



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

Appeal Number: PA/03357/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16th August, 2017**

**Decision & Reasons Promulgated
On 23rd August, 2017**

Before

Upper Tribunal Judge Chalkley

Between

**MS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel instructed by Morden Solicitors

For the Respondent: Ms J Isherwood, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on [] 1939. The appellant has a lengthy immigration history.

2. The appellant first applied for a visa to come to the United Kingdom on 28th December 2011. This application was refused on 8th October 2012 and the appellant then made a family visit visa application on 25th June 2012. She claims to have arrived in the United Kingdom on 11th July 2012. On 30th October 2012, the appellant made an application for recognition as an asylum refugee. The appellant's asylum claim was refused by the respondent on 9th February 2013, and the appellant appealed to the First-tier Tribunal.
3. The appellant appealed that refusal and her appeal to the First-tier Tribunal was dispensed on 29th May 2013. Permission to appeal was refused by both the First-tier Tribunal and the Upper Tribunal and on 15th August 2013, her application became appeal rights exhausted.
4. Further submissions were made on behalf of the appellant on 24th August 2013, and they were rejected on 24th September 2013, by the respondent. Further submissions were made on behalf of the appellant on 28th October 2013, and those submissions were rejected and her application refused on 8th March 2017, with a right of appeal.
5. The appellant appealed and her appeal was heard by First-tier Tribunal Judge Nightingale at Hatton Cross on 3rd May and 18th May, 2017. The First-tier Tribunal Judge rejected the appellant's asylum claim, finding that there was no real risk that she would be involved in preaching, promoting, proselytising or practising her religion in public, or in any private capacity if she were returned to Pakistan now.
6. She also found that she was not persuaded that the appellant would have come to the attention of the Pakistani authorities or that any complaints or warrants for her arrest had been issued. No evidence was submitted to the judge that a passport application or any representations that the appellant may or may not have made to have her passport issued to her, described her as being a "Muslim". Were the appellant to be returned now to Pakistan, the judge found that there was no reason to suspect that she would not continue to practise her faith as she does currently; that is to say attend meetings but, in the words of the witness who appeared before the judge, "not actively participate".
7. The judge rejected the appellant's asylum claim. The judge went on to consider the appellant's Article 8 claim and found that the appellant could not meet the requirements of the Immigration Rules. She went on to consider the appeal outside the Rules and found that she could not describe the appellant's circumstances as compelling, so as to require the respondent to grant leave on the basis of the appellant's Article 8 claim, outside the Rules.
8. Permission to appeal was granted by First-tier Tribunal Judge Shimmin. Two grounds of appeal were set out in the application, settled by Counsel.

9. The first ground suggested that the judge had failed to address the country guidance determination in *MN and others (Ahmadis - country conditions - risk) Pakistan CG* [2012] UKUT 389 (IAC) or to apply the principles therein and the second challenge suggested that the judge failed to give any consideration to the broader fact that the appellant belongs to what the Upper Tribunal in *MN and others* found to be, an opposed minority group as per paragraph 111.
10. At the hearing before me today, Mr Khan handed to me a copy of *FA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 763 and told me that the first challenge to the First Tier Tribunal Judge's decision was that the judge had simply failed to apply *MN*.
11. He referred me to what the judge had said at paragraph 67 of the determination. The judge said that she found nothing on the evidence before her to indicate that the appellant, a woman nearly 80 in a wheelchair and with a number of illnesses and disabilities, would be arrested in Pakistan and ill-treated due to the fact that her passport describes her as a "Muslim". Mr Khan said that that was contrary to what the Tribunal said in *MN*. He submitted that the judge had failed to consider the effect on the appellant of the fact that on her return her passport indicates that she describes herself as being a Muslim.
12. So far as the second ground is concerned, he submitted that the judge has found that the appellant would not be at risk. She found at paragraph 64 of her determination that the first witness told her that since 2003, when the appellant began to suffer strokes, she had not been involved in any activities, other than attending meetings and that at the present time she attends meetings which are held in her son's house. The witness told the judge that she was clear that the appellant just listened and had no involvement beyond her attendance.
13. Mr Khan submitted that what the judge should have done was to have looked at the appellant's **intentions** on her return and she should have ignored the appellant's disabilities. He reminded me that the appellant had suffered strokes since 2002, but, he emphasised, there is no evidence that she will not necessarily recover on her return, when she then might proselytise.
14. Ms Isherwood urged me to find that there was no error of law. There had been no up-to-date medical evidence submitted despite the fact that, as the judge pointed out the appeal was adjourned for up-to-date medical evidence to be submitted.
15. Ms Isherwood submitted that it was not a legal requirement that judges should cite and quote from every relevant legal authority on the point in issue. This judge had clearly demonstrated that she was correctly applying the law, as enunciated in *MN*. The judge heard evidence that when the appellant was well she had invited people to come and view

Ahmadi television and talk about the faith. Since 2003, the appellant had been unable to go outside so they used to invite people in. She would participate by going to the mosque and attending women's meetings. While she had been in the United Kingdom she would simply go and listen, since she has a disability. She could not actively participate. The judge heard that the appellant struggled to speak properly. The judge was entitled to conclude as she did, on the evidence before her, the appellant is presently reasonably likely or, indeed, capable of doing anything other than attending women's meetings and attending at the Ahmadi mosque. She is not able to go out unattended so the judge was entitled therefore to find that she would not be involved in preaching, promoting, proselytising or practising her religion in public or in any proactive capacity were she to return to Pakistan. Similarly, the judge was entitled to find that there was no evidence before her to show that a passport application or any representations that may or may not have been made by the appellant in order to have a passport issued to her described her as being a Muslim. There was no reason therefore to believe that the authorities would have any interest in the appellant.

16. Ms Isherwood invited me to dismiss the appeal.
17. In conclusion, Mr Khan suggested that the activities described by the judge in paragraph 64 were limited purely because of the appellant's current incapacity, but were she to recover from this incapacity, then the appellant would be at risk on her return to Pakistan.
18. I reserved my determination.
19. *MN & others* makes it clear that the first question the decision maker must ask is whether the appellant is a genuine Ahmadi. It suggests that with all the judicial fact-finding, the judge will need to reach conclusions on the evidence as a whole giving such weight to aspects of that evidence as appropriate and in accordance with Regulation 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 United Kingdom where the claimant is worshipping. The Tribunal said that the next step involves an inquiry into the claimant's intentions or wishes as to his or her faith if returned to Pakistan. This is said to be irrelevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in openly practising their faith. The burden is on the appellant 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 is genuinely held and of particular importance to the claimant to reserve his or her religious identity. The decision maker needs to evaluate all the evidence and behaviour since arrival in the

United Kingdom may also be relevant. If the claimant discharges this burden then he or she is likely to be in need of protection.

20. Immigration Judge Nightingale did not refer to or quote from *MN and others*. However, as Ms Isherwood quite properly pointed out, there is no requirement on judges to cite or quote from any legal authorities; what is necessary is that they demonstrate that they properly apply the law.
21. I am satisfied that in this appeal, this very experienced Immigration Judge has properly applied the law.
22. The judge heard oral evidence from the appellant and two witnesses called in support. At paragraph 62 of her determination she noted an inconsistency in the evidence between the two witnesses as to the appellant's circumstances. These discrepancies cause the First-tier Tribunal Judge to have what she described as being "considerable concerns as to the honesty of the applicant and the witnesses".
23. However, the judge set these concerns aside. What she said at paragraphs 64 to 67 of her very careful and detailed determination is this:-

"64. These concerns notwithstanding, I am far from persuaded that this appellant has ever done anything which would bring her to the attention of the Pakistani authorities or cause her difficulties in practising her faith in Pakistan. The evidence of the witnesses was that their mother had been a person with a practical faith who had sought to lead by example by being kind and considerate to others. The first witness said that since 2003, when the appellant began to suffer strokes, she had not been involved in any activities other than attending meetings. At the present time, she attends meetings which are held at her son's house, but the witness was clear that she just listened and had no involvement beyond attendance. Indeed, in view of her advanced years, disability and slurred speech I find it entirely credible that the practise of her faith is attendance at women's meetings, some of which are held at her son and daughter-in-law's house, and attendance at the Ahmadi mosque. I do not find that this appellant is presently reasonably likely or, indeed, capable of doing anything further. She is not able to go out unaided, needs help with even the most basic of tasks such as bathing and cooking and her speech is slow and slurred. I do not find that there is a real risk she would be involved in preaching, promoting, proselytising or practising her religion in public or in any pro-active capacity if she was returned to Pakistan at the present time.

65. I accept that the appellant's son Ehsan may well have been of interest to the authorities and, indeed, the recognition of Ehsan as a refugee indicates that he is at risk now in Pakistan. However, it does not follow that the appellant is therefore entitled to asylum. The appellant's contact with her husband, who I accept has been recognised as a refugee, would appear to have been limited and there is nothing to indicate that the marriage was still subsisting at the time she left Pakistan. Whatever the reasons for the grant of asylum to the appellant's husband, it does not follow that this is relevant to the appellant's asylum claim.

66. I have had regard to the documents submitted in support of this appellant's claim, reviewed in the round with the totality of the evidence. Since 2003 this appellant has suffered a series of strokes and is a wheelchair user whose communication must have been hampered. I do not find it remotely likely, even on the lower standard, that she

would have come to the attention of the Pakistani authorities. Her evidence of events in Pakistan is vague, but I consider her age and disabilities in this regard. Nonetheless, it is notable that Ehsan has never referred to his mother suffering persecution in Pakistan beyond the kind of general discrimination, falling short of persecution, which many Ahmadis suffer. I am prepared to accept that the appellant may have suffered some hostility from other individuals in Pakistan, but there is nothing in Ehsan's evidence to suggest that any acts committed towards this appellant crossed the boundary into persecution. The witness stated that since 2003 his mother had been 'unable to go outside'. In the UK she could not actively participate. Looking at the evidence in the round, I am therefore not persuaded that she would have come to the attention of the Pakistani authorities or that any complaints or warrants for her arrest have been issued. I have concerns that the appellant has not been entirely honest with the Tribunal, and viewed in the round I do not find the documents submitted to be reliable.

67. *It is said that the appellant has committed a criminal offence by describing herself as a 'Muslim' on her passport. I have no evidence before me of that passport application or any representations she may or may not have made to have her passport issued to her. I find nothing on the evidence before me to indicate that this appellant, a woman of nearly 80 in a wheelchair and with a number of illnesses and disabilities, would be arrested in Pakistan and ill-treated due to the fact that her passport describes her as a 'Muslim'. I reject this on the lower standard applicable. If the appellant were returned to Pakistan then I find no reason to suspect she would not continue to practise her faith as she does now; that is to say to attend meetings, but, in the words of the first witness, 'not actively participate'. I do not find that the appellant has established that she has a well-founded fear of persecution in Pakistan now."*

24. It is abundantly clear from what the judge said, that she has properly applied the law. She has very carefully examined the evidence and was entitled to conclude as she did at paragraphs 64, 66 and 67. I reject the appellant's first challenge; the judge did not err and clearly had MN in mind throughout her determination.
25. Mr Khan did not address me on the second challenge. I am satisfied that the second ground of challenge fails to identify any material error of law on the part of the judge either. The judge quite properly considered all the evidence before her and concluded that there was no real risk that she would be involved in preaching, promoting, proselytising or practising her religion in public or in any pro-active capacity were she returned to Pakistan now. She was entitled to find that it was not remotely likely the appellant would come to the attention of the authorities in Pakistan.
26. What Mr Khan did submit was that the judge should in some way have ignored the appellant's current physical disabilities and look simply at the appellant's intentions were she to be returned to Pakistan. With very great respect, that is not what the judge was required to do. The judge expressed concern at the hearing that no up to date medical evidence had been obtained concerning the appellant's care needs recently. She adjourned the hearing for an up-to-date medical report. A letter was supplied to the judge from West Barnes Surgery detailing the appellant's medication and conditions.

27. It is a tragically sad fact that this lady has suffered strokes since 2003 and, as a result suffers disability and slurred speech. She cannot go outside by herself. She is now wheelchair bound. There was no evidence before the judge to suggest that it was even remotely likely that the appellant could make a complete and full recovery from her current disabilities, such as to enable her to engage in preaching, promoting, proselytising or practising her religion in public or in some pro-active capacity such as to attract the attention of the authorities or those who may be opposed to Ahmadis in Pakistan. The judge did not err in failing to ignore the appellant's disabilities and instead concentrate on her intentions or wishes as to her faith if returned to Pakistan.
28. For all these reasons I have concluded that in reaching her conclusions, I am satisfied that First-tier Tribunal Judge Nightingale did not materially err in law. I uphold her determination. The appellant's appeal is dismissed.

Richard Chalkley
A Judge of the Upper Tribunal

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 her or any member of her 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.

Richard Chalkley
A Judge of the Upper Tribunal

21st August 2017.