**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/11079/2013

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Determination Promulgated** |
| **On 29 April 2014** | |
| **Delivered Orally at the hearing** | …… |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ZULFIQAR ALI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Taylor-Gee, Counsel instructed by Morden Solicitors (London)
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Fox promulgated it appears on 5 February 2014 in which he dismissed the appellant's appeal against the decision of the respondent to refuse him

leave to remain and to make removal directions against him on the basis that his claim for asylum had been refused.

2. The appellant's case is that he is an Ahmadi Muslim who has practised his faith from birth having been brought up in an Ahmadi family. He was subject to attacks in Pakistan on account of his faith and as a result he has a well-founded fear of persecution on return to Pakistan. The facts of his claim and the basis of that are set out in the refusal letter and they are also set out in the witness statement and in the determination of Judge Fox.

3. The respondent's case is set out in the refusal letter of 18 December 2013. In summary, she did not accept the appellant's account of being attacked in 2005 in Pakistan. She did not accept that he had been identified by three organisations such as Lashkar-e-Jhangvi, Khatm-e-Nabuwat and Tarikh-e-Taliban nor did she accept that he was contacted by the Special Branch to warn him of attacks. She did not accept either that an attempt had been made in November 2013 to kidnap him. The respondent did however accept that the appellant is an Ahmadi Muslim but did not accept that it was important to his identity as an Ahmadi to preach his faith as an Ahmadi. She did not accept that he was subject to a complaint in relation to his practising of a faith that having regard to the country guidance decision **MN & Others (Admadis – country conditions – risk) Pakistan CG [2012] UKUT 00389**, concluding that he would be not therefore be at risk on return to Pakistan. The appeal was at that stage within the fast track but it was later removed and the matter then came before First-tier Tribunal Judge Fox sitting at Hatton Cross on 5 February.

4. In his determination the judge sets out his conclusions and findings from paragraph 55 onwards. The judge accepted that the appellant is an Ahmadi but directed himself that the central issue was his religious identity in accordance with **MN**. The judge did not accept the incident in 2005 had occurred nor did he accept that the appellant had been given an advanced warning of a threat being reported to him by special branch. The judge did not accept the documentary evidence that had been supported and although a letter had been submitted both from the Ahmadiyya Muslim Association the judge considered this was generic and devoid of any meaningful details of the appellant's alleged religious practices. The judge concluded at [69]:

> "It is significant that the appellant has no profile beyond that of any other Ahmadi Muslim. There is no reliable evidence of paragraph 2(i) activities or any reliable evidence of a profile sufficient to engage the terms of **MN**. On the available evidence it is reasonable to conclude that the appellant's claim is false and opportunistic."

The judge then went on to consider that there was no reliable evidence that the principles of **HJ (Iran)** were engaged but even taking the appellant's claim at its highest he enjoyed state protection. The appellant sought permission to appeal on three principal grounds:

(a) that the judge had failed to have proper regard to the letter from the Ahmadiyya Muslim Association ("AMA") and had erred in referring to it as generic and failed to take into account that it corroborated certain aspects of the appellant's claim, the judge failing to address the contents of the letter properly.

(b) that the judge erred in failing properly to analyse the case in line with **MN** in that he appeared rather to have followed the decision in **KK (Ahmadi – unexceptional – risk on return) Pakistan [2005] UKAIT,** that he erred in appearing to consider that the appellant needed to show an individual profile let alone exceptionality and that he had misdirected himself with regards to **HJ (Iran)**, and

(c) that the judge appeared not to have consistently applied the correct standard of proof referring in places to whether the appellant's case was "reasonable."

5. Permission to appeal was granted on 14 March 2014 by First-tier Tribunal Judge Simpson. The matter then came before me on 29 April 2014. The appellant was present and was represented by Ms Taylor-Gee of Counsel. The respondent was represented by Ms Isherwood, Home Office Presenting Officer.

6. Turning to the first ground of appeal Ms Taylor-Gee submitted that the judge had wrongly described the matter as generic, that he did provide corroborative evidence of the appellant being Ahmadi and his role within the community although she accepted that he could have provided more detail of his activities. She did however accept that the judge had not said that he attached much weight to the letter, she accepted that weight was a matter for the judge and accepted that it would have to have been perverse or rather she would have to show that it was perverse and the judge's evaluation of the letter was perverse for there to have been an error of law established. She did not submit that it was perverse.

7. Ms Isherwood submitted with regard to the letter that it was lacking in detail and could be described as generic given that as the judge said in full in his determination at [68], "I have considered the AMA letter which is generic and devoid of any meaningful details of the appellant's alleged religious practices. The AMA letter does not assist the appellant to substantiate his claim".

8. The first page of the letter contains two detailed paragraphs concerned purely with the situation for Ahmadi Muslims in Pakistan in general. The third paragraph headed 'Confirmation specific to your client" states that –

- checks have been made with the relevant headquarters in Pakistan and confirms that the appellant is an Ahmadi Muslim by birth;
- that his contact and co-operation with the community was good;
- he was good in discharging his financial obligations to the community and the duties assigned to him;

- his general moral condition was good, and
- he was connected to his auxiliary organisation;
- the general impression within the community was good, and
- he has had to resign from a job because of the opposition and threats to his life.

9. I consider that it is fair to state that these are lacking in detail and that it was open to the judge to make that finding. There is nothing said here about the nature of the activities in which he participated or how often and whilst there is a reference to resigning from a job, no detail about dates or circumstances are given. It cannot therefore be said that the judge's consideration of the letter or the weight attached to it was perverse which, as Ms Taylor-Gee conceded, is the correct test.

10. Turning to the second ground Ms Taylor-Gee submitted that the judge had failed to conduct an enquiry as to the appellant's wishes on return or as to what he would do on return and why. She submitted that the judge had erred in considering only the appellant's past persecution and whilst he had made negative credibility findings in respect of those, he had failed properly to ask the questions which he is compelled by **MN** to ask. She submitted further that in failing properly to apply **MN** and to ask the questions set out therein he had also failed to take into account what was said by the appellant in his asylum interview, particularly at questions 97 to 130, in respect of his activities as an Ahmadi.

11. Ms Isherwood in contrast submitted that the judge had acted properly within the terms of **MN**, drawing my attention to what was said in the head note, in particular at paragraphs 8, 9 and 10. In reply Ms Taylor-Gee's point is that the judge simply failed to ask the questions and whilst there is no challenge to the negative findings of credibility or the finding that the appellant had fabricated his claim and it was opportunistic, that this could not fairly be read over into the necessary findings that had to be made in respect of the appellant's attitude towards his faith and intentions as to what he would do on return.

12. It is important to look closely at what the Tribunal held in **MN** and I set out below the relevant parts of the head note

> 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.*

4. *….*

5. *In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi . As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 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 UK where the claimant is worshipping.*

6. *The next step (2) involves an enquiry into the claimant's intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph 2(i) behaviour. The burden is on the claimant 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 (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.*

7. *The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to engage n paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti- Ahmadi legislation.*

8. *Ahmadis who are 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) above are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return, as described in paragraph 2(i) above.*

9. *…*

13. Turning first to paragraph 5 of **MN** the first question that a judge must ask is whether the claimant is genuinely Ahmadi. In this case that was not in dispute. It is here at paragraph 5 of the head note it is stated that evidence likely to be relevant includes confirmation from UK Ahmadi Association as regarding the activities relied on in Pakistan and confirmation from the local community in the UK with a claim to his worshipping. The latter point does not of course arise in this case as the appellant had arrived relatively recently and had been placed in fast track detention prior to his appeal. I observe at this point that, as is noted above, the letter from the Ahmadiyya Muslim Association does not contain much if any detail regarding the appellant's activities in Pakistan.

14. The next step that the judge should follow is set out in paragraph 6. That involves an enquiry into the claimant's intentions or wishes as to his faith if returned to Pakistan. It is to be emphasised that the burden is on the claimant to demonstrate that any intention or wish to practice or manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code are genuinely held and are particularly important to the claimant to preserve his or her religious identity. That point had been made in considerable detail in the refusal letter. It was therefore incumbent on the appellant to address that point.

15. It is also to be noted from paragraph 8 of the head note that Ahmadis who are not able to show that they practise their faith at all in Pakistan or that they did so on anything other than the restricted basis described in paragraph 22 above are unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return. In this case the judge concluded for reasons which are open to him and which are not the subject of an effective challenge that the appellant's case had been fabricated and opportunistic.

16. It is in the circumstances difficult to discern how, having made those findings, the judge could have concluded on the evidence before him that the appellant's intentions were nonetheless genuine. More importantly, whilst the judge does refer to the appellant not having a profile beyond that of any other Ahmadi Muslim, it appears from that and although it could have been perhaps more elegantly expressed, that what he is referring to is the type of activities referred to in paragraph 2 and that the judge is in fact referring to the fact that there is no reliable evidence of the appellant conducting the type of activities as set out in paragraph 2(i) and that whilst he does refer to "profile" that is to be understood as a type of Ahmadi who engages in these activities or who would wish to do so. In effect the judge is saying that he was not satisfied, given the findings on credibility which were open to him that the appellant had undertaken any of these activities and given the finding of an opportunistic claim and lack of credibility that he was not satisfied that the appellant would conduct any of those activities or genuinely intended to undertake any of those activities which would bring him within the scope of **MN** on return to Pakistan.

17. For these reasons I am satisfied that the judge did give adequate and sustainable reasons for his conclusions that the appellant did not fall within the terms of **MN** and

it is not properly arguable either that he misdirected himself in all the circumstances in a material way in respect of **HJ (Iran)**.

18. Turning to the third ground of appeal, Ms Taylor-Gee submitted that looking at the determination as a whole it is evident that the judge had not properly applied the standard of proof. Ms Isherwood submitted that no proper basis on which to make out that ground of appeal.

19. The judge sets out in his determination at [19] to [21] the correct standard and burden of proof and I do not consider that his use of the word 'reasonable' implies or could be taken as indicating that he had applied any different standard of proof in assessing the appellant's claim and I note that he quite properly said, because this was a matter for the Secretary of State to prove, that the claim is false and opportunistic, stating that it is more likely than not at paragraph 71.

20. For all these reasons I am satisfied that the determination of First-tier Tribunal Judge Fox did not involve the making of an error of law capable of affecting the outcome of the decision and I uphold the decision in all respects.

Signed Date approved: 2 June 2014

Upper Tribunal Judge Rintoul