



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

Appeal Number: AA/02846/2014

THE IMMIGRATION ACTS

Heard at Field House

On 26th January 2015

Determination

Promulgated

On 2nd June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MUBASHAR AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Lemer (Counsel)

For the Respondent: Mr Wilding (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Geraint Jones QC, promulgated on 5th November 2014, following a hearing at Hatton Cross on 27th October 2014. In the determination, the judge dismissed the appeal of Mubashar Ahmad. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 1st January 1969. He appeals against the decision of the Respondent Secretary of State dated 23rd January 2004, refusing his application for asylum status in the UK, and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he is a member of a persecuted minority faith in Pakistan, namely, the Ahmadi faith. Since his arrival in the UK over a decade ago now, he has been involved with the local Ahmadiyya Muslim Association, going to public prayers, and performing service in the Langar Khanna Kitchen, such that he is now a refugee sur place, who will be persecuted in Pakistan under the Pakistani Penal Code, for wishing to practise his faith in the way that he wants to.

The Judge's Findings

4. The judge held that he was bound by the current country guidance in **MN [2012] UKUT 389** and that the test was whether the Appellant would face a real risk of persecution if returned to Pakistan. The judge held that, as far as the Appellant was concerned, "whilst he would consider himself to be an Ahmadi, he would not manifest his faith, or religious identity openly in defiance of the restrictions of the Pakistani Penal Code ..." (paragraph 39).
5. The judge went on to say that,

"I am entirely satisfied that the Appellant might have attended the occasional stall and assisted in distributing leaflets on a number of occasions ... However, I am equally satisfied that any such minimal activity was deliberately designed to permit the Appellant to put forward this instant case on a wholly exaggerated basis. In other words, the Appellant has attempted to manufacture a sur place argument ..." (paragraph 39).
6. The judge went on to further state that,

"I also find that the Appellant is not somebody for whom his religious identity is of special or particular importance. The Appellant has attempted to portray himself as such, especially when giving his seemingly rehearsed answers instead of answering the fairly simple questions put to him during cross-examination. The Appellant must have an intention to practise his faith openly in circumstances that would or might bring him into conflict with the authorities. I do not consider the Appellant to be a witness of sufficient credence, even bearing in mind the modest standard of proof, to allow me to so find" (paragraph 40).

The judge dismissed the appeal.

Grounds of Application

7. The grounds of application state that the judge failed to take into account the Appellant's regular attendance at prayer and his work in the Langar Khanna Kitchen. Accordingly, he did not give adequate reasons for his conclusion that the Appellant was not someone for whom his religious identity was of special importance. Secondly, the grounds argue that the judge appeared to treat the test as if the Appellant would in fact openly manifest his faith in defiance of restrictions as opposed to whether he would wish to do so (bearing in mind what the Supreme Court determined in **HJ (Iran)**).
8. On 21st November 2014, permission to appeal was granted.
9. On 5th December 2014, a Rule 24 response was entered to the effect that it was open to the judge to conclude that having accepted that the Appellant was an Ahmadi, that his activities on return to Pakistan would not bring him into a situation of real risk.

Submissions

10. At the hearing before me, the Appellant was represented by Mr Lemer of Counsel and the Respondent was represented by Mr Wilding, a Senior Home Office Presenting Officer. Mr Lemer submitted that, whereas the judge refers to **MN [2012] UKUT 389**, it was plain that he does not follow its implications right the way through in the way that he ought to have done. The question was what the Appellant would himself want to do. The question is not whether he would actually not do that which the law prohibited under the Pakistani Penal Code.
11. Second, the judge's failure to take into account relevant evidence, such as the Appellant's activities in the Langar Khanna Kitchen, and his daily prayer. Instead, it is plain from the determination that the focus of the judge was on the Appellant's leafleting and preaching. It is in this respect, that the importance of **MN [2012] UKUT 389** could not have been fully appreciated by the judge.
12. For his part, Mr Wilding submitted that it was not true, considering the determination as a whole that the judge had failed to take everything into account. For example, the judge did refer to the Appellant's activities with the Ahmadiyya Muslim Association UK (see paragraph 6). The judge did refer to the letter from the Ahmadiyya Muslim Association dated 1st May 2014 (see paragraph 26). He then concluded that, "I find that the Appellant's involvement and/or activities with the AMA in this country have been modest, infrequent and low-key" (paragraph 40).
13. It is clear from this that the judge did not regard the Appellant's activities, taken as a whole, to be in any way significant to him. The head note of **MN [2012] UKUT 389** makes it quite clear that it would exclude someone

in the Appellant's position. Moreover, the actions of working in the Langar Kitchen, or of attending prayers, was not a public practice at all. However, even if it was a public practice, it was not an error to say that these activities were not material.

14. In reply, Mr Lemer submitted that the judge was focusing upon credibility. There was no assessment by the judge of what the Appellant actually wanted to do himself on return. Going to a "mosque" (which one chooses to describe as a "mosque") is not a private, but a public activity. No regard was given to these matters.

Error of Law

15. Whilst I find that the judge has erred in failing to apply the full import of **HJ (Iran)**, I do not conclude that this is a determination that should, properly speaking, be set aside. The judge has erred because what **HJ (Iran)** determined was, not whether a person would manifest his faith "or religious identity openly and in defiance of the restrictions of the Pakistani Penal Code" (paragraph 39), but whether a person was prevented from doing so because of the Pakistani Penal Code.

16. Similarly, it is not correct to say that the Appellant's claim, taken as a whole, rests upon whether

"Those photographs might just happen to be noticed by somebody in Pakistan who might just happen to think that they should be brought to the attention of the authorities who might then just happen to take an adverse interest in the Appellant ..." (paragraph 40).

17. The issue is again, what the Appellant would himself choose to do. However, the error here is not capable of affecting the outcome of the appeal and I consequently do not set it aside, because the judge has made a finding that the Appellant's activities with the AMA "have been modest, infrequent, and low-key" (paragraph 40) and are not such as to attract persecution, even if they are replicated as activities again in the Appellant's home country of Pakistan.

18. Under Section 12(2)(a) the Upper Tribunal may, but need not, set aside the decision of the First-tier Tribunal. Applying that provision, I have decided that this is not a proper case for the setting aside of this determination.

Notice of Decision

The determination of the First-tier Tribunal Judge is in error but I do not find that the error is capable of affecting the outcome of the appeal. I do not consequently set it aside.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

29th May 2015