



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00053/2016

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 3 August 2017

Decision & Reasons Promulgated  
On 8 August 2017

Before

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**SHARIF IFFAT**  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan (counsel) instructed by Thomson & Co, solicitors  
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Carroll promulgated on 31/01/2017, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 03/06/1973 and is a national of Pakistan. On 15/12/2015 the Secretary of State refused the Appellant's protection claim.

## The Judge's Decision

4. The appellant entered the UK on 25 June 2015 as a visitor. The appellant applied for asylum on 10 August 2015. The respondent refused that application on 15 December 2015. The appellant appealed against that refusal. In a determination promulgated in July 2016 her appeal was dismissed. She appealed to the Upper Tribunal successfully. On 20 September 2016, the appeal against the respondent's decision dated 15 December 2015 (to refuse her protection claim) was remitted to the First-tier tribunal for a fresh decision on all issues. First-tier Tribunal Judge Carroll ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 23/05/2017 Judge Andrew granted permission to appeal stating

2. It is arguable that in coming to his conclusions the Judge did not take account of all the evidence before him including letters from Ahmadiyya Muslim Association contained in the appellant's bundle for the first hearing of her appeal.

3. Further, it is arguable that in coming to his findings the Judge did not correctly apply the guidance in MN and others [2012] UKUT 00389 (IAC)

4. I find that there are arguable errors of law in the decision.

## The Hearing

6. (a) For the appellant, Mr Khan moved the grounds of appeal. He explained the procedural history of this case. Because there have already been two hearings before the First-tier, there are two bundles of documents. He told me that at [18] and [19] of the decision the Judge refers to one letter from the Ahmadiyya Muslim Association UK, dated 7 January 2017. He told me that the Judge had failed to take account of the four letters from the Ahmaddiyya Muslim Association UK, two of which can be found in the appellant's bundle prepared for the hearing before the First-tier in 2016, one is in the respondents bundle at E9, the fourth (the one referred to by the Judge) dated 7 January 2017 is in the appellant's bundle prepared for the hearing on 20 January 2017.

(b) Mr Khan told me that, because the Judge had not considered each of the four letters, the Judge had failed to take account of a material fact. He told me that the appellant had referred to each of the four letters at paragraphs 11 and 12 of the witness statement prepared for the hearing before the Judge on 20 January 2017.

(c) Mr Khan then moved to the second ground of appeal. He told me that at [23] of the decision the Judge considers the appellant's activities in the UK as a sur place

claim. He told me the Judge was incorrect to do so. He took me to [4] of the Judge's decision, where the Judge quotes from the appellant's skeleton argument. He told me that the appellant's activities in the UK are indicative of the manner in which she will conduct her life if returned to Pakistan. Relying on paragraph 5 of MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389(IAC). Mr Khan told me that the Judge has considered the appellant's activities in the UK in the wrong context.

(d) Mr Khan then moved to the third ground of appeal were told me that the judge failed to make findings on material aspects of the case. He told me that the facts and circumstances of this case fall within the discussion at 2(i) of MN and that the judge had failed to consider the appellant's evidence contained in the answers to the questions asked at asylum interview. He told me that the judge had five consideration to the effect of proselytising in preaching, when the appellant's inability to pursue her religion in Pakistan is a relevant consideration.

(e) Mr Khan urged me to allow the appeal and set the decision aside.

7. For the respondent, Mr Petterson told me that the decision does not contain errors, material or otherwise. She told me that no emphasis had been placed on the older three letters from the Ahmadiyya Muslim Association UK, and that, as these had not been drawn to the attention of the Judge, the Judge could not be criticised. She took me to [12] of the decision and reminded me that the Judge found that the appellant has departed from a claim to be specifically targeted by KN. At [13] the Judge quotes from the appellant's asylum interview record and at [15] the Judge records that the appellant retracts an aspect of her claim. Ms Petterson told me that the grounds of appeal failed to grapple with the reasons the Judge gave for rejecting the appellant's claim. She urged me to dismiss the appeal and to allow the Judge's decision to stand.

### Analysis

8. The first ground of appeal is that the Judge failed to consider material evidence before reaching his conclusion. At [18] and [19] of the decision, the Judge clearly considers the letter from Ahmadiyya Muslim Association UK dated 7 January 2017. There are three other, earlier, letters from Ahmadiyya Muslim Association UK.

9. The first letter from Ahmadiyya Muslim Association UK is dated 20 November 2015 and can be found in the respondent's bundle. It is a very brief letter which just confirms that the appellant is a member of the Ahmadiyya Muslim community. The letter goes on to say that a process is to be followed at the end of which

...an appropriate letter will be sent to the Home Office.

10. The second and third letters are in the appellant's bundle prepared for a hearing on 15 June 2016. The second letter is dated 25 May 2016. It confirms that the appellant attended sermons/players; attended general meetings; attended an annual gathering and participated in a Quran exhibition; & that she has followed the Ahmadi faith and participated in acts of charity.

11. The third letter is dated 9 December 2015. It confirms that the appellant is an Ahmadi Muslim by birth, that she has adhered to that faith and follows the tenets of that faith. The letter confirms aspects of her participation in the Ahmadi community in the UK. The letter then goes on to rehearse the generalised difficulties in practising the Ahmadi faith in Pakistan.

12. The Judge clearly takes account of the letter from Ahmadiyya Muslim Association UK dated 7 January 2016. That letter confirms that the appellant is a member of the Ahmadi faith, and participates in faith-based activities in the UK. The letter goes on to refer to the difficulties faced by Ahmadi Muslims in Pakistan, and refers to objective materials.

13. The earlier three letters from Ahmadiyya Muslim Association UK add nothing to letter dated 7 January 2016. Is true that the Judge does not refer to the earlier three letters, but to do so would simply repeat the evidence contained in the letter of 7 January 2016, which the judge manifestly takes account of at [17] and [18] of the decision. The fact that the Judge has not mentioned three repetitive letters does not mean that the Judge has failed to consider material evidence. At [17] and [18] the Judge clearly focuses on material evidence in a succinct manner. There is no substance in the first ground of appeal

14. The second ground of appeal says the Judge has failed to follow the case of MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389(IAC).

15. In MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389(IAC) the Tribunal held that (i) 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; (ii) (a) 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) (b) 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; (iii) (a) 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 (ii)(a) 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; (iii)(b) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph (ii)(a) above ("paragraph (ii)(a) behaviour") to avoid a risk of prosecution; (iv) 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; (v) 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; (vi) 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 (ii)(a) 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; (vii) 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 (ii)(a) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation; (viii) 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(a) above; (ix) 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; (x) Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(a) 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.

16. In FA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 763 it was held that when considering the right to asylum of a national of Pakistan of the Ahmadi faith, the First-tier Tribunal had erred by failing to address the findings made in the most recent country guidance case. The Upper Tribunal had been entitled to find that internal relocation was available to the Claimant. The Court of Appeal effectively endorsed and followed MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 389 (IAC), recognising that it was possible to identify two broad categories of Ahmadis. The first category was those who felt compelled to manifest their faith, if necessary in contravention of the Pakistan Penal Code, and the second was those who were content to live quietly and practise their faith in private. Those who openly practised their Ahmadi faith were acknowledged as being likely to need protection, while those who practised their faith on a restricted basis either in private or in a community with other Ahmadis, without infringing the domestic law of Pakistan, were not.

17. At [12], [13] and [14] of the decision, the Judge makes it clear that by January 2017 the appellant's claim was said to be a fear because of the general situation an Ahmadi Muslim faces in Pakistan rather than that she had been singled out and targeted. At [15] the Judge sets out the appellant's activities as an Ahmadi in Pakistan. After discussing competing strands of evidence, the Judge finds at [23] that the appellant has exaggerated aspects of the case, and that the appellant does not have a prominent role in the Ahmadi community in Pakistan.

18. At [24] the Judge takes account of those findings and specifically finds that the appellant will not practice and manifest her faith openly in defiance of the Pakistan penal code and so will not engage in behaviour described in paragraph 2(i) of the headnote in MN.

19. There is no merit in the second ground of appeal. The judge has clearly followed the guidance in MN. The Judge has made findings of fact which the appellant does not like and disagrees with, but they are findings of fact which were well within the range of findings reasonably open to the Judge to make. The Judge has clearly taken a holistic view of each strand of evidence before reaching those findings. Having reached those findings, the Judge manifestly takes correct guidance in law.

20. The third ground of appeal amounts to nothing more than a disagreement with the facts as the Judge found them to be and the weight that the Judge gave various strands of evidence.

21. In Green (Article 8 – new rules) [2013] UKUT 254 (IAC) the Tribunal said that "*Giving weight to a factor one way or another is for the fact finding Tribunal and the assignment of weight will rarely give rise to an error of law*". In the decision promulgated on 31 January 2017, the Judge clearly took account of each strand of evidence and reached conclusions which were well within the range of conclusions available to him.

22. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

23. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

## CONCLUSION

**24. No errors of law have been established. The Judge's decision stands.**

## DECISION

**25. The appeal is dismissed. The decision of the First-tier Tribunal stands.**

Signed

*Paul Doyle*

Date 7 August 2017

Deputy Upper Tribunal Judge Doyle