



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02821/2015

THE IMMIGRATION ACTS

Heard at Field House

On 14th July 2015

Decision and Reasons

Promulgated

On 29th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR W M

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Javed, instructed by Thompsons Solicitors

For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan born on 1st January 1936, and appealed against a decision of the Secretary of State made on 4th February 2015 to remove him from the UK following a decision to refuse him asylum, humanitarian protection and protection of his human rights under the European Convention on Human Rights.
2. Following an application for permission to appeal, which was initially refused by the First-tier Tribunal, Upper Tribunal Judge Kebede granted

permission finding there was arguable merit in the assertion that the judge focussed on the appellant's evidence that he chose to seek refuge in the UK in order to access health facilities rather than address the reason why he chose not to preach his religion in Pakistan.

3. The matter came before me in the Upper Tribunal to consider the matter with respect to **MN and others (Ahmadis - country conditions - risk) Pakistan CG** [2012] UKUT 00389 (IAC).
4. The respondent accepted that the appellant was an Ahmadi and the appellant had been subject to discrimination and harassment and had some of his property destroyed whilst in Pakistan. The appellant claimed that he had been attacked five to six years previously.

Conclusions

5. At the hearing Ms Isherwood contended that there was no error of law but accepted that the findings appeared essentially to be confined to one paragraph [34]. She also accepted that because the appellant had raised the issue of his health did not mean that his claim of asylum should be given less weight.
6. The Application for Permission to Appeal contended that the judge had failed to assess the evidence in the light of **MN** and I find this has merit such that there is an error of law.
7. There was no reference to the previous attacks on the appellant which the respondent accepted.
8. The judge considered that the Ahmadiyya Muslim Association letter was good evidence as to his commitment to the Ahmadi faith but did not appear to factor it into his assessment of the claim contrary to the guidance in **AB (Ahmadiyya Association UK:letters) Pakistan** [2013] UKUT whereby the more specific a letter is the more it should be given weight.
9. Nor had the judge considered the headnote of **MN** which suggested that the more of a profile an appellant might have the more he might be targeted. The appellant's claim was that he was a landowner and indeed the judge accepted at [32] of the decision that the appellant was a prominent Ahmadi.
10. **MN** confirms
"The burden is in the claimant to demonstrate that any intentions or wish to practise the 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 discharged this burden he is likely to be in need of protection."
11. In addition, the judge stated at [34]

'... the appellant is not likely, given his age and his poor health, to return to Pakistan and embark on a career of preaching the faith and converting others'.

12. **MN**, however, at 2(i) states that it has long been possible in general for Ahmadi to practise their faith on a restricted basis either in private or in a community with other Ahmadi but it also states that 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-Ahmadi** although not amounting to proselytising.*"

and further

(i) If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in paragraph 2(i) above, he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution under section 295C for blasphemy.

(ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above ("paragraph 2(i) behaviour") to avoid a risk of prosecution.

13. **HJ (Iran) v SSHD** [2010] UKSC 31 confirms that if the person wishes to preach but is restricted from doing because of his fear of persecution then he may fall to be protected under the Refugee Convention. The evidence given by the appellant and recorded by the judge appeared to be that the appellant restricted his activities because of the penal code within Pakistan. The judge does not appear to have grappled with that point.

14. I find therefore that **MN** has not been applied in full and that the judge did not engage with all the evidence and failed to apply **HJ** correctly. These are errors of law which are material.

Order

15. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2)(b)(i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court

proceedings. An anonymity order is made because the matter involves an asylum appeal.

Signed

Date 14th December 2015

Deputy Upper Tribunal Judge Rimington