



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005852

First-tier Tribunal No: PA/52123/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27 July 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MB

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson & Co

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard by remote video at Field House on 20 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the Upper Tribunal of 13.2.23 (Judge McWilliam), the appellant, a citizen of Pakistan, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Parkes) dismissing the appellant's appeal against the respondent's decision of 16.4.21 to refuse his claim for international protection as an Ahmadi.

2. Following the helpful submissions made by both legal representatives at the hearing before me, I reserved my decision to look again at the documentation referred to which was before the First-tier Tribunal, as well as to consider the previous First-tier Tribunal findings resulting in the dismissal of the protection claim on the same grounds by First-tier Tribunal Judge Kelly, a decision promulgated 24.5.17.
3. In granting permission, Judge McWilliam considered it to be “*arguably unclear what “acting outside the Ahmadi community” means in the context of the MN (Ahmadis- country conditions – risk) Pakistan [2012] UKUT 00389. While the judge found that the appellant’s profile would not put him at risk, it is arguable that a more nuanced assessment was required explaining this.*”
4. In MN, the Upper Tribunal issued the following country guidance:
 - “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.*
5. In the 2017 decision, Judge Kelly accepted that the appellant and his family are members of the Ahmadi faith, but it was not accepted that he had a profile that would place him at risk on return to Pakistan. The First-tier Tribunal in 2017 rejected the claim to have been targeted by members of Khatam e Nabuwat, finding it inconsistent and not credible, supported by FIR and other documentation found to be unreliable and/or not genuine. That finding does not appear to have been challenged. More significantly, Judge Kelly’s decision dealt at length with the issue of the appellant’s practice of the Ahmadi faith against the Country Guidance. As Mr Avery pointed out in his submissions to me, Judge Kelly provided extensive reasoning for finding that the appellant failed to demonstrate that he fell within the MN risk category. Amongst other matters, Judge Kelly was concerned that the appellant’s wife knew nothing about his claim to preach, that she is not an Ahmadi and he didn’t mention it to her until after they became engaged, and deliberately hid his faith from her family. The judge found this

inconsistent with his claim to openly practice his religion and to preach to others. The judge also noted his failure to attend the mosque and the absence of any evidence from the Ahmadiyya Muslim Association in the UK to confirm that he actively follows his faith and preaches to others. His claim to have participated in an event at Nottingham University was poorly evidenced so that the judge was not satisfied that he did anything more than attend. Neither did the judge find financial contributions persuasive, all post-dating the refusal decision. Judge Kelly considered this to be an attempt to bolster his claim and not a genuine reflection of his commitment to the faith. Similarly, the judge was not persuaded that he had been preaching his faith at a train station, which claim the judge found unusual. In conclusion, at [46] of Judge Kelly's decision, the appellant failed to demonstrate that he was in need of international protection. The decision is well-reasoned and the findings undoubtedly open to the Tribunal on the evidence.

6. I turn to the issue addressed by Judge Parkes relating to the practice of the appellant's faith and the risk category identified in MN. Given the previous findings of fact, the judge was obliged to follow the Devaseelan guidance, the relevant part of which is set out below:

"39. In our view the second Adjudicator should treat such matters in the following way.

(1) The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this.

(2) Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.

(3) Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator. The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them."

(4) Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection. An Appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility. (Although considerations of credibility will not be relevant in cases where the existence of the additional fact is beyond dispute.) It must also be borne in mind that the first Adjudicator's determination was made at a time closer to the events alleged and in terms of both fact-finding and general credibility assessment would tend to have the advantage. For this reason, the adduction of such facts should not usually lead to any reconsideration of the conclusions reached by the first Adjudicator.

(5) Evidence of other facts – for example country evidence – may not suffer from the same concerns as to credibility, but should be treated with caution. The reason is different from that in (4). Evidence dating from before the determination of the first Adjudicator might well have been relevant if it had been tendered to him: but it was not, and he made his determination without it. The situation in the Appellant's own country at the time of that determination is very unlikely to be relevant in deciding whether the Appellant's removal at the time of the second Adjudicator's determination would breach his human rights. Those representing the Appellant would be better advised to assemble up-to-date evidence than to rely on material that is (ex hypothesi) now rather dated.

(6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence

the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated. We draw attention to the phrase 'the same evidence as that available to the Appellant' at the time of the first determination. We have chosen this phrase not only in order to accommodate guidelines (4) and (5) above, but also because, in respect of evidence that was available to the Appellant, he must be taken to have made his choices about how it should be presented. An Appellant cannot be expected to present evidence of which he has no knowledge: but if (for example) he chooses not to give oral evidence in his first appeal, that does not mean that the issues or the available evidence in the second appeal are rendered any different by his proposal to give oral evidence (of the same facts) on this occasion."

7. It follows from the above that Judge Parkes' starting point was the comprehensive findings of that earlier decision by Judge Kelly. Judge Parkes was required to treat the further evidence relied on by the appellant with the greatest circumspection, and with suspicion and caution. Evidently, in the intervening period the appellant attempted to fill the evidential gaps pointed out by Judge Kelly, notably by including letters from the Ahmadiyya Muslim Association in the UK and by adducing a witness statement of NA, whose failure to attend to give evidence before Judge Parkes was never explained.
8. At [23] Judge Parkes noted that there was no evidence from anyone in Pakistan to support the claims of events involving his family there. In the circumstances, even if there was any challenge to that aspect of the 2017 findings, there was no basis for Judge Parkes to depart from the findings of Judge Kelly on that issue. This issue was not the focus of the appeal before me.
9. In relation to the issue of the appellant's faith and his intentions as to practising that faith on return to Pakistan, Mr Khan directed my attention to both the findings of Judge Kelly, pointing to the absence of evidence from Ahmadiyya Muslim Association in the UK and the addition of evidence from the association in the appeal before Judge Parkes. Unarguably, if the appellant genuinely intended to practice his Ahmadi faith openly in Pakistan, he would be at risk on return.
10. At [37] of Judge Kelly's decision, it was found that the evidence was insufficient to establish "*that it is important for him to openly preach his faith or to engage in discourse with non-Ahmadis.*" It was against that conclusion and the considerable findings of fact made by Judge Kelly that Judge Parkes had to consider the additional material. Judge Parkes was certainly entitled to give little weight to the unsatisfactory statement of the witness, NA, who failed without explanation to attend the appeal hearing to provide evidence. I am satisfied that the judge also gave careful consideration to the Association evidence. Mr Khan relied on both letters to the effect that the appellant had distributed material in a market place and endeavoured to improve his preaching skills by attending classes. However, as highlighted at [22] of the decision, the letter did not provide first-hand evidence, referring to an undisclosed report from the Nottingham Branch.
11. In reality, the only new evidence was from the association. The judge was entitled to look at that evidence in the context of the findings made by Judge Kelly and to observe at [21] of the decision that "*the evidence of the appellant acting outside the Ahmadi community in the UK is very limited.*" The judge then went on to consider that evidence. I am satisfied that on the evidence, the judge was entitled to conclude that the appellant failed to demonstrate that his Ahmadi involvement did not extend beyond the Ahmadi community. Yes, there was some evidence in support of the claim but in the context of the previous findings and the concerns highlighted by Judge Parkes, the judge was entitled to conclude that it was insufficient to

depart from the findings of Judge Kelly. I am satisfied that conclusion was with the range of findings and conclusions open to the Tribunal on the evidence.

12. Turning to deal more specifically with the basis of the grant of permission, the reference in the grant of permission to “*Acting outside the Ahmadi community*” refers to Judge Parkes’ findings between [19] and [23] of the First-tier Tribunal decision. At [19] of the decision, the judge accepted, “*There is evidence of the appellant’s involvement with his local Ahmadi community and meeting senior figures in the UK Ahmadi community,*” supported by photographs and certificates. As stated above, at [21] the judge noted that the evidence of the appellant acting outside the Ahmadi community in the UK was very limited and supported only by a letter from a person who did not attend as a witness, so that little weight was accorded to that evidence. At [22] the judge noted that a letter in support from the Ahmadiyya Muslim Association UK, dated 23.5.22 and contained within a supplementary bundle, confirmed the appellant’s activities within the Ahmadi community, which the judge found to be demonstrated by other evidence in the appellant’s main bundle. Whilst, as Mr Khan pointed out, that letter referred to preaching in the market place or distributing material, the judge noted that the source material for that letter was not disclosed. Unarguably, the judge was entitled to give limited weight to that evidence. At [23], the judge accepted that it was common ground that the appellant is an Ahmadi and that the evidence demonstrated that he “*appears to have become more involved since the hearing before Judge Kelly but not outside the community itself.*”
13. I am satisfied that it is perfectly clear what the judge intended to convey by “*acting outside the Ahmadi community,*” and that the conclusion that he did not was open to the judge on the evidence and supported by cogent reasoning. As is clear from MN, Ahmadis are able to practise their faith on a restricted basis in private “*or in community with other Ahmadis,*” without infringing domestic Pakistan law. The only reliable evidence on this issue was that the appellant worked *within* the Ahmadi community. There was no reliable or satisfactory evidence that his activities went beyond that. The judge concluded on the evidence that the appellant’s activity in the UK was limited to within the community with other Ahmadis. On application of the Country Guidance, as set out above, activities limited to within the community do not create a risk. Clearly, after starting from the findings of fact of Judge Kelly and taking into account the limited additional evidence, the judge was not satisfied to the lower standard of proof that the appellant had demonstrated that there was any basis to depart from the earlier findings or that the appellant genuinely would wish to practise his faith openly on return to Pakistan so as to meet the Country Guidance risk category. It follows that the appellant failed to demonstrate any risk to him on return. I am satisfied that conclusion was entirely open to the judge on the evidence and is within the range of rational findings open to the Tribunal.
14. In the circumstances, no material error of law in the making of the decision of the First-tier Tribunal has been demonstrated.

Notice of Decision

The appellant’s appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

I make no order for costs.

DMW Pickup

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Judge of the Upper Tribunal Immigration and Asylum Chamber

20 July 2023