



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11658/2011  
AA/11842/2011  
AA/11844/2011  
AA/11845/2011  
AA/11846/2011

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16<sup>th</sup> September 2013

Determination Sent  
On 23<sup>rd</sup> September 2013  
.....

Before

UPPER TRIBUNAL JUDGE REEDS

Between

HABIB UR REHMAN  
ISHRAT RIAZ  
ATIQU REHMAN  
SHUMAILA REHMAN  
SABIHA REHMAN

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Halim, instructed by Dear Mason Solicitors  
For the Respondent: Ms E Martin, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellants are nationals of Pakistan born on 1<sup>st</sup> January 1963, 19<sup>th</sup> June 1963, 8<sup>th</sup> April 1994, 24<sup>th</sup> July 1999 and 15<sup>th</sup> December 2001 respectively. The first and second Appellants are husband and wife and the remaining Appellants are their children who claim as dependants and rely upon his claim for asylum. The first Appellant

arrived with his family members and entered the United Kingdom using their own Pakistani passports with valid visit visas on 18<sup>th</sup> September 2011 and claimed asylum.

## **The Background to the Appeal**

2. The basis of the claim for asylum was that the Appellant and his family members were practising members of the Ahmadi faith in Pakistan and in the United Kingdom. He had come to the attention of local residents in Pakistan due to the practice and propagation of his faith and in 2008 concerning an incident that arose from the first Appellant's membership of a construction committee for an extension being built to the mosque in Kotli. The Appellant claimed that he was part of the building committee that helped supervise the workers for the extension. During the building work, a group of Molvis protested against the extension and an open FIR (First Information Report) was issued against the committee. He was arrested on 16<sup>th</sup> June 2008, detained for two days and bailed after a payment was made. The extension of the mosque was never completed. The Appellant and his family members continued to live in Pakistan. On 15<sup>th</sup> September 2011 the Appellant was involved in an incident concerning two Molvis who saw an Ahmadi newspaper on his counter and caused an incident claiming that the Appellant was proselytising his Ahmadi faith. They threatened him with violence and another FIR was registered on 15<sup>th</sup> September 2011 arising out of this incident. He left Pakistan on 18<sup>th</sup> September along with his family members using a valid visa which he had to enter the United Kingdom.
3. The Respondent refused the Appellants' claim in a reasons for refusal letter dated 6<sup>th</sup> October 2011 and on the same date, a decision was made to refuse the claim for asylum and on humanitarian protection and human rights grounds and to remove the Appellants by way of directions under Paragraph 10A of Schedule 2 to the Immigration Act 1971.
4. The Appellants exercised their right to appeal that decision and in a determination promulgated on 2<sup>nd</sup> December 2011 the First Tier Tribunal (Judge Hands ) dismissed the appeal on asylum and human rights grounds and further found that the Appellants were not entitled to a grant of humanitarian protection.
5. An application was made for permission to appeal which was granted by the First Tier Tribunal (Judge Blandy) by an order dated 22<sup>nd</sup> December 2011. On 23<sup>rd</sup> February 2012, directions were given for hearing which led to a hearing before Upper Tribunal Judge Deans on 9<sup>th</sup> May 2012. In a decision and directions issued on 20<sup>th</sup> August 2012, Upper Tribunal Judge Deans found that the determination of the First Tier Tribunal contained a material error of law and he therefore set the determination aside and recorded that none of the findings of fact should stand and listed the appeal on a date to be fixed for further hearing before him. As discussed with the advocates, there did not appear to be a written decision in respect of the error of law although it was clear to all concerned that Judge Deans had heard the oral

submissions of the parties at the hearing on 9<sup>th</sup> May and having reserved his determination issued a “decision and directions” in which he set out the decision that he had reached, namely that he was satisfied from submissions that he had heard and from the material that he had read that the determination of the First-tier Tribunal contained a material error of law and that none of the findings of fact should stand. The parties had prepared their cases on the basis of that decision. It therefore can only be the position that the judge reached the conclusion that the determination should be set aside having considered and accepted the grounds of appeal that had been filed on behalf of the Appellant and in particular ground two of the grant of permission, referring to the failure of the First-tier Tribunal to make proper findings with regard to the possibility that the first Appellant, as an Ahmadi, would be at risk by preaching about his faith in the light of the decision of HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31 and MT (Ahmadi - HJ (Iran)) Pakistan [2011] UKUT 227 (IAC) and that the judge should have considered the wider risk on return in accordance with the principles set out in those cases.

6. On 21<sup>st</sup> November 2012, a transfer order was made by Principal Resident Judge Southern. Thus the case was listed before the Upper Tribunal for a resumed hearing in accordance with the decision and directions made by Upper Tribunal Judge Deans.
7. At the hearing, the Appellants were represented by Mr Halim of Counsel and the Respondent was represented by Ms Martin, a Home Office Presenting Officer.

### **The Evidence**

8. The Appellants’ bundles were numbered 1 and 2 for convenience. Those bundles consisted of Bundle 1 which was a consolidated bundle for the Upper Tribunal hearing which included witness statements from the Appellant, his wife and daughter and a number of documents and reports numbered pages 1-308. Bundle 2 contained further evidence submitted under Rule 15(2A) and numbered 1-190.
9. Many of the documents in the Home Office bundle were those documents provided by the Appellants when they claimed asylum. In addition at the hearing the Presenting Officer relied upon the original Respondent’s bundle before the First-tier Tribunal.
10. The first Appellant gave evidence with the assistance of the court interpreter and gave evidence in the Urdu language. I carried out an introduction of the proceedings so that the Appellant was familiar with the procedure that would be adopted during the court hearing and in particular I ensured that the Appellant and the interpreter could understand each other. There were no difficulties identified. I note that during the hearing there were no difficulties with the Appellant being able to give evidence or with the interpretation and no concerns were raised at any time during the hearing in relation to that.

11. There is a full record of oral evidence of the Appellant and the witnesses which appears in the Record of Proceedings. I shall refer to the relevant parts of the evidence during my analysis of the case. I have heard both advocates by way of summary at the conclusion of the case which I have recorded in my Record of Proceedings. I confirm that I have considered those submissions during my analysis of the evidence and in the conclusions that I have reached, even if not specifically referred to.
12. I note that I was guided to certain passages in the objective material. I confirm that I have read those passages with care, but I read them in the context of the entire document. I further confirm that I have read the whole of the documentation set out before me in order to assist me in reaching my conclusions.

### **The Law and the Burden and Standard of Proof**

13. In reaching my decision I have borne fully in mind the relevant law and Immigration Rules, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Handbook on Procedures and Criteria for Determining Refugee Status ('The Handbook') (Geneva, January 2000). By Article 1(a)(2) of the Refugee Convention the term "refugee" shall apply to any person who:-

"Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or, owing to such fear, is unwilling to return to it."

14. The provisions of SI [2006] No.2525 "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006" now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29<sup>th</sup> April 2004 on 'minimum standards' for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9<sup>th</sup> October 2006.
15. The determination I have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended Immigration Rules. These have permitted us to consider whether the Appellant is in need of Humanitarian Protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, I have gone on to consider whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.

16. The burden of proof is upon the Appellant. The standard of proof has been defined as a '*reasonable degree of likelihood*', sometimes expressed as '*a reasonable chance*' or a '*serious possibility*'. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. We regard the same standard as applying in essence in human rights appeals although sometimes expressed as '*substantial grounds for believing*'. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of Humanitarian Protection.
17. Paragraph 339C of the Immigration Rules defines a person eligible for Humanitarian Protection, as a person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.
18. Accordingly, where below I refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying respectively:-
  - (i) whether on return there is a well-founded fear of being persecuted under the Geneva Convention;
  - (ii) whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and
  - (iii) whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.
19. The Appellant places specific reliance on Article 3 of the ECHR. It is for an Appellant to show that there are substantial grounds for believing that he or she is at real risk of ill-treatment contrary to Article 3 ECHR, which prohibits torture, inhuman or degrading treatment or punishment. The standard of proof equates to that in asylum appeals. Unlike Article 3, Article 8 rights are qualified rights protecting the right to respect for private and family life, home and correspondence. It is for an Appellant to show that one or more of such qualified rights is engaged and that there is an interference with such a right or rights. The Respondent must then show that any interference pursues a legitimate aim, is in accordance with the law and is proportionate.
20. In coming to my determination, following Section 85 (4) of the 2002 Act, I may take into account evidence about any matter which I think relevant to the substance of the

decision, including evidence which concerns a matter arising after the date of decision.

### **The Appellant's Claim**

21. The basis of the Appellant's claim is set out in his written evidence comprising of two witness statements dated 14<sup>th</sup> November 2011 and 13<sup>th</sup> June 2013. The statements are adopted as evidence-in-chief.
22. The Appellant and his family members are members of the Ahmadi faith in Pakistan. Whilst living in Kotli, Azad Kashmir, the Appellant and his family members were an important part of the Ahmadi community in that area and took part in a number of committees in respect of their religious faith.
23. On 10<sup>th</sup> May 2002 a criminal case was registered against the Appellant's community associates for the construction of a mosque and preaching activities. The first Appellant worked as a businessman selling electrical items with a shop located in the main bazaar in Kotli named as "Electric Point". As part of the practice of his faith, he was a member of a mosque construction committee. It was decided that an extension to the current mosque would take place in June. However it is asserted that a group of local Molvis protested against that extension and work was therefore stopped.
24. On 3<sup>rd</sup> June 2008 a criminal case under the anti-Ahmadiyya legislation was registered by the police against the population of Kotli under an open First Information Report (hereafter referred to as "FIR") on complaint of mullahs of Khatme Nabuwwat and their associates for construction of the mosque and the preaching of the Ahmadiyya religious beliefs. On 5<sup>th</sup> June 2008 two separate criminal cases were registered by the police against the population of the Ahmadiyya community in Kotli again on the complaints of the mullahs of the Khatme Nabuwwat and their associates for preaching in the construction of the mosque under two open FIRs. In response to this an application was addressed to the district magistrate in Kotli through representatives signed by members of the construction of the mosque committee including the main Appellant. It was after this that it was alleged that the Appellant was arrested on 16<sup>th</sup> June 2008 and was detained for two days but was bailed when 50,000 rupees was paid. In cross-examination he was asked whether or not the problems in Kotli began after the grant of the construction of the mosque. The Appellant stated in his evidence that they had had problems even before the construction of the mosque and it was a longstanding issue in the area. He said that all the Ahmadi born in the area had those problems. He set out that they were not able to pray or read the Koran or attend meetings and that they had had no freedom to preach and if they had people would issue FIRs against them to cause them trouble and harassment. He confirmed that he had not been arrested prior to June 2008 although he stated there were problems for the Ahmadiyya community including members of his own family. He confirmed in cross-examination that the government had granted the construction of the mosque in Kotli but as a result of it individuals had complained to the authorities. He referred

to the FIR and its open nature that was against the whole of the Ahmadiyya community in Kotli. It was put to him that the FIR that he referred to did not name him specifically. He said that the FIR was against everyone of the Ahmadiyya community. As to his arrest, he confirmed that he was arrested whilst he was inside his shop and that there were twelve members of the construction committee but the rest had run away and he had gone to the shop and it was where they had caught him. He said that he had not gone into the shop for hiding, he had gone to the shop because it was his business. He said that they had come looking for him, that when FIRs had been issued they would come to look for people to arrest. He was asked how would they know to look for him if he had not been named on the FIR? He stated that he was known through his family connections as coming from a well-known Ahmadi family and that everybody knew that. He said the police station was 20 feet away from his shop and therefore he was easy to arrest. He confirmed he was detained for two days and released on bail. He referred to the bail document at [R127, Bundle 1]. In cross-examination he said he did not have to comply with any other conditions and when asked if he had to attend the police station to report, the Appellant stated he had gone to court but not the police station and that there would be no set time for him to attend. He confirmed that when he attended court his lawyer would go with him. He said nobody else would. The bail agreement was put to him referring to a man called Mr Dawood. The Appellant stated that he was bailed and that the man named was his first cousin who was vouching for him. He said that he had kept going to court to comply with the bail conditions. It was put to him that he had not said in his interview that he had attended court.

25. The Appellant was asked about the "hit list" and he was asked if he was named on the list. The Appellant confirmed that his name was not on the list but his shop was on the list of which he was the owner and also his employee was named, Mr Khokar. There were also other members of his family who were on the list. He confirmed that at page R44 the person named was his nephew but that his shop was also on the list under the businesses. When asked who wrote the list he said it was a group of people who had written down a list of all the Ahmadis in a high position in the area. He could not say when the list was written but that it was written by a group called the Khatme Nawabwe.
26. After the incident in 2008, the Appellant referred to an incident that occurred on 15<sup>th</sup> September 2011 which led to the Appellant leaving Pakistan with his family members.
27. On 2<sup>nd</sup> September 2011 the first Appellant received a threatening letter from the Lashkar Hizb-ul-Mujahadin Kotli threatening that he would be killed. The Appellant referred to this letter being sent to him in relation to the "hit list" that had been written in August 2008 and publicised in the English language of the mullahs of Khatme Nabuwat in March 2009. The Appellant gave an account as to what happened in his shop on 15<sup>th</sup> September 2011. He said that he had been in his shop when two Molvis had come into it. They came in as potential customers but on the

shop table there was a newspaper which was an Ahmadi newspaper. One of the men started to read the newspaper and the other one said he would like to look at them and so the Appellant showed them. The person reading the newspaper said that this was an Ahmadi newspaper. He then asked the Appellant if he was Ahmadi and then an argument ensued in which they asked him if he had preached and they began shouting. A neighbour or a shopkeeper from next door could hear all the noise and tried to calm the Molvis down. They shouted at him for proselytising and they told him that the police would not do anything if they returned to kill him. They also said that they would get an FIR issued against him.

28. The Appellant in cross-examination said that the men did not know that he was an Ahmadi because they came from a different town and that they had reached the conclusion he was an Ahmadi because they had seen the newspaper in his shop. He confirmed that as a result of this incident an FIR was issued. He confirmed that he had not preached to them but they had picked up the newspaper. The contents of the FIR was put to him in cross-examination which had set out details of an incident. The Appellant was asked if the explanation given was an accurate one or one to justify the FIR.
29. It was put to him that the information in the FIR as to the events was not consistent with the account that he had given. The Appellant said that the information in the FIR claiming that he was proselytising was false and incorrect. The FIR was issued because they had made a false claim that he had preached to them and were therefore trying to file a false case against him. He confirmed that he did not preach to them that day and false information had been placed before the police in the First Information Report.
30. Following this the family left the United Kingdom using a valid visa to enter the United Kingdom as family visitors. They claimed asylum upon arrival on 18<sup>th</sup> September 2011. One daughter was left in Pakistan in Rawalpindi. In cross-examination he said that she had had problems there but he could not say if she was preaching the Ahmadi faith presently as he did not know because he was not with her. He was asked in cross-examination if she had been targeted due to their Ahmadi faith. The Appellant said that when they were in Kotli one of the daughters coming home from college were attacked. He said that there had been problems recently on 13<sup>th</sup> April 2013.
31. Since the family has arrived in the United Kingdom they have been active members of the Ahmadiyya Muslim Association UK and upon making contact with that group when in the United Kingdom sought confirmation from them as to his practice of his faith in Pakistan and also his family members. In his evidence he said that he supported the AMA UK financially through voluntary financial contributions as did his wife and daughter separately. That he would attend meetings and conventions including congregational prayers, Eid festivals and the annual convention called the "Jalsa Salana" and annual gatherings organised by the AMA UK. In the bundle of documentation produced he made reference to photographs showing him with the



supreme leader, out on the streets preaching, copies of his payments made by way of financial contribution and confirmation of the membership of the committees on which he sat. He had assisted in the food and hospitality work of the branch during branch meetings and functions and held responsibility for looking after the maintenance and cleaning programme of the local AMA branches. He had been appointed as the muntazim izaar and muntazim ziafat.

32. In his oral evidence-in-chief he was asked about his preaching. He confirmed that he had been preaching in the United Kingdom and that he had preached in Pakistan. He stated in his oral evidence that the preaching of his faith was important to him and that it had been part of the Ahmadi religion for generations. He said that it was important and that you could not live without it and it is part of his heritage and his religious faith to tell others about their faith and not keep quiet. He confirmed that in preaching in Pakistan it was dangerous and that he has continued to do it although they are in fear of their lives. In cross-examination it was put to him that he had said at questions 51 and 52 that he had not proselytised in Pakistan. The Appellant stated that that had been an interpreter's error and that he had not given the right answer on his behalf. He made reference to problems with the interpreter later on in his interview which had been raised during the First-tier Tribunal hearing. He said that he had not withdrawn the complaint at the hearing and that the judge had said there should be a full hearing at which point he began crying (before the First-tier Tribunal). The appeal to the First-tier Tribunal grounds (amended grounds) made some reference to these problems.
33. In respect to the practice of his faith in the United Kingdom, he said that he first attended after 18<sup>th</sup> September 2011, about a month afterwards. He was shown the photographs between pages 67 and 74 and said that they had been taken on different days. There was a suggestion that he was wearing some of the same clothes. The Appellant said that that was what he wore and he was not very well off and that on some of the photographs he was wearing someone else's shirt and jumper but at the photographs on page 65 they were his own trousers. He was asked about the financial contributions at pages 57 to 61 and it was put to him that they were large amounts bearing in mind his limited means. He said that they were not large amounts, that everybody had a responsibility to give a little of what they had including his children and himself and his wife. He confirmed that his wife and daughter donated separately. It was put to him that he had described himself as a "poor asylum applicant" and how was it that he could donate large amounts of income? The Appellant said that he was saving little by little and that he had used to smoke cigarettes but that he had given up and that had freed up some of his money. He said that he had not been working in the United Kingdom. He refuted the suggestion in cross-examination that he had had two years to learn the Ahmadi faith stating that he had been an Ahmadi since birth and that had been supported by the documentation.

34. When asked about proselytising in Pakistan, he said that he did proselytise there but that he had a fear of the men that were against them and that if they found out they would file false cases against them and the punishment would be the death penalty and that would be the outcome if they preached in Pakistan. He said that in the UK they had no fear because they were able to preach freely. It was put to him that he had joined the Ahmadiyya Association in the UK in order to support his claim for asylum. The Appellant refuted that. It was also put to him that if asylum would be granted he would stop attending the association and stop proselytising. The Appellant again refuted this stating that he had been born an Ahmadi as were members of his family going way back and that he had been brought up in that religion.

### The Submissions

35. Ms Martin on behalf of the Respondent relied upon the refusal letter dated 6<sup>th</sup> October 2011 and in addition made the following oral submissions. Ms Martin began by helpfully setting out the essential paragraphs of the country guidance case of **MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC)** by summarising the headnote and paragraphs 119-127 of the decision. She confirmed that it was accepted on behalf of the Secretary of State that the Appellant and his family members were of the Ahmadi faith. When considering the test set out in **MN and Others** (as cited) she said that the Appellant’s credibility was in issue. In relation to his activities in Pakistan and proselytising, questions 51 and 52 state that he did not proselytise in Pakistan. Whilst the Appellant had raised the issue of interpretation problems and there having been a complaint made, the complaint was withdrawn and that since his application for asylum the Appellant had had a number of years to bolster his claim so that he could fall within the country guidance provisions.
36. As to the events in Pakistan, a number of documents had been produced which should be seen in the light of the matters in the COIR Report relating to documents from Pakistan. Looking at those FIRs, there is only one that names the Appellant at R153. Looking at the contents of the FIR, they are not consistent with the account of the incident on 15<sup>th</sup> September given by the Appellant during oral evidence. The threat letter, predates the only FIR and the other FIRs are all open documents and none of them name the Appellant. The Appellant has also provided a “hit list” (page 125). The Appellant is not named on the list although his employee and the business is named on the list. If the Appellant was really wanted by the authorities he would be named on the “hit list” personally. The threatening letter that came two years later refers to him “you are on the hit list” however he was not. When considering the arrest in 2011, the Appellant in cross-examination said that he had attended court in respect of bail and that he had attended with his lawyer. But the bond agreement refers to Mr Dawood and he was inconsistent.
37. As to proselytising in the UK, there are letters listing his activities. The specific activities are evidenced by photographs in the bundle. It was submitted that at best

the photographs covered three separate occasions and the photographs were self-serving to support a claim for asylum. He made donations to the Ahmadiyya UK Association as did his wife and his daughter. Those were set out. It was submitted that this was a “snippet” and that he could not afford to pay such sums of money. As to the Appellant’s wife’s account, she claimed to have preached once to a lady in a library. The Appellant’s daughter had said that she had assisted her mother in meetings at the house in which seven or eight ladies had attended.

38. In those circumstances, applying the country guidance case, he did not fulfil the requirements and that whilst he may be known as Ahmadi prior to his departure he did not proselytise and was not wanted for doing so and had no difficulties. He has created an account to remain in the United Kingdom and he has not discharged the burden to show him that he would be at risk on return.
39. Mr Halim on behalf of the Appellant relied upon his skeleton argument. There is no need for me to make reference to that skeleton argument as it is before the Tribunal. Counsel submitted that contrary to the submission made by the Presenting Officer, he had been in the United Kingdom for a number of years before the country guidance case had been promulgated and therefore would not have known at the time he began his activities in the United Kingdom what the outcome of the country guidance case would have been. That was a bare assertion and was not supported by any evidence.
40. In this case it is clear that the Ahmadiyya Association in the UK had sought confirmation from Pakistan that he and his family members had been involved in the propagation of the faith in Pakistan. The replies that they have received by way of verification are set out in documents at pages 52 and 52(a) which demonstrate that he was an active and prominent member for advancement of his faith in Pakistan. This included being part of a committee building an extension to the mosque. The association have also confirmed the activities that he has carried out in the United Kingdom for the Ahmadiyya Association. They have no vested interest in supporting any particular appellant but they have been able to confirm and verify the Appellant’s past association membership and propagation of his faith in Pakistan and also to confirm his work and propagation of the faith and proselytisation in the United Kingdom. The photographs, and letters and voluntary contributions also demonstrate the advancement of his faith in the United Kingdom. All of that evidence was positive.
41. Whilst the Presenting Officer had criticised the donations made, the factual basis upon which it would put the Appellant was wrong. He was never asked in cross-examination if he had made weekly donations and that his oral evidence was that he had saved money little by little and that he did not smoke and was able to use that money. They are not large amounts when viewed in the round.
42. As to events in Pakistan, whilst the Appellant was not named on the “hit list” the business name is recorded which therefore is a reference to him. There is

confirmation that he was part of the building committee which is an activity that put the Appellant at risk in Pakistan. Whilst it had been asserted that the contents of the FIR were inconsistent with his evidence, that was in fact the Appellant's case that the allegation set out in the FIR was based on false information to implicate the Appellant. It was not an account of what had happened and that is the explanation as to why it is inconsistent with what he had said. It had always been the Appellant's case that this was a false account in the FIR designed to be the start of proceedings against him. The FIR was an attempt to frame the Appellant and engender a prosecution.

43. As to the interview, Mr Halim submitted that the interview record should be treated with a degree of caution. It is clear that at some point there was some language used by the interpreter which may have caused offence to the Appellant and that this had been an issue before the Tribunal. Indeed, amended Grounds of Appeal which were supported by a statement from the solicitor advocate conducting the hearing appeared to state that there had been some concession made by the Presenting Officer that the interview should not be relied upon. However he conceded that it did not appear that any issue had been taken concerning that when reaching the error of law and thus he could not take that any issue any further. But nonetheless, he invited the Tribunal to look at question 52 in the light of what had been said at question 51 and in the light of the Appellant's propagation of his faith and proselytising that he had undertaken in the United Kingdom.
44. As to Article 8, he relied upon what was set out in the skeleton argument and that the Appellant and his family members were a "value to the community" and thus it would be disproportionate to remove the family to Pakistan.
45. At the conclusion of the hearing I reserved my determination.

#### **Assessment of Evidence and Findings of Fact**

46. I must make findings as to the credibility of the Appellant and the claim in the light of the totality of the evidence that is before me, including the background evidence.
47. The Appellant has provided a number of documents in support of his claim. Those documents can be found in the Appellant's bundles named "1" and "2". In the decision of **Tanveer Ahmed** at paragraph 35 the Tribunal stated that there was no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. It was said that doubtless there were cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. The Tribunal recorded as follows:-

"In the absence of a particular reason on the facts of an individual case, a decision by the Home Office not to make enquiries, produce in country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office."

48. The decision of Tanveer Ahmed is a starred decision and the Tribunal is bound by it. When considering documentation, I remind myself of the guidance given in the decision of the Tribunal in Tanveer Ahmed [2002] UKIAT 00439 in which the Tribunal acknowledged the argument that “documents and information contained in them may be either genuine or false; documents may be genuine but that information itself may be false; documents may not be genuine but the information may nonetheless be true.” The Tribunal in that case went on to state

“It is trite in immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain ‘forged’ documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are ‘genuine’ to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. ... The permutations of truth, untruth, validity and ‘genuineness’ are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is ‘forged’ or even ‘not genuine’.”

The only question is whether the document is one upon which reliance should properly be placed. Such documentation should be not looked at in isolation but should be assessed along with other pieces of evidence and therefore “in the round”. I confirm that I have had in mind those words of the Tribunal when making an assessment of the variety of documents that have been produced in this case.

49. I have considered the Appellant’s account with care and the documents produced in support of it in the light of Tanveer Ahmed and in the light of the background country materials. At paragraph 33.01 – 33.06 the COIR Report deals with the prevalence of forged and fraudulently obtained official documents in Pakistan.

**“33. Forged and Fraudulently Obtained Official Documents**

- 33.01 The Immigration and Refugee Board of Canada (IRB) noted in a Response to Information Request (RIR), Pakistan: Fraudulent documents (2008-2010), published 24 November 2010, that:

'In an article published on 10 August 2010, the Daily Times of Lahore reported that "fake passports are widely available" in Pakistan. According to the Sydney Morning Herald, the Federal Investigation Agency (FIA) in Pakistan arrests an average of six people a day in the Islamabad area for document fraud... An assistant director of the FIA stated that tens of thousands of people have some sort of involvement in this industry... According to a an article published on 12 November 2009 in another Lahore newspaper, The Nation, the current British Home

Office Minister responsible for Immigration stated that numerous applications for British visas presented by Pakistanis are accompanied by false documents. The Consul General of the United States in Pakistan stated that in July 2010, nearly 98% of applications for American visas made by Pakistanis were refused because they were accompanied by false documents...'

33.02 The IRB also produced a

'... partial list of cases reported in the media concerning fraudulent documents in Pakistan:

'The Supreme Court asked the Election Commission of Pakistan (ECP) to review the degrees of legislators... Almost all of the nearly 1,100 elected officials have to submit their diplomas for verification... According to an article in the newspaper The News International on 14 October 2010, at the time the article was published, the degrees of 67 Members of Parliament had been declared fake; however, the hearings into the fake degrees was still ongoing as of 1 November 2010...

'In September 2010, six Pakistanis went to Denmark to seek asylum... They were allegedly in possession of fake visas and were aided by FIA [Federal Investigation Agency] agents at Benazir Bhutto International Airport...

'In September 2010, the FIA arrested four people-three women who had fake Afghan passports that had been provided to them by the smuggler accompanying them-as their airplane was about to take off for Oslo... An FIA agent and an immigration inspector allegedly helped the passengers clear the checks prior to boarding...

'On 20 June 2010, Zimbabwean police arrested two Pakistanis with fake Kenyan passports...

'In March 2010, the FIA arrested a forgery expert and found at his residence various forged documents, including passports, visa stickers and security papers...

'In early 2009, Pakistan's National Accountability Bureau (NAB) announced that the former consul general of Pakistan in the United States would soon be arrested for issuing 300 fake passports to Pakistanis... He subsequently admitted in court that his office had indeed issued 300 fake passports...'

33.03 The Immigration and Refugee Board of Canada (IRB) noted in a Response to Information Request (RIR), dated 28 November 2007, that:

'A July 2005 article in Dawn, a Karachi-based newspaper, states that "tens of thousands of Pakistanis manage every year to reach [the] UK on forged documents and through other means of human trafficking". In an

article on human trafficking [March 2005], The Daily Times... indicates that "illegal immigrants travelling with fake student visas" are also commonplace. The Human Rights Commission of Pakistan (HRCP), a non-governmental organization which promotes the advancement of human rights in Pakistan indicates in their 2006 report that during the previous four years, over 33,000 Pakistanis were returned to Pakistan after using fraudulent travel documents to enter Oman. The HRCP report also estimates that over 300,000 people were thought to leave Pakistan by illegal means each year.'

33.04 The same source noted that:

'The Federal Investigation Agency (FIA), a Pakistani law enforcement agency which generally investigates cases of corruption and immigration control, including offences under passport-related legislation states that it was aware of 131 passengers travelling on forged documents in 2004 and 83 in the first six months of 2005.

'According to the Pakistan Press International (PPI), in May 2006, the British government donated a machine that detects forgeries to the Pakistan passport and immigration office. This equipment, which magnifies images on any document to a very high degree and can identify the use of different inks in the preparation of documents, is intended to help Pakistani authorities identify forged or fraudulent documents, such as national identity cards, bank statements and other documents required to obtain visas. The FIA already owns four such machines. The Director of Visa Services at the British High Commission in Islamabad is quoted in the article as saying that approximately two percent of applications for United Kingdom (UK) visas are fraudulent.'

33.05 Another IRB RIR, dated 18 June 2004, stated that:

'During a presentation at the Ninth European Country of Origin Information Seminar held in Dublin, Ireland, on 26 and 27 May 2004, an Islamabad-based representative of the United Nations High Commissioner of Refugees (UNHCR) provided information on various country conditions in Pakistan. The UNHCR representative stated that there is a high level of corruption in Pakistan and that it is possible to obtain many types of fraudulent documents or documents that are fraudulently authenticated by a bona fide stamp or authority.'

33.06 The same report noted that:

'The Information Centre on Asylum and Migration of the German Federal Office for the Recognition of Foreign Refugees indicated that '[i]n nearly all cases, the documents presented [by asylum seekers] for proof of persecution (reports under the penal code, warrants for arrest, court judgments, lawyers' correspondence) were falsified or of incorrect content. In Pakistan, it is not...difficult to have a (simulated) criminal proceeding initiated against oneself, in order to get authentic documents

(e.g. a "First Information Report" or a decision to set the accused free until the date of the trial)... It is possible...either [to] pay for or to use private contacts to have a newspaper article published depicting a situation of persecution'."

#### **"First Information Reports (FIRs)**

- 12.01 The United States Department of State Country Report on Human Rights Practices 2011 (USSD Report 2011), published 24 May 2012, stated that:

'First Information Report (FIR) is the legal basis for any arrest. Police ability to initiate an FIR is limited, but for certain crimes the police may initiate an FIR. Often a different party must file the FIR, depending on the type of crime, not whether there is reasonable proof of a crime. An FIR allows police to detain a suspect for 24 hours, after which a magistrate can order detention for an additional 14 days if police show that the detention is material to their investigation. In practice some authorities did not observe these limits on detention. There were reports that authorities filed FIRs without supporting evidence to harass or intimidate detainees or did not file them when adequate evidence was provided unless the complainant paid a bribe...

'There were reports that some police detained individuals arbitrarily without charge or on false charges to extort payment for their release. There were reports that some police also detained relatives of wanted individuals to compel suspects to surrender.

'Police routinely did not seek a magistrate's approval for investigative detention and often held detainees without charge until a court challenged the detention. When requested, magistrates approved investigative detention without requiring further justification. In cases of insufficient evidence, police and magistrates sometimes colluded to issue new FIRs, thereby extending detention beyond the 14-day period.'

- 12.02 The Citizens Police Liaison Committee (CPLC) of Pakistan noted on its website, accessed 14 March 2011, that a First Information Report (FIR):

'...is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf. Anyone can report the commission of a cognizable offence either orally or in writing to the police. Even a telephonic message can be treated as an FIR. It is a duty of police to register FIR without any delay or excuses. Non-registration of FIR is an offence and can be a ground for disciplinary action against the concerned police officer.'

- 12.03 The CPLC went on to describe a cognizable and non-cognizable offence:



'Cognizable Offence: A cognizable offence is one in which the police may arrest a person without warrant. They are authorized to start investigation into a cognizable case on their own and do not require any orders from the court to do so.

'Non-cognizable Offence: A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission.'

50. I confirm that in reaching my findings I have considered all the evidence "in the round" in making an assessment.

### The Country Guidance

51. The Tribunal have dealt with the decision of Ahmadis most recently in the decision of **MN and Others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC)**.

52. 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.

53. The head note reads as follows:-

- "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 (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;
  - (ii) 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.
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 (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.

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 (ii)(a) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
  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(a) 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(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."
54. The first question I must ask is whether the claimant genuinely is an Ahmadi. As noted by the country guidance decision in reaching a conclusion on this aspect of the case, the Tribunal is likely to include an enquiry whether the claimant was registered with the Ahmadiyya community in Pakistan and worshipped and engaged there on a regular basis. Post arrival activity is also relevant including confirmation from the UK Ahmadi headquarters regarding activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.
55. In this appeal it is accepted on behalf of the Secretary of State that the Appellant and his family members are followers of the Ahmadi faith. Their faith is prominently set out on their passports. I have considered the evidence as a whole concerning their worship and engagement in the Ahmadiyya community in Pakistan from the evidence that has been produced before the Tribunal and in the light of the oral evidence that I have heard. Having done so, I am satisfied that the Appellant and his family members were active members of the Ahmadi faith and of their community in Kotli in Pakistan.
56. The Appellant applied for verification of his faith and preaching activities in Pakistan by making an application to the UK Ahmadiyya headquarters for such verification to take place. The process of verification is set out in a letter dated 20<sup>th</sup> November 2011 in which it is noted that they carry out checks in Pakistan before they

confirm or verify any factual account given by any person making an enquiry to establish their faith. It is clear that they have no vested interest in the support of any particular Appellant and that is confirmed in the country guidance case of MN which further notes that the AMA UK are highly organised and have an information gathering capacity (see paragraph 66 of the decision). The enquiries that were undertaken by the UK Ahmadiyya headquarters into this particular Appellant and to confirm and verify his activities in the United Kingdom are set out in a letter at page 52(a). The documentation corroborates the Appellant's claim that he was an "Ahmadi by birth" and sets out that confirmation as to his activities had been confirmed by the president of the Kotli branch. Specific confirmation concerning this particular Appellant and his family members are set out in that letter. As to his claim that he comes from a longstanding Ahmadi family, that is confirmed by the letter noting that he was Ahmadi by birth therefore both parents were of the Ahmadi religion. It noted that he had contact and co-operation with the Ahmadiyya community and that he had paid financial contributions regularly. As to posts held in furtherance of his faith, it was noted that he was the naiib nazim isha'at (assistant secretary for publication and literature) between 2004 and 2005 and that he was a volunteer in the ziafat (kitchen and catering) between 2005 and September 2011 and that he was a member of the committee for the construction of the local mosque from 2008 until September 2011 and his contributions to the Kotli city branch of the Ahmadiyya community were confirmed by the UK AMA at page 177 of the bundle. In respect of the Appellant's wife, she also held positions in the Ahmadiyya community, that she was the secretary of the taalimo tarbiat lajha imailah (education wing ladies) and a secretary of the nasirat (youth girls' wing) and also a secretary of the dawat illaa (preaching) since 2009.

57. Having considered that evidence in the light of the oral evidence that I have heard, I am satisfied to the lower standard that the Appellant has demonstrated that he was an active and prominent member of the Ahmadi faith and sought advancement of that faith in a number of respects shown by his representation on various committees and in particular seeking to be involved in the building and construction of a mosque. It is of significance that the objective material makes reference to the difficulties that members of the Ahmadi faith have and the restrictions they face on establishing places of worship. Several Ahmadi mosques were reported as being desecrated and construction being stopped.
58. I have also considered with care the evidence concerning his participation in the United Kingdom and that of his family. Whilst it was submitted that he has only taken part in activities in the United Kingdom to bolster his claim and to bring himself within the country guidance, as noted by Mr Halim, this is not a case where the Appellant had not been a genuine follower of the faith in Pakistan and was therefore trying to mount a sur place claim nor could it be said that he would have known what the country guidance case said it having been promulgated a number of years after he had been in the United Kingdom and after having demonstrated his faith in the United Kingdom since his arrival.

59. There is an abundance of evidence concerning the first Appellant and his family members' participation in the Ahmadi faith in the United Kingdom arising out of their membership of the local branch in Hartlepool. The evidence has been supported and confirmed by the AMA UK and the secretary of that association. The letter from the AMA UK is set out at page 52. It supports the Appellant's account and is consistent with the activities that he has carried out in the United Kingdom. It confirms that the first Appellant has participated in the preaching programme of the branch by distributing leaflets to create an awareness of ISRA and to encourage members of the public. He has attended congregational prayers, Eid, attended monthly meetings and the annual convention in 2012. He has participated in preaching activities known as "tabliq" involving door to door leaflets and that he has assisted in the food and hospitality work of the branch at meetings and that he is also given the responsibility of looking after the maintenance and cleaning programme of the branch. At page 53 he is given the title of "mumtazim ziafar" and there is a document at page 56 confirming his account that he was a volunteer for the annual convention in 2012 known as the "jalsa salana".
60. The Appellant has produced photographic evidence that confirms the contents of the letter from the AMA UK relating to his activities. They show him out on the streets in Hartlepool distributing leaflets and preaching to members of the community. He is shown at page 64 at a peace exhibition with a guest and there are photographs of him (page 63) with the national president and members of the executive committee. I do not accept the assertion that they only demonstrate three occasions. I am satisfied from the evidence that has been verified by the AMA UK that throughout the time that he has been in the United Kingdom he and his family members have been involved in the active propagation and participation in their faith in their local community and that these are simply examples of the propagation of that faith. There are photographs showing him also with the spiritual head of the Ahmadi religion at page 198. It shows the Appellant, his wife and the spiritual leader of the Ahmadiyya community together in one photograph. Whilst photographs may be seen as self-serving, it is because they are seen in conjunction with the verification of the AMA UK concerning the totality of the activities that are carried out which gives them some force.
61. I also accept that he has made financial contributions to the Ahmadiyya Association in the United Kingdom. It is of significance that the AMA UK verified that in Pakistan he also had made voluntary contributions to his faith. The contributions are set out at various pages, 57, 89, 59, 60 and 61. Those all relate to donations made in 2011 and when totalled together give a figure of £72. The Appellant was cross-examined on the basis that those contributions were high for a man of limited means. It is not clear what the inference was from that, either he did not pay them or he had been working. Nonetheless, the evidence of the Appellant was that he had always provided contributions towards his faith when in Pakistan and had also done so in the United Kingdom. His explanation of being able to afford it was that he would "save little by little" and that he had given up cigarettes which had therefore meant

some of his income could be used by way of voluntary contributions. I accept that he made those contributions. As to the contributions of his wife, they are found at page 87 and they comprise of a donation of £20 (15<sup>th</sup> July), £80 on 16<sup>th</sup> December and £27 on 9<sup>th</sup> June. Those donations can be seen to have been spread over a period of six months. The daughter's contributions are also found in the bundle of £27, £24 and £10. Again they are over a period of six months. Whilst it was submitted that they only demonstrated a "snippet on a weekly basis" that was not the evidence given. At no time were they asked if they made contributions weekly and that was not the evidence that was given by them. I am satisfied that they live as a simple family and are conducting themselves in the way that they did in Pakistan by making voluntary contributions towards their religion.

62. I have also considered the evidence of the family members, namely his wife and daughter. The Appellant's wife did hold different positions in the Ahmadiyya Association in Pakistan and in particular education of the ladies wing. That had been verified by the UK headquarters in respect of activities in Pakistan. She confirmed that she had preached her faith in the United Kingdom and further confirmed that she had felt the need to preach because it was part of their faith that they should spread the word of God to people. She said that "even knowing the dangers this is the faith that we have and we cannot separate from this". She confirmed in cross-examination that she was the only secretary in Kotli ladies wing held between 2009 and September 2011. She said her daughter Atique did not have any actual role but was a member and would preach at college. She confirmed her activity in the AMA UK attending general meetings and taking part in classes, bazaars, charities and classes for education. She said that she did not preach at the moment except for one occasion at a library where she had met a woman and they spoke the same language. She confirmed that her daughter attended classes and that when they had meetings she would serve food. She confirmed her daughter's conduct with preaching at school and college and that she had set up a group on the internet, "a blog".
63. The evidence of the Appellant's daughter Atique confirmed that she would preach by conversations in class and that she had set up a Facebook page entitled "Rabwah" where people convert to the Ahmadi faith and ask questions about the religion and that it was part of the way to preach. I would accept that as a young person the use of Facebook is universally prevalent and that the way young people these days seek to display and send information is often used by the medium of Facebook and the setting up of a site entitled "Rabwah" is consistent with the way a young person would seek to engage other young people in their faith and is no less a part of preaching than going out and using more traditional methods.
64. In her oral evidence she also explained why she had preached despite experiences in Pakistan. She said it was part of her religion and that she had to tell people about her religion even if in fear, however since she had been in the United Kingdom she was able to do this more openly.

65. In cross-examination she said that she had held meetings and had served food. At school she had preached and had discussions with others who were not Ahmadis and that she had also watched the MTA channel. She also referred to her mother organising meetings in the home. Whilst the Presenting Officer in her submissions had submitted that the witnesses had been inconsistent on the basis that her mother had said her daughter had only preached at college and not at meetings, I do not find that that is right. The evidence recorded related to Pakistan where she said she had meetings at home and that her daughter had helped. The evidence of the mother was that she had only preached to one lady in the library but she did say that she attended meetings at which her daughter had helped. She was not saying that she was preaching at the meetings and that has been a misunderstanding. Therefore I find no inconsistency in their evidence. I am satisfied that both the Appellant's wife and daughter have demonstrated their adherence to and propagation of the Ahmadi faith not only in Pakistan but also in the United Kingdom and have given credible reasons as to why they have continued their faith and why they would continue their faith if returned to Pakistan.
66. As to the issue of the first Appellant's conduct in Pakistan, the Appellant claims that he did preach or proselytise his Ahmadi faith whilst in Pakistan. The Respondent relies upon evidence to the contrary set out in the asylum interview. At question 52 the Appellant was asked "Have you ever ... the Ahmadi faith with other non Ahmadis?". It is not possible to read part of that question and none of the advocates could assist in what that word actually was. It is assumed that it is "preach" although it does not look like that. In any event the answer that is recorded is "no". However that answer has to be seen in the light of question 51, the preceding question, in which he was asked "Have you ever proselytised the Ahmadi faith?" and he answered "Never to any Molvis. Only to people I knew and people of understanding. We speak to other Ahmadis. I ask them to pray and to do certain things."
67. It is the Appellant's evidence that he did preach to others in Pakistan as set out at question 51 but also that he preached to other non Ahmadis. He said that the answer to question 52 is wrongly recorded and that there were problems of interpretation during the interview. It is apparent that following the interview the Appellant voiced concerns that the interpreter had interpreted some evidence incorrectly and that at some point in the interview at question 94 it was alleged that a derogatory word was used to upset the Appellant. It appears to have been raised before the First-tier Tribunal (see paragraph 3 entitled "preliminary issue") where the representative appears to have withdrawn any suggestion that the Home Office interpreter showed disrespect for the Appellant. However there is no indication that the general complaint that the interpretation was not recorded accurately was ever withdrawn. Indeed it appears upon amended grounds before the Upper Tribunal that were before Judge Deans related to an issue that a concession was made by the Presenting Officer at the hearing and that parts of the interview were to be treated as unreliable and that was supported by a signed statement by the solicitor advocate at the hearing. No finding appears to have been made on that issue and both parties

accept that there is nothing else to take the matter further. However it may lend some support to the Appellant's case as it is clear at the answer given to question 51 that he had preached whilst in Pakistan and set against the background evidence relating to the risks of preaching in Pakistan and the fact that I find that it has been amply demonstrated that he had prominence in Pakistan in respect of his Ahmadi faith; a matter verified by the AMA UK, that there is a real possibility that the answer recorded is not a correct one. Indeed in his evidence in cross-examination he said he did preach in Pakistan but that he was "in fear of the consequences, in the UK I am able to preach freely". It was put to him that if he were granted asylum he would stop proselytising (on the basis that the evidence before the court is that he is presently proselytising and propagating his faith to non Ahmadis). He refuted this (stating that "I was born an Ahmadi"). That has to be seen in context with the evidence as a whole in which he is accepted that he is an Ahmadi and that he has held and shown to hold positions within the Ahmadiyya community which shows that he was an active participant in the religion whilst in Pakistan. This is also supported by his general evidence concerning the importance of preaching to him and the identity of the faith.

68. I now turn to the events in Pakistan themselves. The events in 2008 arise principally out of the extension work to the mosque in Kotli. The background material by reference to the area of Kotli and the Ahmadiyya community there, demonstrates that Ahmadis face restrictions on establishing places of worship and that there was credible evidence of several Ahmadi mosques being reported as being desecrated and construction of such mosques being stopped (I refer to the USSD Report of 2009). Thus the events in relation to 2008 are set against that general background material.
69. The account given by the Appellant is that the extension to the mosque that began in June 2008 caused an outcry in the area of Kotli and in particular for members of the Khatme Nabuwat. I accept from the evidence given that the Appellant was a member of the committee for the construction of the local mosque between 2008 and September 2011. That is not taken solely from his interview, statements and other evidence but it has been confirmed by the AMA UK from a verification request and taken from sources in Pakistan. I am entitled to place weight upon that verification as it is referred to in the country guidance case and the information gathering services that are available to the AMA UK. It is said that an open FIR against the Ahmadiyya community as a whole was issued. The FIR is set out at page 213. Cross-examination took place on the basis that the Appellant himself was not named in the FIR. However my understanding of the evidence is that the Appellant did not produce the open FIR to demonstrate that he was at risk but as I understand it to demonstrate the strength of feeling and conduct of those who were seeking to harass and harm the Ahmadiyya community as a whole. I find that that is consistent with the background material set out in the US State Department Report 2009 as to what was happening in relation to those who sought to construct places of worship for the Ahmadi faith and it is also consistent with the background evidence recorded by the Tribunal in the country case of **MN and Others** (as cited) when making reference to



the filing of FIRs (first step in any criminal proceedings) which are being used in an attempt to harass and persecute members of the religious community. The reason it is said that it was "open" is that it is done deliberately to keep the name and address of the accused blank so that the police can simply make an arrest and add the name to it as and when required. The criminal case was registered against the entire population of Kotli for the construction of the mosque on 3<sup>rd</sup> June 2008 (R23 open FIR). By way of response it appears that an application was sent to the district magistrates three days later on 6<sup>th</sup> June 2008 to investigate the matter for the members of the mosque committee. On this document (page 130) the Appellant is named and that is consistent I find with the verified evidence from the AMA UK that the Appellant was a member of the mosque committee. It is clear that that application was in answer to the open FIR that was registered on 3<sup>rd</sup> June 2008 against the community as a whole.

70. I have considered the circumstances of the dissent around the construction of the mosque. There are a number of news articles from June 2008 that make reference to the issue of the mosque construction and what had happened. At pages 256-260 the Daily Nawi-I-Waqt records that there were "restrictions" placed on the construction of the Quadari Centre in Kotli and that a case was filed under "298B and 298C". It records that one accused was arrested whilst raids conducted for others. This is on 9<sup>th</sup> June and this was prior to the arrest of the Appellant. There is a similar article at page 261 reporting restrictions were placed on the construction of the mosque and in the newspaper "the Daily Khabrin" recorded on 11<sup>th</sup> June that in Kotli members of the Jamat-e-Islam offered to provide free legal assistance to Muslims who filed legal complaints against "Qadianis" (the derogatory name given to the Ahmadiyya community). Thus this is the background evidence to the events in 2008. Whilst I have set out earlier in this determination the background evidence relating to the prevalence of documentation in Pakistan and that newspaper reports and other documents can be provided, I am satisfied that in general terms those documents should merit some weight as they are consistent with the general background evidence and the evidence when taken in the round demonstrates that there were problems in 2008 arising out of the mosque in Kotli and allied to that that this Appellant was a member of that said committee. There is no FIR in his name but I accept that he was arrested on 16<sup>th</sup> June 2008 and detained for two days until he was bailed. The circumstances of his arrest are consistent with the newspaper report concerning raids on others. There was a document relating to the bail (page 127) issued on 18<sup>th</sup> June 2008, two days after his arrest. He was cross-examined on the basis that this was a "court document for the appellant". However on closer inspection this is not a court document but is a bond agreement paid by Amir Dawood who is said to be the Appellant's relative. While it gives the accused's name being that of the Appellant, it relates to the bond put forward by Mr Dawood and not to the Appellant.
71. Having considered the evidence in the light of the oral evidence and the documents, I find that the Appellant, as a result of his activities on the committee for the

extension to the mosque in 2008 came to the attention of the members of the Khatme Nabuwwat alongside others of the Ahmadiyya community and that he was arrested, detained but was bailed after two days. There is no evidence before me from this Appellant that the proceedings are still ongoing nor is there any evidence of any further action taken after 2008. Therefore I conclude that whilst I am satisfied that he was arrested and detained, I find that there was no further action taken against this Appellant that arose out of those particular proceedings and that he continued to live in Pakistan. This is borne out by his own account that the next incident that occurred was in 2011.

72. There is a document that the advocates have referred to as a "hit list" at page 135 that is dated August 2008 and is said to have been re-issued on a date in 2009. It is said to set out a list of prominent and high profile members of the Ahmadiyya community preaching the "Qadiaiat". It is clear that the document does not name the Appellant himself. However it does name his business at page 144 at entry number 19 under the heading "Qadyan lawyers and businessmen". The entry is "Nadim Khokar Electric Point". Whilst he is not named personally his business is named. I do not find that it demonstrates that he is a person of high profile but at best it demonstrates that his business was seen as being associated with those who preached and were active in the propagation of the Ahmadi religion and its activities.
73. The threatening letter that was said to arrive on 2<sup>nd</sup> September 2011 (exhibited at page 157-158) was said to have been delivered over two years later stating "you are on the hit list". As I have stated, the so-called "hit list" was dated a significant time before 2008 and the Appellant in any event is not listed by name in that list thus I do not attach weight to that document.
74. As to the events in 2011, the Appellant claims that an FIR was issued on 15<sup>th</sup> September arising out of an argument that he had in a shop where two men, who were out of the district, noticed that he had an Ahmadi newspaper on his counter (see page 17 of the ROP). The Appellant's evidence was that the FIR was filed against him because of the argument that ensued in his shop and he confirmed that they had filed the FIR after finding out that he was an Ahmadi and after accusing him of preaching and that the contents of the FIR set out a false allegation against him because they were trying to file a case against him. The point made by the Presenting Officer was that the contents of the FIR are not consistent with the events. However in my judgment that is not surprising. The Appellant's case is that the whole contents of the FIR were false and were designed to cause trouble for him. He was not saying that the events in the FIR were what had happened but what was in the FIR was to found a false allegation against him to begin the first step of criminal proceedings.
75. I accept the contents of the FIR. He has been consistent about that evidence when cross-examined about the events that occurred in the shop and it is consistent with his general background set against his Ahmadi faith. Thus I have reached the conclusion concerning the events in Pakistan that he and his family members have

demonstrated from the evidence that they were active participants who regularly engaged in their Ahmadi faith in Pakistan. In the Appellant's case he was a member of a number of committees including the committee for the construction of the mosque, family members had paid voluntary contributions and his wife was also a member of a committee (the ladies wing). His daughter would preach whilst at school and that it is reasonably likely that the Appellant himself although to a limited extent did preach or proselytise his faith whilst in Pakistan. In 2008 he became of interest to the members of the local Khatme Nabuwwat as a result of the construction of the mosque which is consistent with the background material concerning events at that time. However the interest in him did not lead to any further proceedings and I did not accept that he was on any "hit list" arising out of that. I also accept that in 2011 a further FIR was issued against him arising out of the events on 15<sup>th</sup> September.

76. I have therefore considered the evidence relating to the claimant's intentions or wishes as to his faith if returned to Pakistan and also members of his family. I have set this out earlier in the determination. I have reached the conclusion on the evidence before me that there is a reasonable likelihood that they have demonstrated that there is a need to establish that their faith is of particular importance to them and to their "religious identity". Both the first Appellant and his wife and daughter have referred to the particular importance it has to them to their own identity as being an Ahmadi and I am satisfied that they have discharged the burden upon them to demonstrate that they would wish to practice and manifest aspects of their faith openly but are not permitted by the Pakistani Penal Code (PPC). I have reached the conclusion that it is genuinely held and I do not accept the submission that the conduct and behaviour that has been well documented is simply designed to found a claim for asylum. That is wholly contrary to the family's previous conduct which again is well evidenced in Pakistan which I consider gives a fuller picture concerning their active participation and propagation of this faith as a whole.
77. I have therefore evaluated the evidence taking into account their behaviour since their arrival but also in the context of their activities whilst in Pakistan. I do not find that they fall into paragraph 8 of the head note, namely Ahmadis who were not able to show that they practised their faith at all in Pakistan. That is contrary to the evidence that I have set out above, nor do I find that they conduct it on a restricted basis. Similarly it is not the case that this is a sur place claim based on post arrival conversion or a revival in belief and practice because as set out earlier it is well documented that this is a family who have been active in their participation not only in the United Kingdom but also in Pakistan.
78. Thus in summary I find that the Appellant and his family members are genuine Ahmadis who have been active in Pakistan propagating their faith and have been active members of the Ahmadiyya community as evidenced by the AMA UK and the verification of that conduct. I found the first Appellant came to the attention and hostility of the Muslim community in Pakistan in 2008 although it appears no further action was taken in respect of that and that he also came to their adverse attention in

2011 culminating in the first step of the criminal process of a registration of an FIR. I did not accept that he had been on any "hit list" as he had not been specifically named but at its highest his business had been identified as a business run by someone who actively preached or propagated the Ahmadi faith. He has practised and propagated his faith in the United Kingdom as have his family members and has been able to do so on perhaps a more active basis than he did in Pakistan. As his wife has pointed out, it is possible to practise in the United Kingdom with no fear of arrest, harassment or any harm and that in Pakistan that had been at the forefront of their minds and the consequent attention their religion would bring them.

79. Thus I am satisfied that the family as a whole are genuine Ahmadi and have taken part in their faith both in Pakistan and in the United Kingdom holding true beliefs. Their behaviour in the United Kingdom is consistent with a longstanding active faith pursued in Pakistan. I do not find that the family can be reasonably expected to abstain from practising their faith to hold the beliefs that they have if returned to Pakistan. Thus I conclude that the Appellant and his family members are reasonably likely to continue with the propagation of their faith and practice of it if returned. Such restrictions I find would undermine their religious identity as demonstrated in these appeals.
80. For the reasons that I have set out, I am satisfied that the Appellant has demonstrated that he has discharged the burden upon him to demonstrate that if returned to Pakistan there is a reasonable likelihood that he would face serious harm or persecution as a result of his religious beliefs. Applying the country guidance in **MN and Others** I find that the Appellant would be at risk if he would seek to propagate his faith in Pakistan and that he should be entitled to refugee status on the principles of **HJ Iran** because his reasons for refraining from propagating his faith would be because he feared persecution and that thirdly as a genuine and devoted Ahmadi, the propagation of his faith is of significant importance to the Appellant in preserving his religious identity.
81. In the light of those findings, the appeal should be allowed on asylum and Article 3 ECHR grounds. Whilst I have made some findings in relation to the Appellant's wife and daughter, they are dependants upon the claim and therefore should be granted leave to remain as part of the core family of the Appellant.
82. The determination of the First-tier Tribunal involved the making of an error on a point of law. The determination was set aside. The decision is remade as follows:-

The appeals are allowed on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date: 23/9/2013

Upper Tribunal Judge Reeds