



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03685/2017

THE IMMIGRATION ACTS

At: Manchester Piccadilly
On: 28 March 2018

Decision & Reasons Promulgated
On: 11 April 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SA

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmad, Joules Law

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

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1946. He appeals with permission the 21st June 2017 decision of the First-tier Tribunal (Judge Gurung-Thapa) to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns a protection claim. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. It is the Appellant’s case that he is a member of the Ahmadi Muslim faith and that it is an important part of his religious identity to openly practice it. He asserts a well-founded fear of persecution in Pakistan arising from these facts. The Respondent disputes that there is a real risk of serious harm. This was the central matter in issue before the First-tier Tribunal.
4. As usual, the First-tier Tribunal was required to consider the credibility of the claim, any relevant country background evidence, the ‘country guidance’ issued by the Upper Tribunal, here MN & Others (Ahmadis- country conditions -risk) Pakistan CG [2012] UKUT 00389 (IAC), and the applicable law. In this case however the Tribunal’s task was further complicated by the fact that this was the Appellant’s second appeal against a refusal of protection. In 2012 he had claimed asylum and had been refused. His appeal against that decision had been dismissed by First-tier Tribunal Judge de Haney in a determination dated 10th December 2012. As such the principles in Devaseelan (Second appeals – ECHR- extra territorial effect) Sri Lanka [2002] UKIAT 00702 applied. Since the Tribunal’s treatment of Judge de Haney’s decision has some relevance to the appeal before me it is appropriate that I begin by setting out that decision in more detail.

Decision of First-tier Tribunal Judge de Haney

5. When Judge de Haney considered the Appellant’s appeal in 2012 the Respondent had placed all of the Appellant’s assertions in issue. The only element of the claim that was accepted was the fact that the Appellant is a Pakistani national born in 1946. Judge de Haney heard live evidence from the Appellant and read his witness statements. Elements of the case put forward by the Appellant were the same then as they are today:
 - He is from Sialkot and he lived there until 1970 when he moved there for work;
 - He lived in Kuwait from 1970 until 2001 when he spent six years in Saudi Arabia. He resumed residence in Kuwait in 2007 until he retired in 2012;

- In those years he visited Pakistan on a number of occasions, usually staying for approximately two weeks;
 - He is an Ahmadi Muslim;
 - His last visit to Pakistan was in 2011 when he stayed for two months in order to conduct some legal business relating to family land;
 - He is now a widower and his children live in the United Kingdom.
6. Judge de Haney began his reasoning by finding that the Appellant was not an Ahmadi. He had failed to produce any witnesses supporting this claim, which was surprising given the assertion that the Appellant had three adult daughters living in this country, all of whom could be expected to speak to their father's faith. Judge de Haney found that their evidence – or lack of it – fell within the category of easily obtainable material discussed in TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40. It was further noted that the Appellant's passport does not identify him as an Ahmadi; Judge de Haney noted the objective evidence indicating that in those circumstances the Appellant must have signed a declaration, required by Pakistani law, to the effect that Mirza Ghulam Ahmad Qadian is an "imposter".
7. In the alternative Judge de Haney found that the Appellant has on his own account "lived a very low profile existence as an Ahmadi, [and] has denied his Ahmadi faith in order to have his passport renewed because being an Ahmadi would be 'inconvenient' to his work and life in Kuwait and Saudi Arabia". Applying the criteria in MN & Ors the Tribunal dismissed the appeal.

The Fresh Decision

8. On the 3rd September 2012 the Appellant made further submissions and asked that they be considered as a 'fresh claim' for protection. The submissions included three letters in support from the Ahmadiyya Muslim Association (AMA) of the UK. It was this new material that led the Respondent to accept, in her letter of the 21st March 2017, that the Appellant is in fact an Ahmadi Muslim and that as such his submissions should be treated as a 'fresh claim'. Having accepted that the Appellant was Ahmadi the Respondent was not however satisfied that he faced a risk as a result. Curiously, the assessment is made with reference to BA (Iran) CG [2011] UKUT 36 (IAC) and whether or not any of the Appellant's *sur place* activities had come to the attention of the Pakistani authorities.

The First-tier Tribunal Decision

9. The determination summarises, in some detail, the 2012 decision of Judge de Haney and the reasons for refusal letter. The evidence of the Appellant and his daughter who appeared as a witness is then set out. Having evaluated that evidence the Judge finds there to be three material discrepancies in their testimony. The Appellant asserted that his daughter, son-in-law and their children were all attacked by Khatme Nabuwat in a restaurant in Pakistan in 2012. The same daughter, in her evidence, denied that she and the children were present and stated that the incident only involved her husband and his friends. The Appellant now asserted that he had “faced many problems” in Kuwait as a result of his faith; he had not previously made any such claim and he had managed to live in Kuwait since 1970. Finally, the Appellant had said in evidence before Judge Gurung-Thapa that he had tried to convert two people whilst in Kuwait; he had previously described these encounters as conversations in which no attempted conversion was mentioned.
10. The determination then turns to address the letters from AMA. The Tribunal finds that these letters do not give further detail about the nature of the Appellant’s activities here. He had produced some photographs depicting him giving out leaflets in Manchester, but by his own admission these had been taken for the purpose of the hearing. The Tribunal found it reasonable to conclude that the Appellant had undertaken those activities solely to aid his asylum claim.
11. Turning to apply these findings to the country guidance given in MN & Ors, the Tribunal found as follows [at §57]:

“I find that the appellant has failed to demonstrate that the restrictions on Ahmadis in Pakistan on the practise of his faith are of particular importance to his religious identity and he has not shown either an intention or wish to defy such restrictions...there is no issue of the appellant having to modify his behaviour on return to Pakistan”.

The appeal was thereby dismissed.

The Onward Appeal

12. It is now submitted on behalf of the Appellant that the First-tier Tribunal erred in several ways. In summary it is said that the Tribunal failed to correctly apply the guidelines in MN & Ors; failed to consider, in accordance with HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31, the reason why the Appellant might have been discreet about his behaviour in Kuwait and Saudi Arabia; misunderstood the Appellant’s evidence and failed to give reasons for rejecting the clear evidence of AMA that the Appellant has been undertaking public expressions of his religious identity in the UK.

13. The Secretary of State for the Home Department opposes the appeal on all grounds.

Discussion and Findings

14. MN & Ors establishes that decision-makers must ask themselves three questions when faced with claims such as this one. First, is the appellant an Ahmadi? Second, is he able to demonstrate that it is of particular importance to his religious identity to openly practice his faith in Pakistan? That is a question to be answered with reference to the behaviours listed at paragraph 2(i) of the headnote below. The third question is whether, even if the answer to Q2 is negative, he faces a real risk of serious harm as a result of his religious belief:

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.*
15. When the First-tier Tribunal came to answer those three questions in this case, its starting point was the 2012 decision of Judge de Haney. There can be no doubt that as a matter of law that was the correct approach: see Devaseelan. The complaint made by Mr Ahmed is that the Tribunal thereafter failed to

appreciate the diminished value of the 2012 decision, in light of the evidential developments in the case. In 2012 the answer to all three questions was in the negative. It was Judge de Haney's rejection of the Appellant's claim to be Ahmadi that informed his approach to the second question posed in MN, and the disposal of question three. When the present appeal came before Judge Gurung-Thapa there had been a substantial shift in the landscape. The Secretary of State now accepted that the Appellant was in fact an Ahmadi and as such it was incumbent on Judge Gurung-Thapa to conduct her own assessment of whether the Appellant considered it important to his religious identity to engage in the behaviours described at paragraph 2(i) of the headnote to MN.

16. I do not doubt that Mr Ahmed is correct to say that this is a case which would fall into one of the 'exceptions' set out in Devaseelan. There had been a marked shift in the matters in issue before the two Tribunals. I am not however satisfied, on a holistic reading of Judge Gurung-Thapa's determination, that she failed to appreciate that. Although the findings of Judge de Haney are set out in some detail it is apparent that Judge Gurung-Thapa conducted her own assessment of the Appellant's evidence, that given before her and that given before Judge de Haney. Of note was the Appellant's evidence to Judge de Haney that he had encountered no problems in either Pakistan, Kuwait or Saudi Arabia on account of his faith; he had denied his Ahmadi faith when renewing his passport because it would be "inconvenient" to do otherwise; he had only discussed his faith on two occasions whilst in the Gulf, and on neither occasion had he attempted to convert the friend he was talking to. That evidence is contrasted with the evidence that the Appellant now gave before Judge Gurung-Thapa, when he asserted that in fact close family members had been attacked in Pakistan, he had only denied his religion because he was in fear of persecution and he had faced many problems whilst living in Kuwait; he further said that he had discussed his faith on a number of occasions with non-Ahmadis. Those discrepancies in the evidence were such that Judge Gurung-Thapa was entitled to characterise the Appellant's claim to have preached his faith in Kuwait as a 'fabrication' [at §45]. I am not satisfied that she simply adopted Judge de Haney's conclusions without examining the fresh evidence.
17. The second ground is that the Tribunal erred in failing to consider why the Appellant might not have had any problems in Kuwait, Saudi Arabia or indeed Pakistan on his short trips home. If he was not openly practising his faith it was incumbent on the Tribunal to consider why. If any part of the Appellant's decision was informed by a fear of persecution, then that was relevant to the assessment of his future conduct.
18. Mr Ahmed is once again correct in his analysis of the law. The difficulty was that in this case the evidence before Judge Gurung-Thapa did not enable her to join the dots in the way that Mr Ahmed contends she should. There was no country background evidence at all before the Tribunal about the position of Ahmadis in Kuwait or Saudi Arabia. Although I was asked to take judicial

notice of the strictly observant nature of those countries, it is not at all clear that the same was asked of Judge Gurung-Thapa. Nor is that a matter of which judicial notice can properly be taken. The AMA UK letter of the 5th November 2012 indicates that they were able to obtain confirmation from the National President of the Community in Kuwait that the Appellant had been an active participant in community programmes and a regular financial contributor. This would rather tend to indicate two things: there is an Ahmadi community in Kuwait and that they are active. The letter says nothing about repression or difficulties. There was therefore no evidential basis upon which Judge Gurung-Thapa could properly have found that the Appellant acted discreetly in order to avoid persecution whilst living in the Gulf. More importantly the evidence from the Appellant was entirely unclear. He had told Judge de Haney that he had experienced no difficulties in Kuwait; before Judge Gurung-Thapa he had said that he had experienced “many problems” there. There was, she found, also a marked discrepancy in his evidence about his religious activities.

19. The ‘misunderstanding’ alleged in the grounds relates to the Appellant’s production of some photographs which depict him, and others, running a *tabligh* stall outside the Manchester Arndale and holding up some leaflets in the street. The determination records that the Appellant had candidly admitted taking the pictures to show the Judge. Mr Ahmed protests that this is an unfair characterisation of the evidence. The evidence was that the photographs had been taken by someone from AMA for the purpose of their own record and publicity, and the Appellant has asked the photographer for some copies for the purpose of the appeal. I accept that it is quite possible for such nuances to be lost in the course of evidence, particularly in translation. I am prepared to give the Appellant the benefit of the doubt on this point, since it seems unlikely that if the pictures were entirely staged he would have admitted as much, or that he would have the support of AMA.
20. It is the AMA material that is the subject of the final ground of appeal. Mr Ahmed submits that the Tribunal had failed to properly assess this new material. The letters from this organisation, long-recognised by the Tribunal as an independent source of verification in Ahmadi claims, had led to the Respondent accepting that the Appellant was in fact Ahmadi. That was the extent to which the Tribunal was prepared to rely upon them in its determination of the questions posed in MN. Mr Ahmed contended that this was an unreasonable approach for the following reasons.
21. The letters themselves spoke to more than simply the fact of the Appellant’s status as an Ahmadi. They confirmed that in addition to attending the mosque for prayers the Appellant has in the UK attended general meetings of the *majlis*, attended and provided security at the annual general meetings of AMA, participated in a preaching programme and run a *tabligh* stall in Derby and Manchester city centres. He has participated in a charity walk. AMA described the Appellant as an “active and dedicated member” of their community who attached sincere importance to his ability to attend prayers in a building called

a 'mosque', respond to the *azan* and openly use the traditional Muslim salutation. The Manchester branch confirmed that the Appellant had been involved in preaching by way of distributing leaflets. Importantly AMA UK are also able to confirm that their Kuwaiti branch has a record of the Appellant as having been an active participant in programmes there who regularly made financial contributions to the welfare of the community.

22. Mr Ahmed submits that none of this evidence is considered in the determination. Insofar as it could be inferred from the Tribunal's negative findings on the question of proselytising that AMA's evidence on this point is to be rejected, no reasons are given as to why that should be. He further contends that the Tribunal errs in failing to make findings on any of the other 'paragraph 2(i) matters' set out by the AMA letters. There is for instance no finding on whether the Appellant might regard it as fundamental to his religious identity to hear and answer the *azan*, or to pray in a building openly referred to as a mosque.
23. Although I fully accept that another Tribunal may have regarded the AMA evidence as determinative, there is no legal imperative to do so, and I cannot be satisfied that it was here ignored. The Respondent had dealt with it in some detail in the refusal letter and the points made therein are summarised at paragraph 21 of the determination. The Respondent was unable to attach any significant weight to the assertions about the Appellant's activities because the letters lacked significant details including dates. At paragraph 50 the determination notes that AMA had written a further letter, dated 18th May 2017, in which the concerns of the Respondent might have been answered. The contents were however similar to those submitted earlier, and did not give any further elaboration on the dates and frequency with which the Appellant attended the events mentioned, what role he actually played or what charities he raised money for. The conclusion, implicit if not express, is that the Judge shared the Respondent's concerns about the weight to be attached to the evidence of the Appellant's activities. Weight is of course a matter for the Judge, and absent an identifiable error in approach I am unable to find that it was a course not lawfully open to Judge Gurung-Thapa. See AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 00511(IAC):

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.

24. This was not a hopeless case by any means. The photographs and letters of AMA certainly supported the Appellant's evidence as to his activities in the UK, and of course confirmed that he lived as a member of the Ahmadi

community in Kuwait. The totality of the evidence was however such that the Tribunal was entitled to conclude that in respect of the second and third questions posed by MN & Ors, the Appellant was cynically exaggerating his claim. It being a decision open to the Tribunal, and no error of law having been identified, I am bound to dismiss the appeal.

Decisions

25. The decision of the First-tier Tribunal contains no error of law and it is upheld.
26. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', is positioned in the lower-left quadrant of the page.

Upper Tribunal Judge
4th April 2018