



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

Appeal Number: PA/03504/2020

THE IMMIGRATION ACTS

Heard at Birmingham CJC

Decision & Reasons

On 12 May 2022

**Promulgated
On 15 June 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHAH TAJ AHMAD

(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hawkins instructed by MH Solicitors.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** In a determination promulgated on 13 January 2022 the Upper Tribunal found a judge of the First-tier Tribunal had erred in law and directed the matter be considered further.
- 2.** At [39] of its decision the Upper Tribunal wrote:

39. My concerns in relation to this decision are threefold, firstly the accepted failure by the Judge to make any express findings on the Facebook evidence which was a matter relied upon by the appellant in relation to which

documents do appear in the appellant's bundle, secondly the failure of the Judge to consider the Danian point, and thirdly the finding that the appellant's manifestation of his faith in a manner different to that he exercised in Pakistan was "to some extent" a cynical device to enhance his claim lacks clarity in relation to how the Judge properly factor such a statement in. If it is only "to some extent" what of the other reasons. The Judge does not find that the manifestation of a cynical device is the only reason for the appellant conducting himself in relation to his faith in the UK. If the other reason is because the appellant is an Ahmadi who now feels able to openly practice his faith in the UK where he will not suffer ill-treatment or persecution, when he has not been able to act in this manner previously, and in relation to which having been able to express his faith openly he would like to do so again in Pakistan, and will do so but for the risk of persecution, he is entitled to succeed with the protection claim.

3. It is not disputed the appellant, a citizen of Pakistan, was born on 3 December 1989 or that he has been, from birth, a follower of the Ahmadi faith. This is therefore not a 'conversion' case.
4. In addition to the appellant's evidence the Upper Tribunal was able to hear from Mr Sikander, described as the President of the Burton upon Trent Muslim Community.

Discussion

5. In relation to the appellant's social media profile and his use of Facebook he writes in his more recent witness statement dated 29 April 2022:
 4. In relation to my Facebook account, I confirm that I opened my account in May 2011. My account has always been a public account.
 5. When I moved to the University of Sargodha and to the University of Faisalabad, I made many friends studying and over time my friends network increased.
 6. I then moved to Cheniot area and Sangla Hill where I taught in three colleges. My friends network increased where students and colleagues were added to my social media account.
 7. Whilst here in Pakistan, I was sharing posts of the Ahmadi faith. I was sharing with posts which were associated with Ahmadi religion. There were posts written about either the difficulties people face or the Ahmadi's mosque attack et cetera when these posts were shared, I faced no problems in Pakistan.
 8. However, I then wrote a post myself. I wrote a post where I wrote that we are considered as non-Muslims by black law. I stated in my post that if the laws we were seen was changed, then the hatred against us as a whole would decrease and we would not be persecuted and discriminated.
 9. When I returned to college, my colleagues and teachers threatened, smashed my face (I got my injury) and demanded that I remove this post, or they would take legal action against me. I was ostracised by the college but in order to ensure that I would face no legal action, I apologised and removed the post.
 10. I can refer to social media posts that I have shared instead.
 11. I was not openly saying that I followed the Ahmadi faith or posting Ahmadi beliefs which would mean that I will face problems in Pakistan. What I was posting about was problems as a whole Ahmadi were facing in Pakistan as a whole.
 12. Since entering the United Kingdom in September 2019, this was prior to the pandemic and with the Ahmadi organisation, I was visiting people's homes and giving out leaflets. I was also participating in activities arranged by the Ahmadi organisation. Stalls were set up in the town centre and I would talk

about our religion to the general public. The Ahmadi organisation has yearly gatherings and I have been attending these and also taking part in funding appeals. During the lockdown, the social activities ceased but I was then allocated a member of social media.

13. My role was to answer questions to those individuals that speak Urdu, and I was advised to increase my social media activity, being a member of social media preaching team.
 14. Whilst in the United Kingdom, I have been very active on social media. This is as a result of my role within the Ahmadi Association. I am aware that my social media activities are reviewed by hundreds of people, are shared by a number of people and those that are commented on, would result in subsequent detention if I were to be returned to Pakistan.
 15. My social media account cannot just be deleted as I am associated with the Ahmadi Association in the UK. My posts are seen, shared commented on by a number and possibly hundreds of people. Screenshots of my posts are provided, and they show clearly the number of shares and comments that take place.
 16. My belief is my religion, and I believe that it would be unfair that I should be required to conceal my religion. It is the first time, in the United Kingdom a country I have been openly speaking about my religion that I have been so active. A role has been given to me that I have taken seriously, and this has allowed me to deal with the Covid-19 pandemic.
- 6.** It cannot be suggested the appellant delete his Facebook account as it is accepted he is a genuine believer and follower of the Ahmadi faith, and I make a finding of fact to that effect, as that will be contrary to the HJ (Iran) principles.
 - 7.** The skeleton argument provided by the Secretary of State was drafted prior to receipt of the recent witness statement. The Secretary of State's position, inter alia, was that the appellant would face no harm on return as he has been able to go to university, receive an education, and secure employment without evidence of discrimination.
 - 8.** The appellant's claim that had been attacked as he was teaching the subject of evolution as part of the government approved curriculum was said by Mr Williams to be evidence of his not being attacked as a result of his belief or as an Ahmadi, as their views on the issue are the same as mainstream Muslims. It was submitted the acid attack on the appellant had been as a result of teaching a topic which extremists disagreed with as being contrary to the teachings of Islam.
 - 9.** It was accepted by Mr Williams that the appellant's religion is important to him and plays a role in the appellant's life. This was confirmed by the evidence of Mr Sikander in relation to both the activities the appellant undertook generally within the Ahmadi Association and within his locality, which included mentoring a recent convert to the religion, and his devotion and commitment generally. Mr Williams submitted, however, that there was no evidence that the appellant had not been able to practice his faith in the past as a result of a fear of persecution.
 - 10.** Mr Williams raised a number of issues concerning the Facebook posts by reference to the country guidance case of XX and claimed they could be deleted but they are of a limited impact even if they were found to be genuine.

- 11.** As noted, the appellant's identity, nationality and faith are not in dispute, and I accept his description of being a lifelong devoting for whom his religion is of great importance to him.
- 12.** I accept the evidence of Mr Sikander which was given in an honest and forthright manner concerning the appellant's involvement within the Burton-on Trent Community.
- 13.** The issue is, put simply, how the appellant is likely to behave if returned to Pakistan and whether if he is forced to moderate his conduct to the extent that he is not able to express his view of his faith or communicate his beliefs in an open manner, why he would not do so.
- 14.** At [58] of the decision of the First-tier Tribunal which was referred to by Mr Hawkins, it was written:
 58. Taking into account the guidance in WA (Pakistan) the fact that the Appellant is an Ahmadi is not in dispute but it is not the case that every Ahmadi is at risk in Pakistan. I must consider the Appellant's behaviour if he is returned to Pakistan. Whilst I accept that the Appellant may have manifested his faith in a different way in the UK I am satisfied that this was done to some extent as a cynical device to enhance his claim. I have found that the Appellant had not given a truthful account of events in Pakistan and I am therefore satisfied that he will avoid behaviour which would attract persecution and will do that because that is the way he behaved in the past and that was his choice. I do not find he is credible when he suggests that he would avoid such behaviours because of the risk and the fear of another attack as I do not accept he has been attacked in the past.
- 15.** The evidence of Mr Sikander was that the appellant has been able to organise interfaith events and other community activities in the UK, attended meetings with new members, does not hide his faith, and is open about the same. It is clear the appellant has been able to enjoy freedom of expression of his faith in the United Kingdom which he could not do in Pakistan.
- 16.** I accept the submission, supported by the country evidence and country guidance caselaw, that if the appellant as an Ahmadi expressed his faith openly in Pakistan he will face a real risk of persecution.
- 17.** In *FA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 763 the Court of Appeal recognised that it was possible to identify two broad categories of Ahmadis. The first category was those who felt compelled to manifest their faith, if necessary in contravention of the Pakistan Penal Code, and the second was those who were content to live quietly and practise their faith in private. Those who openly practised their Ahmadi faith were acknowledged as being likely to need protection, while those who practised their faith on a restricted basis either in private or in a community with other Ahmadis, without infringing the domestic law of Pakistan, were not.
- 18.** I accept the statement that links lack of harm to communications from Ahmadi sources, such as the appellant, with others in the Ahmadi community in Pakistan which would not give rise to a real risk. The

appellant does not claim otherwise, but asserts it was a comment he posted his Facebook account, which has public settings, and which gave rise to the threat.

19. Mr Williams made submissions concerning timeline aspects of the posts downloaded from the Facebook account and that not all the type of evidence recommended in XX has been provided in relation to the Facebook account; but that does not undermine the finding in relation to the appellant's faith. The appellant also offered at the beginning of the hearing to make his Facebook account available to either the Tribunal or Mr Williams if he wished to do so, but that offer was not taken up.
20. There is a clear quantitative and qualitative difference between the manner in which the appellant was able to express his faith in Pakistan, and did so, and in the United Kingdom.
21. I accept that the appellant would not be able to continue to manifest his faith in Pakistan to the extent he has been unable to do so in the United Kingdom, or at all outside the Ahmadi community.
22. The fact the appellant has moderated his behaviour already in Pakistan to avoid legal proceedings is an important factor. As indicated by Mr Hawkins in his submissions there is support for such concerns in the country guidance caselaw which shows legal proceedings, by the issue of an FIR, is used by nonstate actors against followers of the Ahmadi faith as well as acts of violence.
23. I assess the merits of the appellant's claim as at the date of the hearing. I found his evidence to be honest and to have been given and forthright manner, which was not shaken by Mr Williams in cross examination, in relation to his claim that he would want to continue to professes faith openly and act as he had in the UK back in Pakistan, but that he could not do so as a result of his fear of a real risk of persecution. I find that evidence credible. I accept the appellant's evidence that he would not wish to limit such activities to the more secure private environment, but that he would want to do so openly which would lead him into contravention of the Pakistan Penal Code and facing a credible real risk of persecution.
24. On that basis I find the appellant has discharged the burden of proof upon him to the required standard to show a real risk of persecution if returned to Pakistan for a Convention Reason, religion, if he openly expresses his beliefs as an Ahmadi and that the reason he would not do so is as a result of a fear of persecution. I find that any suggestion that he should act discreetly will contravene the HJ(Iran) principle. On that basis the appellant must succeed with his protection claim.

Decision

25. **I allow the appeal.**

Anonymity.

26. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008

Signed.....
Upper Tribunal Judge Hanson

Dated 27 May 2022.