friendly towards me. They were not many as most of the Muslims would boycott us and refuse to have anything to do with us. I used to tell them that we are Muslims as well and we pray as well five times a day, we read the Koran, we go on pilgrimage to the Saudi and on Haji the basic principles of Islam are the same. I tried to explain to them about our belief that the Imam Mehdi has come already and why we believe he came. Most common accusation against our Mahdi is that we are infidels because we believe that Imam Mehdi came whereas the other Muslims believe that he has yet to come. They see this as an insult to the Prophet Muhammad who is in their opinion the last prophet⁹.

It would seem from paragraphs 8-20 of the determination ('The Proceedings – Evidence') that the focus of enquiry at the hearing was the most recent events that had allegedly led the Appellant to leave Pakistan. That is understandable. However it would seem from paragraphs 24 on ('Decision and Reasons') that this has distracted the Tribunal from assessing the evidence about what might be called the 'general' harassment and persecution the Appellant claims to have endured for much of her life. Because the determination is almost exclusively concerned with the 'catalyst event', to which I return below, there is no consideration given to the material set out in Mr O'Ryan's grounds. At paragraph 24 it is noted that the Appellant claims to have preached over a significant amount of time, but the risk assessment begins at paragraph 26 which opens "she has claimed threatening and abusive behaviour from others directed against herself and her family from at least 2012 onwards". This would appear to confirm that the Tribunal has not had regard to the parts of the account going back to the 1990s. This then led to the findings that she had provided no examples and that the account of problems was "virtually non-existent". Grounds i) and ii) above are made out.

The final ground deals with the central findings in this determination. These are concerned with the Appellant's claim that in approximately January 2013 she had

⁹ Witness statement 23.5.14, para 11

arranged for some Ahmadi books to be sent to a relative in Quetta. Someone who was assisting her with the packing had accidentally included a copy of the Qur'an in the parcel. It had been opened by someone at the shipping company who had become suspicious about it. Local Mullahs were made aware of this and deemed it an insult to Islam. They threatened the Appellant and visited her home looking for her. The grounds make various criticisms of the reasons Judge Lever gives for his findings on this issue. Overall I do not find these criticisms to be well founded. At paragraph 31 the determination sets out eight reasons why the account is not believed. It may be that some of them would not, in isolation, stand up to scrutiny, but taken cumulatively they provide a sound basis for the Tribunal to have rejected this part of the claim. These findings are preserved".

8. Following this written decision on 'error of law' I directed that the decision in the appeal would be remade by me in the Upper Tribunal, dealing only with the "historical" claims of persecution and the Appellant's evidence as to her propensity to preach. At the November 2014 hearing I had been informed by both parties that the Appellant's daughter, son-in-law and three granddaughters¹⁰ had been recognised as refugees. Since she lived with them in Pakistan and a large part of her claim overlaps with theirs, the parties agreed that these grants would likely have some bearing on the Respondent's attitude towards this Appellant. It was therefore agreed that the re-making of this matter would be adjourned until the 30th January 2015 when it is listed 'For Mention Only'. This gave the Respondent an opportunity to review the decision in this matter.
9. On the 26th January 2015 the Respondent applied to have the hearing of the 30th January adjourned. This was because due to "significant resource issues" the Respondent had been unable to look again at the Appellant's case. The hearing was adjourned and relisted for mention on the 5th March 2015. At that hearing Mr McVeety initially applied to have the matter adjourned again. The Respondent had still not reviewed the matter. The HOPO at the 'error of law' hearing, Mr Smart, had sent the file to the correct team, but they had unfortunately sent it on to the wrong unit in Newcastle. It had from there been sent back to the correct place but not in time to have the Appellant's asylum refusal reviewed.
10. Mrs Rashid is approaching 75 years of age. She is not in the best of health, and is understandably anxious to have her appeal determined, or her case otherwise resolved. In light of these matters Mr O'Ryan invited me to proceed to re-make the decision in light of the accepted facts and country guidance. Mr McVeety had no objection to that course.
11. I apologise to both parties for the delay in promulgating this decision.

The Re-Made Decision

12. The First-tier Tribunal found as fact that the Appellant is Ahmadi. Her daughter, son-in-law and granddaughters have all been granted refugee status consequent to

¹⁰ Their grant of refugee status was evidenced by way of a letter from the Respondent dated 31st July 2014.

their claims for asylum, based on a factual matrix closely related to that advanced by the Appellant in her own claim.

13. The extant country guidance is MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC). The headnote reads as follows:

- “1. This country guidance replaces previous guidance in MJ & ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 00033, and IA & Others (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088. The guidance we give is based in part on the developments in the law including the decisions of the Supreme Court in HJ (Iran) [2010] UKSC 31, RT (Zimbabwe) [2012] UKSC 38 and the CJEU decision in Germany v. Y (C-71/11) & Z (C-99/11). The guidance relates principally to Qadiani Ahmadis; but as the legislation which is the background to the issues raised in these appeals affects Lahori Ahmadis also, they too are included in the country guidance stated below.
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.
 - (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.
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.
 - (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.
4. The need for protection applies equally to men and women. There is no basis for considering that Ahmadi women as a whole are at a particular or additional risk; the decision that they should not attend mosques in

Pakistan was made by the Ahmadi Community following attacks on the mosques in Lahore in 2010. There is no evidence that women in particular were the target of those attacks.

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.
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.
7. The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to engage in paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
8. Ahmadi 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.
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.
10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile."

14. The Appellant has already shown herself to be Ahmadi. I therefore begin my assessment at the second stage set out above. This means that the alternative questions I must address are therefore whether:
- a) The Appellant is an Ahmadi who would genuinely wish to engage in “paragraph 2(i) behaviour” which includes but is not limited to “holding open discourse about religion with non-Ahmadis”, “openly referring to her place of worship as a mosque” or to her religious leader as an “imam”, or to her religion as “Islam”.
- OR whether
- b) She cannot meet that test but is nevertheless reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile.
15. In addressing these questions I remind myself that the burden of proof rests on the Appellant and that the standard of proof is the relatively low “reasonable likelihood”.
16. The record of the Appellant’s screening interview is dated 5th August 2013, her asylum interview 29th August 2013; her statement is dated 23rd May 2014. I note that in all of these she quite naturally refers to herself as a “Muslim” and her place of worship as a “Mosque”¹¹. She has consistently stated that her son-in-law Ahmed Nauman Khan was the General Secretary of the Ahmadi organisation in their area of Karachi¹². In the absence of any evidence to the contrary I accept that this was a material fact advanced by him in his own asylum claim, and accepted, by the Respondent. It is certainly a claim supported by way of letter from the Ahmadiyya Muslim Association UK dated 2nd March 2013. As set out above (at page 5) the Appellant has explained that whilst in Pakistan she considered it an important part of her faith to talk to friends and neighbours who were not Ahmadis about her faith, and to try and dispel any prejudices that they might have about it. In light of the evidence overall I see no reason to reject that part of her account. She has not sought to exaggerate or embellish that part of her evidence and on the lower standard of proof I accept that it is true. I note the evidence of the Ahmadiyya Muslim Association UK that she continues to be active in the community here. That is consistent with her having undertaken that role in Pakistan.
17. The Appellant’s husband died in 1996. She is now part of the household of her daughter and son-in-law, both of whom have been recognised as being at risk for reasons of their religious belief in Pakistan. I accept her evidence that she would talk to neighbours etc about her faith and that she did so because she took a “bayt”¹³, a promise that she would pass her faith on to others¹⁴. Her involvement was not as a community leader or overt preacher but I am satisfied that it is reasonably likely that

¹¹ See for instance 1.9 screening interview, Q29 of asylum interview, paragraph 4 witness statement

¹² See for instance Q40 asylum interview record, paragraph 11 witness statement

¹³ See paragraph 199 of MN and Others

¹⁴ Q133 asylum interview

her behaviour when in Pakistan did in the past, and would in the future, amount to the behaviours described by the Upper tribunal in paragraph 2(i) of the headnote to MN and Others. She therefore qualifies for refugee status.

Decisions

18. The determination of the First-tier Tribunal contains errors of law and it is set aside.
19. I re-make the decisions in the appeal as follows:
“The appeal is allowed on asylum grounds.
The Appellant is not entitled to humanitarian protection because she is a refugee.
The appeal is allowed on human rights grounds”.
20. I make no direction for anonymity. There was no application for such an order and on the facts I see no reason to make one.

Deputy Upper Tribunal Judge Bruce
10th May 2015