IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11840/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2nd December 2015	**On 22nd January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NASIRA SALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Khan of Counsel
For the Respondent: Mr M Diwnycz, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Thornton made following a hearing at Bradford on 12th February 2015.

Background

2. The appellant is a citizen of Pakistan born on 22nd July 1968. She came to the UK on 8th August 2014 and claimed asylum shortly thereafter, on the basis that she feared persecution on a return to Pakistan on the grounds of religion.

3. It was accepted by the respondent that she is of the Ahmadi faith and was party president for the Ahmadi ladies in her area for four to five months before her departure from Pakistan. It was also accepted, in the refusal letter, that she had encountered some societal discrimination in her local area as a result of being an Ahmadi, but not that she had preached the Ahmadi faith, nor that it was of particular importance to her religious identity to practise and manifest it openly in Pakistan. Her account of having come to the attention of the Khatme Nabuwat Maulvis was rejected.

4. The judge found that the appellant was not a credible witness and in a detailed determination in which the appellant's evidence was forensically examined she concluded that the appellant's entire account of the circumstances which allegedly led to her fleeing Pakistan was not credible. In particular she rejected the claim that the appellant had preached either in Pakistan or in the UK since her arrival here.

The grounds of application

5. The appellant sought permission to appeal on the grounds that the judge had not properly applied the relevant country guidance case of MN and Others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 389.

6. The protection of behaviours which cover an Ahmadi Muslim's behaviour represents a marked departure from the previous country guidance which attributed risk only to exceptional Ahmadis, defining these substantially by reference to preaching or proselytising activity. Under present case law, any Ahmadi Muslim whose intention or wish to practise and manifest in Pakistan aspects of the faith not permitted by the Pakistan Penal Code will face persecution on return, even if he or she would suppress that intention through fear of persecution.

7. The judge had failed to deal adequately with the primary question, which concerns the appellant's strength of feeling as regards the manifestation of her religious faith, and she was entitled to succeed by reference to MN and Others even if some aspects of the claim were sustainably rejected by the judge.

8. The judge's confusion was illustrated by her dealings with the evidence from the Ahmadiyya Muslim Association. The relevant question was the appellant's commitment to the community and to its defining belief, supplemented by her leadership position. The judge had dealt with the letters in a confused and inadequate manner, criticising it for not recording that the appellant conducted preaching activities. This was factually incorrect since preaching was referred to in the letter. Furthermore, she had erred in expecting excessive detail and had failed to distinguish between evidence which could be based only upon report and evidence based upon direct experience.

9. Permission to appeal was granted for the reasons stated in the grounds by Judge Cox on 15th April 2014, save for a final point relating to the judge's decision not to direct anonymity which was not material to the outcome of the appeal.

10. On 8th May 2015 the respondent served a reply, defending the judge's credibility findings. It was clear that she had directed herself properly to the country guidance information and the appellant would not be at risk on return merely as a follower of the Ahmadi faith.

Submissions

11. Mr Khan relied on his grounds. He submitted that the appeal ought to have been allowed on the basis of the facts as accepted by the respondent. Her profile, as the Ahmadi president in her local area, who held meetings at her home, was not in dispute. Irrespective of whether the appellant had preached or not, she had attracted hostility. It was accepted, at paragraph 13 of the refusal letter, that the appellant's doors had been broken, bricks and rubbish had been thrown at her and a child from across the road had brought a gun.

12. He also argued that the judge had approached the letter from the Ahmadiyya Association in the wrong way. He referred to paragraph 66 of the decision in MN which states:

> "The Ahmadiyya Association is a highly organised one and is capable of providing sophisticated information on the numbers who have converted to their faith, the number of members and it appears, based on the information provided on its website, the numbers who have faced difficulties".

The judge had unreasonably expected too much detail from the Association, more than an organisation under siege in Pakistan could be expected to provide. In any event, the letter did refer to preaching to neighbours and the distribution of leaflets.

13. Mr Diwnycz relied on his Rule 24 reply but agreed that there was too much focus in the determination on whether the appellant had engaged in preaching when the issue was whether she was at risk from her accepted profile.

Findings and Conclusions

14. The grounds do not challenge the judge's conclusions with respect to the claimed threats to her by the Khatme Nabuwat Maulvis nor is there any challenge to her rejection of the appellant's claim to have preached, save in relation to the treatment of the Ahmadiyya Muslim Association letter.

15. The judge accepted that there was some reference in the letter to preaching but she was entitled to state that no information was provided as to what was involved in her preaching to the neighbours. Furthermore, whilst it may be that not every judge would have criticised the letter on the same basis, it was open to her to conclude that the references to preaching were vague and lacking in detail. She did consider the evidence that the appellant had preached to named neighbours in the UK but was entitled to give little weight to that evidence on the grounds that neither had attended the hearing nor provided written evidence in support of her claim. Moreover, there can be no quarrel with the judge stating that, when asked how she

had conducted her preaching activities in the UK, the appellant had in fact described putting letters and pamphlets through people's letterboxes.

16. The judge's conclusions on the credibility of the appellant's claim to have preached were open to her and not vitiated by any legal error.

17. On the other hand, the judge criticised her inability at interview to provide detailed information about the life of Mirza Ghulam Ahmad Qaidiani but it is not disputed that she is an Ahmadi from birth and there may have been many other reasons for her difficulty at interview in giving clear answers. Indeed, she said that she felt under great pressure and was unwell.

18. It is quite clear that the judge's focus was on whether the appellant had shown that she was committed to preaching or proselytising in Pakistan. However, as Mr Diwnycz accepted, that is not the entire answer to the question of whether she would be at risk on return, which is not restricted to those who have engaged in preaching or proselytising activity.

19. In concentrating her attention on the issue of the appellant's credibility rather than on whether, on the facts as found, she would be at risk on return, the judge erred in law. Her decision is set aside.

20. In MN and Others the Tribunal held, at paragraph 2(i):

> "The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able to openly 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 (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".

21. Whilst the Tribunal accepted that it was 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, it concluded at paragraph 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. 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 to avoid a risk of prosecution".

22. Whilst the Tribunal accepted that Ahmadis who were 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) were in general unlikely to be able to show that their genuine intentions or wishes were to practise and manifest their faith openly on return, the appellant does not fall into that category.

23. Undoubtedly the appellant is not merely a follower of the faith. She has held significant positions in her local community over a number of years, most recently President, but also Secretary for services to humanity from 2010 to 2012 and she has given out leaflets and books. The criticisms by the judge of the AMA letter relate to the appellant's preaching activities rather than positions held within the Ahmadi community in Pakistan.

24. She may well have exaggerated the extent of her activities and indeed invented an attempt to kill her, but that in itself does not mean that she would not be at risk. The appellant has demonstrated by her past behaviour, in particular the holding of office, that it is of particular importance to her to preserve her religious identity. She has demonstrated a commitment to her community and its defining beliefs which, according to MN, puts her at risk on return.

Notice of Decision

25. The original judge erred in law. The decision is set aside. It is re-made as follows. The appellant's appeal is allowed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Taylor