



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11171/2014  
AA/11176/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 December 2015

Decision & Reasons Promulgated  
On 5 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

CMA  
NMA  
(Anonymity direction made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellants: Mr P. Turner, instructed by Crescent Law  
For the Respondent: Mr S. Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellants are appealing the decision of the First-tier Tribunal (FtT), promulgated on 16 February 2015, whereby it dismissed their appeals against the respondent's decision to refuse to grant them asylum or humanitarian protection and to remove them from the United Kingdom.
3. The appellants are nationals of Pakistan who are married to each other. The first appellant was born on 1 July 1945 and the second appellant was born on 1 January 1945. They were issued visit visas to visit the UK on several occasions between 2009 and 2014. In July 2014 they entered the UK on a valid visit and claimed asylum on entry. Since 2011, until coming to the UK, they have been living in Dubai.
4. The appellants claim to have a well founded fear of persecution arising from their religious practice as Ahmadis. The core of their claim is that they have a high standing within the Ahmadi and wider community in Pakistan (a photograph of the first appellant, who is a pharmacist, appears in a book about the Ahmadi and he is a Musi, which is position of honour and privilege, placing him at higher risk); they have used their home for prayer meetings (between 1983 and 1995; and then between 2003 and 2014), and the first appellant has undertaken preaching. Although they have not personally had problems directly from the authorities, they claim that they are unable to practice their faith openly and are at real risk of persecution if returned to Pakistan such risk having been heightened by their conduct since arriving in the UK.
5. The respondent refused the appellants' application for asylum. Whilst it was accepted that they were Ahmadi, it was not accepted that they would be at risk on return to Pakistan because of their faith. The respondent did not accept that they were openly practising and preaching Ahmadi Muslims such that they would fall into a category of person considered at risk under *MN and others (Ahmadis - country conditions - risk) Pakistan* CG [2012] UKUT 00389(IAC)

#### Decision of FtT

6. The appellants appealed and their appeal was heard by FtT Judge Ford. The FtT made clear that the appeal was being considered in light of *MN and Others and HJ (Iran)* 2010 UKSC 31. It accepted that the appellants were Ahmadi but not that they were inclined to preach or proselytise or attempt to convert non Ahmadis. At paragraph [44] the FtT concluded:

"I am not satisfied that they wish to practice their faith in such a matter as to bring them to the adverse attention of the Pakistan authorities. This is not a case where they have been intimidated and prevented by threats and fears of violence from practicing their faith in the way it demands. Their faith, ie their personal faith, does not demand proselytising, preaching or attempting conversion of others."
7. The FtT did not accept that their *sur place* activities added to the level of risk they would face and found at paragraph [45] that if they are returned to Pakistan they

"... will continue to practice their faith in the way that they have always done so, which is in private and in a quiet personal way."

8. In reaching its conclusion about the risk the appellants would face on return to Pakistan the FtT made, inter alia, the following findings:
  - a. Although the first appellant was considered a generally credible witness, the FtT did not accept his account of regularly returning to Pakistan to continue Ahmadi activities and of allowing his home to be used for prayer meetings after moving to Dubai in 2011.
  - b. It was accepted that the appellants hosted prayer meetings in their home between 1983 and 1995 but not between 1995 and 2011.
  - c. The FtT found that the first appellant had never preached directly or indirectly to non Ahmadi in Pakistan or elsewhere and is not perceived as a proselytiser either in the UK or Pakistan.
  - d. His *sur place* activities have been limited to attending events and handing out leaflets.
  - e. Prior to 2011 the appellants were living a quiet life in Pakistan as respected members of the Ahmadi community and participating in administrative functions of the community. The first appellant participated in administrative functions for the community and is a Musi which is a position of privilege and honour but not one involving proselytising or preaching.
  - f. The first appellant's photograph appears in a book by the Ahmadi community but there was no evidence to suggest this book was distributed beyond the community.
  - g. The FtT found that the first appellant is an individual who has always chosen to practice his faith in private and limited his discussion of his faith to other Ahmadi and trusted friends.

### Grounds of appeal

9. In a detailed grounds of appeal, the appellants raise a number of issues.
  - a. Firstly, they argue that the FtT applied the wrong standard of proof.
  - b. Secondly, they argue that the FtT misapplied the applicable country guidance *MN and Others* and that on a correct application of the law to the facts found by the FtT the appeals should have been allowed. The essence of their argument is that the FtT concluded the appellants were not at risk because they are not inclined towards proselytising and preaching whereas *MN and Others* recognises that a range of activities falling short of this, such as holding open discourse about religion with non-Ahmadi or referring to a religious leader as an Imam, can place an Ahmadi at risk and that they should not have to conceal core aspects of their identity by exercising 'discretion' if returned to Pakistan.
  - c. Thirdly, they argue that the FtT improperly failed to make an anonymity direction.
10. Permission to appeal was granted by Upper Tribunal Judge Canavan on the basis that the FtT may have erred in its assessment of what treatment might cumulatively

amount to persecution and in the application of the relevant country guidance (ie the second of the three grounds described above). Judge Canavan described the ground relating to standard of proof as unarguable. With regard to anonymity, the Upper Tribunal made an appropriate direction and I am satisfied that this issue has now been resolved. The matter before me, therefore, is the second of the three grounds described above.

### Submissions

11. Mr Turner argued (both orally and in a skeleton argument) that the FtT had not applied *MN and Others* correctly. It based its decision on a finding that the first appellant is not (and has not been) engaged in proselytising and preaching whereas, under *MN and Others*, the correct test is whether the appellants wish to openly practice their religion as they have been able to do since coming to the UK and whether, upon return to Pakistan, they would have to curtail the open practice of their religion, which under *HJ (Iran)* cannot be expected of them. He submitted that the first appellant is an elderly man who has lived a quiet life in respect of his faith in Pakistan because of fear of persecution. Upon coming to the UK he started to practice his faith more openly and in such a way that he falls within the risk categories identified by *MN and Others*. Only fear of persecution prevented him openly practicing his faith in Pakistan.
12. Moreover, argued Mr Turner, the *sur place* activities of the first appellant, which have taken the form of attending events and handing out leaflets, would put him at risk if undertaken in Pakistan, and had not been properly addressed by the FtT.
13. Mr Kola argued, in response, that the grounds of appeal are no more than a disagreement with the FtT's findings. The reason the FtT focused on the issue of proselytising and preaching was that the first appellant's case was that this is what he did. It was therefore entirely proper for the FtT to engage with this issue. The FtT has considered *MN and Others* in detail and there is no basis to argue it has been misunderstood. Mr Kola further argued that whilst the FtT found the first appellant to be generally credible there was several findings showing a lack of credibility in certain aspects of his case and the decision demonstrates careful and detailed consideration of the evidence and a proper application of that evidence to the relevant country guidance.

### Consideration

14. It was common ground between the parties that the FtT correctly identified that the appellants' appeal should be assessed in light of the findings in *MN and Others* as to the risks faced by Ahmadis in Pakistan.
15. The headnote to *MN and Others* is highly instructive for this appeal and therefore the relevant parts are set out in full:
  - "2.(i) The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements

of manifesting one's religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one's place of worship as a mosque and to one's religious leader as an Imam. In addition, Ahmadis are not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.

(ii) It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.

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

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

...

6. The next step (2) involves an enquiry into the claimant's intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph 2(i) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.

...

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(i) above.

9. A sur place claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant's local United Kingdom Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant's account as a whole may be relevant to the assessment of likely behaviour on return.

10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably

16. Under *MN and Others*, in order for the appellants to have succeeded in their appeal before the FtT it was not necessary for it to have accepted that the first appellant has engaged in proselytising and preaching. It would have been sufficient, to found a successful claim for protection, if the FtT accepted the appellants' claim to have engaged in activities falling short of proselytising and preaching but nonetheless falling within the activities described in paragraph 2(i) of the headnote to *MN and Others* or their claim to have only refrained from open practice of their religion, in the way contemplated by paragraph 2(i), because of fear of persecution.
17. However, although the FtT found the first appellant to be a "generally credible" witness, it did not accept all of his claims. It is clear from the decision, in particular paragraphs [12] – [23], that the FtT, in reaching its view on the first appellant's credibility and on which of the evidence to accept or not, has given consideration to and engaged with the relevant evidence, both documentary and oral, that was before it. Careful consideration was given, in particular, to the oral evidence of the first appellant about, inter alia, his role and profile in the Ahmadi community, the way in which he has practiced his faith (in Pakistan and the UK), and the use of his home in Pakistan as a prayer centre. The FtT has also carefully considered the letters in the appeal bundle from the Ahmadiyya Muslim Association. Having considered these and the other material evidence, and without taking into consideration any immaterial matters, the FtT reached a number of conclusions about the appellants and the way in which they practice their faith. These conclusions are not limited, as suggested by Mr Turner, to a finding that the appellants are not inclined to preach or proselytise, but address issues that go to the heart of whether the appellants are likely to be at risk on return to Pakistan as that risk has been described in *MN and Others*. The conclusions that the FtT has drawn from the evidence about the appellants includes the following:
- a. They have not shown an intention or wish to defy the restrictions on the practice of their faith in Pakistan;
  - b. The restrictions on their faith in Pakistan are not of particular importance to their religious identity;
  - c. They do not wish to practice their faith in such a manner that will bring them to the attention of the Pakistan authorities; and
  - d. If they return to Pakistan they will continue to practice their faith in private and in a quiet personal way;
  - e. The first appellant is an individual who has always chosen to practice his faith in private and only discussed faith matters with other Ahmadis and trusted friends; and
  - f. Neither the authorities nor the wider Sunni community in Pakistan have an adverse interest in them

18. Whilst these conclusions are not the only ones that could reasonably be drawn from the evidence, I am satisfied that they are based on and properly grounded in the evidence that was before the FtT both in relation to the appellants' activities in the Pakistan and in the UK. Having made these findings, it was consistent with both *MN and Others* and *HJ (Iran)* for the FtT to conclude that the appellants fall into the category of Ahmadi that is covered by paragraph 2(ii) of the headnote and as such are not in need of protection under *MN and Others*.
19. Accordingly, I find that the FtT has not made a material error of law. For the reasons explained above it has (a) made factual findings and drawn conclusions from those findings that were open to it on the evidence; and (b) properly applied *MN and Others* to those factual findings and conclusions.

### Decision

- a) The appeal is dismissed.
- b) The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c) An anonymity order is made.

Signed



Date: 30 December 2015

Deputy Upper Tribunal Judge Sheridan