



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00373/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at : Field House

**Decision &
Promulgated**

Reasons

On 30 June 2017

On 5 July 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ASHFAQ HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 5 January 2017 to refuse his protection and human rights claim.

2. The appellant is a national of Pakistan born on 1 January 1964. He last arrived in the United Kingdom on 21 May 2009 on a visitor visa, having made previous visits in 2006 and 2008. On 20 December 2013 he made an application for leave to remain outside the immigration rules, on the basis of a land dispute in Pakistan and made it clear that he did not wish to claim asylum,

despite also claiming to have converted to the Ahmadi faith. His application was refused on 27 January 2014. He did not claim asylum, despite being advised to do so.

3. On 10 March 2016 the appellant was arrested on suspicion of sexual assault on a 13 year old girl on a train and on 14 July 2016 was convicted of sexual touching and was sentenced to a two year community order and placed on a sex offender register. An emergency travel document (ETD) application was completed and on 10 November 2016 he was detained pending removal. At that point he made an asylum and human rights claim which was refused on 5 January 2017. The appellant appealed against that decision and his appeal was heard before the First-tier Tribunal and was dismissed in a determination promulgated on 23 February 2017. Permission to appeal to the Upper Tribunal was granted on 15 May 2017.

4. The appellant's claim was made on two bases. The first was that he was at risk from his brothers as a result of a land dispute and the second that he was at risk as he had converted to the Ahmadi faith in July 2012 in the UK. With regard to the latter the appellant claimed to have accepted the Ahmadi faith as his own in Pakistan in 1985 but did not practise or preach openly as he would have been killed.

5. The respondent did not accept either claim, finding both to be lacking in credibility. In regard to the claim based on conversion to the Ahmadi faith, the respondent noted that in his application of 20 December 2013 the appellant had made it clear that his application was mainly based on the land dispute and that he had not claimed asylum after his conversion in July 2012. The respondent considered the appellant's knowledge of the Ahmadi faith to be limited and questioned his attendance at Ahmadiyya conferences. The respondent accorded little weight to a letter submitted by the appellant from the Ahmadiyya Association UK. The respondent did not accept that the appellant was a genuine Ahmadi, but considered that even if he was it was not accepted that he was a spiritually active Ahmadi and concluded that he would be at no risk in Pakistan.

6. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Kainth on 2 February 2017. Judge Kainth considered that the appellant's asylum claim was a last-ditch attempt to circumvent the system with a view to frustrating removal. He did not accept the appellant's account of the land dispute, noting various inconsistencies in his evidence, and rejected his claim to be at risk on such a basis. As to the appellant's claim based on conversion to the Ahmadi faith, the judge did not accept that he was a genuine Ahmadi convert. He did not accept that a letter relied upon by the appellant from the Ahmadiyya Muslim Association UK (AMMA) dated 26 July 2012 was confirmation of conversion and placed little weight on a second letter from the AMMA dated 17 March 2016. He found the appellant's evidence as to his claimed conversion to be unclear and evasive. He did not accept that the medal and identification card relied on by the appellant was evidence of conversion to the faith and neither did he accept that photographs produced by the appellant confirmed his conversion to the faith. The judge concluded that

the appellant had no risk profile to cause the Pakistani authorities to have any interest in him and he accordingly dismissed the appeal on all grounds.

7. The appellant then sought permission to appeal to the Upper Tribunal in relation to the judge's findings based on his Ahmadi faith. The decision and findings relating to the land dispute were not challenged in the grounds. Permission was initially refused, but was then granted on 15 May 2017 by Upper Tribunal Judge Canavan who considered it to be at least arguable that the judge may not have appreciated the difference between conversion and registration as an Ahmadi.

Appeal hearing and submissions

8. The matter came before me on 30 June 2017. I heard submissions from both parties.

9. Mr Butterworth submitted that the judge had made various errors of fact in concluding that the appellant had not converted to the Ahmadi faith and he expanded upon the grounds. In regard to the first ground the judge's finding at [54], that the objective material made no reference to the ten pillars of the Ahmadi faith mentioned by the appellant, was inconsistent with the expert evidence in MN and others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 389 at [187] which referred to the ten conditions of bai'at. In regard to the second ground, the judge misunderstood the conversion process and confused the concepts of conversion and registration and wrongly rejected the two letters from AMMA which were persuasive evidence of the appellant's conversion. As to the third ground, the judge erred by according no weight to the medal and identification card produced by the appellant as evidence of conversion to the Ahmadi faith, or by failing to give reasons for according them no weight. As to the fourth ground, the judge erred by finding that the photographs the appellant had produced did not provide evidence of his attendance at the Ahmadi conference and by failing to consider the weblink on the photographs. The fifth ground asserted that the judge wrongly concluded that the appellant was only able to name one Ahmadi book.

10. Mr Tufan submitted that the judge had provided sufficient reasons for reaching the conclusions that he did. As regards the first ground, the expert in MN referred to five tenets of the Ahmadi faith, but ten conditions of initiation. As regards the letters from the AMMA, Mr Tufan submitted that the judge was entitled to place limited weight on the them, in accordance with the guidance in AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 511, owing to their brevity and the absence of reference to any activities undertaken by the appellant in the UK. What the judge was saying at [54] was that he did not accept that the appellant was a *genuine* Ahmadi convert. There was no letter from the head of the local Ahmadi community and no evidence of activities undertaken in the UK. In any event, even if the judge ought to have found that the appellant had converted to the Ahmadi faith, he properly found that he would be at no risk in Pakistan as an ordinary Ahmadi.

11. In response, Mr Butterworth submitted that the judge's error in regard to the appellant's conversion was material as he did not go on to consider [6] of

the head-note to MN and that that was a matter which still required consideration by the First-tier Tribunal. He requested that the matter therefore be remitted to the First-tier Tribunal.

Consideration and findings

12. It is the appellant's case that Judge Kainth misunderstood the evidence and made errors of fact in concluding that the appellant had not converted to the Ahmadi faith and that the evidence, particularly the letter of 17 March 2016 from AMMA, provided confirmation that he had converted to the faith. However, as Mr Tufan submitted, what the judge found was that the appellant was not a *genuine* convert, namely a person whose intentions and commitment to the Ahmadi faith were genuinely held.

13. I am not in agreement with the assertion in the grounds and with Mr Butterworth's submission that the judge misunderstood the process of conversion to the Ahmadi faith and the difference between conversion and verification, but consider that he was fully aware that, in line with the country guidance in MN, the appellant was considered to have undergone the process to convert to the faith. At [51] he specifically referred to the paragraph in MN which dealt with the conversion process (his reference to [271] rather than [217] was plainly a typing error and the reference was in fact to [217]) and referred to the initial form of conversion and the subsequent two year process for official recognition as an Ahmadi. I do not consider that the judge's observation at [53] detracts from that understanding, although I accept that the paragraph could have benefitted from being more clearly and concisely expressed. It seems to me that what the judge was saying at [53] was that the fact that the AMMA letter was produced four years after the initial letter, with no confirmation of his registration as an Ahmadi at the relevant two year point, detracted from the weight to be accorded to it. For that reason, and for the reason given at [56], that the letter made no reference to any activities undertaken by the appellant, the judge was perfectly entitled to accord the letter the limited weight that he did when considering the genuineness of his commitment to the Ahmadi faith. Such a finding was entirely consistent with the guidance in AB, as referred to by Mr Tufan.

14. With regard to the reference to the judge's finding at [54] in relation to the ten pillars of the faith, it is relevant to note that, whilst the expert's evidence in MN referred to ten conditions of initiation at [187], [195] and [200], it was clear from [187] that there were in fact five fundamental tenets to the faith. As the judge properly found, the tenets or conditions were not actually set out in the background evidence provided in MN. The judge was entitled to find the appellant's evidence lacked clarity in that regard, but in any event the judge provided many other reasons for doubting the genuineness of the appellant's claim as to his involvement in the Ahmadi faith.

15. As to the medal and identity card, Mr Butterworth admitted to not having seen these but submitted that the judge erred by not giving them any weight when they were evidence that a conversion had taken place. The grounds of appeal, at [30], state that the items were for the purpose of attending the Ahmadiyya annual convention. However, as the judge observed at [58], the

appellant's claim to have attended two conferences was significantly undermined by the fact that his claim was to have attended the events in London whereas they were held in Alton. In light of the various concerns he had about the appellant's evidence as a whole, the judge was entitled to accord the items the limited weight that he did in supporting a claim to be a genuine convert.

16. The fourth ground of appeal refers to the photographs produced by the appellant and assert that the judge erred by failing to note that they contained a web link to the annual conference, the Jalsa Salana. However the judge found at [53] that the photographs did not identify the appellant as being a true and genuine convert and found in any event, at [66], that it was unclear whether the appellant actually appeared in any of the photographs. Those were findings he was entitled to make and, as such, he was entitled to accord the photographs no weight.

17. As to the appellant being able to name five Ahmadi books, as referred to in the fifth ground, there is no evidence that those he named were correct and no evidence to show that the respondent wrongly found at [42] that he only named one correctly. In any event the appellant's knowledge was clearly limited in that regard, given the significant number of other publications.

18. The judge gave various reasons for concluding that the appellant was not a genuinely committed convert, noting inconsistencies and discrepancies in his evidence. At [42] he noted that a certificate produced by the appellant stating that his property had been forcibly confiscated by local people and that the whole community was against him because of his change of religion was inconsistent with his evidence in his statement and his interview that no-one in Pakistan aside from two friends had known about his Ahmadi faith; at [49] and [56] he noted that the appellant's claimed intention to openly practise the Ahmadi faith and preach to others if he was returned to Pakistan was inconsistent with his evidence that he had deliberately not approached Pakistani Muslims in the UK out of fear; at [56] he noted that the appellant's statement of 20 December 2013 made no reference to activities undertaken for the Ahmadi mosque in Bradford and that the AMMA letter made no reference to activities undertaken for them; at [57] the judge noted that the appellant specifically stated in his statement of December 2013 that he did not wish to claim asylum on the basis of his conversion and that he had placed reliance instead on the land dispute; at [58] the judge noted the lack of knowledge displayed by the appellant about the Ahmadi faith and noted the appellant's claim to have attended two Ahmadi conferences in London, whereas the conferences had taken place in Alton, Hampshire; and at [59] the judge noted that the appellant had failed to provide any evidence in his witness statement about his association with subsequently named Ahmadis.

19. The judge was perfectly entitled to consider that those matters all undermined the appellant's claim to be a genuinely committed Ahmadi. Contrary to the suggestion in the grounds, the judge was not required to conclude from the AMMA letter of support that the appellant was genuine in his claimed commitment to the faith. The letter of 17 March 2016 confirmed simply that the appellant had undergone the conversion process and was registered

as an Ahmadi, having maintained contact with the community and attended prayers. There was nothing inconsistent in the judge's findings with the expert evidence set out at [217(iv)] of MN, to which he plainly had full regard.

20. In any event it is clear from the judge's findings and from the evidence before him that the appellant could not possibly have succeeded in his claim to be at risk on return to Ahmadi with respect to [6] of the head-note to MN. I disagree with Mr Butterworth that the judge did not make any relevant findings in that regard. In accordance with [9] of the head-note to MN the judge's adverse findings in the appellant's case, as set out above at [18], are clearly relevant to the assessment of his likely behaviour on return to Pakistan. Furthermore, as the judge noted, the appellant's evidence was that he had not sought to preach his faith to Pakistani Muslims in the UK, his claim to be at risk on return to Pakistan had previously related only to the land dispute rather than his claimed conversion, the letter from AMMA dated 17 March 2016 indicated that the appellant's commitment to the faith was limited to maintaining contact with the community and attending prayers at the mosque (with no information as to frequency) and there was absolutely no evidence, and certainly no reliable evidence, from the appellant to show that he had engaged in, or was likely to, engage in the type of behaviour set out at [2(i)] of the head-note to MN, as the judge properly found at [65]. Accordingly, as consistent with the findings in MN, there was no basis to conclude that the appellant, even as a convert to the Ahmadi faith, would be at risk on return to Pakistan and the judge's conclusion to that effect was fully and properly open to him on the evidence before him.

21. For all of these reasons I do not consider there to be any errors of law Judge Kainth's decision which would require it to be set aside. I uphold his decision.

DECISION

22. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Signed



Upper Tribunal Judge Kebede

Dated: 5 July 2017