



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal
Number**

AA/00466/2014

THE IMMIGRATION ACTS

Heard	at	Field	House
On 23 April 2014			Determination Sent:
		On 03 June 2014	

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

AA
(Anonymity direction made)

Appellant

and

Secretary of State for the Home Department
Respondent

Representation

For the Appellant: Ms. H. Naz of Morden Solicitors LLP.
For the Respondent: Mr. G. Saunders, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Alis promulgated on 27 February 2014, dismissing the Appellant's appeal against the Respondent's decision dated 7 January 2013 to remove the Appellant from the UK following the refusal of his application for asylum.

Background

2. The Appellant is a national of Pakistan. His personal details are a matter of record on file and are not reproduced here in line with the anonymity direction that has been previously made in these proceedings, and which is hereby repeated and continued.

3. The Appellant's immigration history is also a matter of record on file, and is summarised at section 2 of the cover sheet to the Respondent's appeal bundle before the First-tier Tribunal. It is unnecessary to reproduce it here: I reference it as is incidental for the purposes of this decision.

4. The Appellant applied for asylum on 28 October 2011 on the basis that he claimed to be at risk if returned to Pakistan because of his faith. Although he was born into a Sunni Muslim family he became interested in the Ahmadi faith whilst in Pakistan, and subsequently converted to the Ahmadi faith in April 2011 whilst studying in the UK.

5. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter dated 6 January 2014, and a Notice of Immigration Decision dated 7 January 2014 was served on 10 January 2014.

6. The Appellant appealed to the IAC. The First-tier Tribunal Judge dismissed the Appellant's appeal for reasons set out in his determination.

7. The Appellant sought permission to appeal which was granted by Designated Judge of the First-tier Tribunal Judge RC Campbell on 18 March 2014.

Consideration

8. The Respondent's representative before the First-tier Tribunal accepted the fact of the Appellant's conversion to the Ahmadi faith since being in the UK (see determination at paragraph 56), as in turn did the Judge (paragraph 66). The First-tier Tribunal Judge concluded that the Appellant was not at risk when he left Pakistan (paragraph 55). Therefore the Judge was essentially dealing with a *sur place* claim and was required to evaluate the Appellant's case

with regard to the risk factors for an Ahmadi in Pakistan, and with particular reference to the country guidance case of **MN and others (Ahmadis - Country Conditions - Risk) Pakistan CG [2012] UKUT 00389**.

9. The First-tier Tribunal Judge did indeed direct himself to the appropriate case law and set out the relevant passages in detail in his determination.

10. Pursuant to the Country Guidance, the key issue in the appeal became that of 'paragraph 2(i) behaviour': see paragraphs 119 and 120 of **MN** - and specifically what was of importance to the Appellant's own religious identity - a matter itself to be evaluated in significant part on the basis of his own testimony and any supporting evidence as to how he conducted himself in faith terms generally.

11. In my judgement, in evaluating this core question the First-tier Tribunal Judge fell into error of law by relying upon the Appellant's previous conduct in Pakistan in respect of his Sunni faith as a key determinative factor in evaluating the Appellant's likely conduct - and/or preferred conduct if free from any risk - if returned to Pakistan as an Ahmadi. I find that the conduct of a person who at no point asserted a serious commitment to the Sunni faith, and indeed was exploring alternative faith interests, is in no way a reliable indicator of that same person's likely conduct and preferences post-conversion to a different faith. In short: the Appellant's relative indifference to the Sunni faith is not a reliable indicator of his commitment to the Ahmadi faith.

12. The First-tier Tribunal Judge plainly placed significant reliance upon the Appellant's previous behaviour in Pakistan prior to his conversion:

(i) *"I cannot overlook the fact that when he had the opportunity to pursue his religious beliefs in Pakistan he chose to do so in private..."* (paragraph 67).

(ii) *"Although this appellant stated he would preach openly I am not satisfied he would, based on previous conduct in Pakistan when he chose not to convert pursue his religious beliefs beyond listening to the radio."* (paragraph 17).

13. Further, I find that I am unable to reconcile these key passages in the concluding paragraphs of the Judge's assessment of the Appellant's asylum claim - and in particular the latter one - with the observation at paragraph 61 - "*I also must take into account that his involvement with the Ahmadi religion was totally different prior to March 2011 because firstly he was not a convert and secondly he apparently only followed the religion by listening to radio broadcasts.*"

14. The error of law thus identified relates to the central element of the assessment of the Appellant's claim, and as such requires that the decision in the determination be set aside.

Remaking the decision in the Appeal

15. I am satisfied that the decision in the appeal can be remade without hearing any further oral evidence. Despite the error identified above in respect of the First-tier Tribunal Judge's evaluation of the risk on return, the Judge otherwise for the main part made clear well-reasoned findings of primary fact, and further set out in helpful detail key passages of the Appellant's testimony.

16. One area of the Judge's assessment that does require further consideration and focus is in relation to the supporting material submitted by the Ahmadiyya Muslim Association for the UK ('AMAUK'). Indeed there is considerable substance to the Appellant's submissions that the Judge also fell into error of law in his consideration of the supporting evidence: permission to appeal was granted in part on this basis. In the event, however, because I have found that the error identified above is so fundamental, it is unnecessary for me also to reach a formal decision on error of law in respect of the AMAUK letter: the letter can in any event be approached afresh in the context of remaking the decision in the appeal. Be that as it may, analysis of this material does not require hearing further oral evidence.

17. In all of the circumstances there is sufficient material before the Tribunal to remake the decision without further evidential input.

18. Save in so far as the Respondent now accepted the fact of the Appellant's conversion to the Ahmadi faith, Mr Saunders repeated reliance upon the Respondent's RFRL, and in particular paragraph 75, where reference is made to the Appellant only claiming to have practised his faith at a "*low level*". Mr Saunders also emphasised

paragraph 126 in **MN** in relation to evaluating *sur place* claims based on post-arrival conversion.

19. I observe that the First-tier Tribunal Judge made no adverse assessment of the Appellant's general credibility. The only aspect of his testimony that he did not accept was the Appellant's assertions as to what was important to him as an Ahmadi, and how he would wish to practice his faith. As indicated above, the Judge essentially rejected these matters on the erroneous basis that the Appellant's approach to his Ahmadi faith was different from the manner in which he had observed the Sunni faith, and the limited manner in which he had explored the Ahmadi faith prior to conversion. The First-tier Tribunal Judge otherwise identifies no basis to doubt the veracity of the Appellant's expression of his Ahmadi faith.

20. The following passages setting out the Appellant's evidence are, in my judgement, particularly germane:

(i) *"When he lived in Pakistan he followed the Ahmadi faith in his heart. He had not converted because converts were not accepted in Pakistan. He did not act openly because he feared the consequences of his actions and he was aware other people had been killed"* (paragraph 38).

(ii) *"In his oral evidence he confirmed that having lived in the United Kingdom and converted and lived the way of an Ahmadi, without fear, he no longer wished to return to Pakistan because he believed that not only would he face problems from his father, Mr Hussain and Mr Ghafoor but he would also be persecuted by others once they discovered his conversion. Having converted he stated he would have to continue preaching, even though to do so would place his own life at risk"* (paragraph 39).

(iii) *"In answers put to him by myself he stated that he would wish to openly follow his religion if returned to Pakistan, despite the known risks although he did not explain why he would do this. He stated he no longer felt able to just follow the religion in his heart, but would wish to follow the religion fully as he had been doing in the United Kingdom"* (paragraph 59).

21. I pause to observe in respect of this latter passage that, in my judgement, the First-tier Tribunal Judge's suggestion that the Appellant had not explained why he would wish openly to follow his religion is unsustainable. The Appellant had explained that his

experience of observing his faith openly was important to him as a matter of that faith, as was practising it 'fully' which involved preaching to others. In the context of religious observance that is sufficient explanation. In any event the Judge's observation misses the point that if the reason for not wishing to follow one's religion openly is fear of harm, that may be sufficient to engage the Refugee Convention.

22. Be that as it may, in my judgement it is clear that the Appellant gave evidence that it was important to him to practice his faith fully and openly, and there was no basis to doubt his testimony in this regard.

23. The Appellant had provided supporting evidence of the fact of his conversion, and his observance of the Ahmadi faith from the AMAUK. The First-tier Tribunal Judge marginalised the significance of this letter because it was not itself supported by other letters, and was not supported by the attendance of a representative from the AMAUK (determination at paragraph 58).

24. In remaking this decision I do not adopt that approach. As Ms Naz points out the AMAUK letter dated 31 January 2014 is written as a culmination of a process of inquiry conducted by the AMAUK: something of the organisational capability of the AMAUK is set out in the country guidance case of **MN** at paragraphs 55 and 66, and see further the evidence set out at paragraph 297(iv). In all such circumstances it is not appropriate to marginalise the letter on the suspicion that it may be based on information supplied by the Appellant alone and not based on any enquiries made by the organisation itself. In my judgement the letter is to be taken into account as providing corroboration of the Appellant's own account. There is no reason to treat the letter at anything other than its face value.

25. The letter provides corroboration of the Appellant's involvement in the Ahmadi community both at a local branch and Association level, including participation in preaching programmes and assisting in holding preaching stalls.

26. In all of the circumstances I accept that the Appellant has been involved in the UK in 'paragraph 2(i) behaviour' as an aspect of his observance of his Ahmadi faith, and I accept his testimony to the effect that these are, to him, important aspect of his faith with which he would wish to continue if he were returned to Pakistan. In

particular I find that the Appellant has been involved in, and would wish to continue involvement in preaching including holding open discourse about his religion with non-Ahmadis.

27. Further to the risk assessment in **MN**, I am satisfied that such matters place the Appellant at sufficient risk of persecution were he to be returned to Pakistan at the present time to give rise to an entitlement to the international surrogate protection of the Refugee Convention.

Decision

28. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

29. I remake the decision in the appeal. The appeal is allowed on Refugee Convention grounds.

Deputy Judge of the Upper Tribunal I. A. Lewis 2 June 2014

Anonymity Direction

In order to secure the anonymity of the Appellant I direct pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and Section 11 of the Contempt of Court Act 1981 that no report of the publication of these proceedings or of any part or parts of them shall name or directly or indirectly identify the Appellant. Reference to the Appellant may be by use of his initials but not by name. **Failure by any person, body or institution whether corporate or unincorporated (for the avoidance of doubt to include a party to this appeal) to comply with this direction may lead to proceedings contempt of court.** This direction shall continue in force until this Tribunal or an appropriate Court shall lift or vary it.

Deputy Judge of the Upper Tribunal I. A. Lewis 2 June 2014