CUREDI013UK008

Question(s) at stake:

Whether members of the Ahmadi sect could be at risk of religion-based persecution in Pakistan, and whether specific appellants would face persecution in Pakistan as a result of their affiliation to the Ahmadi sect.

Outcome of the ruling:

The Upper Tribunal Country Guidance case of MN and Others (Ahmadis - Country Conditions - Risk) Pakistan v the Secretary of State for the Home Department [2012] held that Pakistan's anti-Ahmadi laws are discriminatory laws that violate the fundamental human right to religious expression. Therefore, any person who can show that they engage in behaviour(s) contrary to the anti-Ahmadi laws is a person entitled to international protection. This need for protection applies equally to men and women: there appears to be no reason to believe that women, as a group and compared to men, face particular or additional risks arising out of the aforementioned laws. Furthermore, even if an Ahmadi person has been found to be unlikely to engage in prohibited behaviour, and therefore unlikely to be "at real risk" of persecution "on return to Pakistan, fact-finders may in certain cases" still "need to consider whether that person would be reasonably likely to be targeted by non-state actors" by reason of their prominent social or business status. (p. 10) After consideration of the Country Guidance, four of the five joint appeals were allowed: one was dismissed.

Topic(s):

- Immigration and Asylum

Keywords:

- Grounds/Reasons of persecution

- Refugee status
- Religion or belief
- Asylum seeker

Tag(s):

- Ahmadi
- Religious minorities
- Pakistan

Author(s):

- Bianchini, Katia (Max Planck Institute for Social Anthropology, Department Law and Anthropology, Germany)

Country:

United Kingdom

Official citation:

MN and Others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012] UKUT 00389 (IAC)

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2012-ukut-389

ECLI:

No ECLI number / ECLI number unknown

Date:

13 November 2012

Jurisdiction / Court / Chamber:

Upper Tribunal (Asylum and Immigration Chamber)

Remedy / Procedural stage:

Joined Appeals from the First Tier Tribunal

Previous stages:

- First Tier Immigration Tribunal (appeals dismissed) – Second stage, appeal of initial decision.
- Secretary of State (asylum applications refused) – First stage of the asylum decision.

Dates of the first stage decisions are unknown. The appeals at the second stage were heard between 2010 and 2011.

Subsequent stages:

None

Branches / Areas of law:

Administrative law; Asylum law; Human rights law

Facts:

MN, from Lahore, Pakistan, was born on 10 October 1966. On 15 July 2010 he, his wife and children arrived in the UK as visitors. Together, they claimed asylum on 25 August that year. The basis of their claim was that they faced persecution in Pakistan because they are Ahmadis. MN also claimed that the risks that he would face are also due to his status as a prominent Ahmadi businessman, who had received much publicity as a result of being a victim of the Lahore mosque attack in 2010. Whilst in hospital subsequent to that attack, he said, he had been interviewed on television by Pakistan's Interior Minister. (para. 10)

At the administrative stage, the Secretary of State accepted that MN was an Ahmadi, but did not accept the claim that he had been injured in the 2010 mosque attack. Although he may have been hospitalized, it was not accepted that this had been due to injuries sustained in such an attack, and the claim that he had been personally targeted was also rejected. (ibid.)

NH, born on 28 February 1969, is from Lahore, and of the Ahmadi faith. She is unmarried. She arrived in the UK on 21 October 2010 and claimed asylum four

days later. This claim was based on a fear of persecution resulting from her Ahmadi religious affiliation. The Secretary of State recgnised her affiliation, but did not find her account of what had happened to her to be believable. It also found that protection was available to her in Pakistan. Consequently, her claim was refused on 25 November 2010. (para. 15)

ZN was born on 12 January 1982, is a qualified doctor of homeopathy, and is from Lahore: accompanied by her husband and daughter, she arrived in the UK on 29 December 2010. Her claim for asylum, in which she named her family members as dependants, was made on 4 January 2011. The Secretary of State believed that she was an Ahmadi, but rejected her claim that she had become a target of the *Khatme-e-Nabuwat* (a right-wing Islamist organization). Regarding alternative options open to ZN, the secretary of state argued that internal relocation was an option in her case. (para. 18)

SB was born on 7 January 1971. She is from Sialkot, but was previously a resident of the city of Daska. An Ahmadi, she worked as a senior female health technician for the Pakistani government. On her arrival in the UK on 20 March 2011, she claimed asylum: her claim was that she had been a target of persecution by *Khatme-e-Nubuwat* because of positions she had held in the Ahmadi community, and because she had been a preacher of the Ahmadi faith. The Secretary of State did not accept that she had held those claimed positions, and neither was her claim to have engaged in “preaching at gatherings” accepted. (para. 20) “It was also not accepted that she had received threatening telephone calls or that the police had visited her home in December 2010 informing her that a complaint had been made against her for preaching the faith”. (ibid.) Her claim was, therefore, refused on 12 April 2011. (ibid.)

HQ “was born on 1 March 1968.” (para. 23) Originally from Pakistan, he resided in the United Arab Emirates from January 2005 to May 2007. In May 2007 he returned to Pakistan, where he set up a garment business in Rabwah. On 3 October 2007, he arrived in the UK, where “he claimed asylum two days later. The Secretary of State accepted” that HQ was an Ahmadi, but did not accept that he had been threatened by a mullah belonging to the *Khatme-e-Nabuwat* militant

group*,* or that his decision to leave Pakistan and travel to the Emirates was motivated by a fear of persecution. Additionally, many other aspects of his claim were rejected. His asylum claim was refused on 23 December 2009. (ibid.)

In all these cases, the appellants' cases were rejected on the grounds that their claims were not credible – either partially not credible, or entirely so.

However, given the accumulation of evidence indicating the worsening situation of Ahmadis in Pakistan, and in the light of the implications of the "Supreme Court decision in *HJ (Iran) [2010]* UKSC 31 as to the ability of Ahmadis" to freely practise their faith, the appeals of *MN and Others* [2012] were identified as suitable for Country Guidance. (para. 4)

Ruling:

The Upper Tribunal's ruling can be divided into two main parts, one providing Country Guidance and the other addressing the individual claims.

Country Guidance

The most important conclusions are as follows:

1. Previous country guidance on the condition of Pakistan Ahmadis, in *MJ & ZM (Ahmadi – Risk) Pakistan CG* [2008] UKAIT 00033, and *IA & Others (Ahmadis: Rabwah) Pakistan CG* [2007] UKAIT 00088, was now replaced, the Upper Tribunal ruled, by this new Country Guidance. Although this new The guidance principally concerns Qadiani Ahmadis, it affects Lahori Ahmadis as well. (para. 4)

2. Risks faced by Ahmadis are the product of anti-Ahmadi laws that restrict and circumscribe their open practise of their faith. Such laws prohibit preaching and other forms of religions proselytizing. In practice, it restricts the ways in which Ahmadis can manifest their religious beliefs. They cannot, for instance, hold open discussions about religion, even if such activities do not amount to proselytisation. In addition, Ahmadis are not permitted to identify themselves as Muslims, or to describe their religion as Islam. Non-observance of these restrictions is punishable by sanctions including fines and imprisonment. If blasphemy is alleged, they are also at risk of the death penalty. This legislation is

employed by non-state actors seeking “to threaten and harass Ahmadis”, for instance by “filing First Information Reports (FIRs).” Such reports represent the first step in a criminal proceeding in Pakistan, and lead to the detention of persons while their prosecutions are pending. (para. 119) Non-state actors from sections of the majority, Sunni Muslim, population also engage in physical attacks on Ahmadis.

However, “it is, and has long been, possible in general for Ahmadis to practise their faith” without breaching Pakistan law, so long as such practise is carried out on a restricted basis. (para. 119)

3. “If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to openly practise and manifest his faith in Pakistan, thus defying the restrictions in the Pakistan Penal Code (PPC)”, then they are likely to require protection due to the grave “nature of the sanctions” that they may thus incur, in particular the capital sanction for blasphemy. (para. 120)

It has been deemed unreasonable and a violation of an individual’s rights to require that, in order to evade persecution, they avoid engaging in behaviours that are fundamental to their beliefs. (ibid.)

4. “The need for protection applies equally to men and women.: Although women are in general recognized as a vulnerable group, “there is no basis for considering that women as a whole are at a particular or additional risk” of persecution. (para. 121)

5. The first question that must be asked by any decision-maker in such cases is, in the light of the above, whether the claimant is genuinely an Ahmadi. The evidence as a whole will provide the basis for any conclusions, and such evidence will rest on enquiries into such matters as “whether the claimant is 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.” (para. 122)

6. To address the next question, the decision-maker must enquire into the claimant's intent to practise or manifest aspects of his or her faith openly if returned to Pakistan. of the relevance of this point lies in "the need to establish whether" such a course of action is "of particular importance to the religious identity of the Ahmadi" person concerned. If the claimant is to discharge this religious duty, he or she will probably require protection. (para. 123)

7. Internal relocation "is not in general, reasonably open to" claimants, given the state's anti-Ahmadi legislation and the violent and discriminatory practices of non-state actors. (para. 124)

8. In general, Ahmadi persons who are unable to show that they ever practised their faith in Pakistan, or that they did so on the restricted basis described above, are unlikely to be able to show that their intentions are to practise and manifest their faith openly if returned. (para. 125)

9. "A *sur place* claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant's local United Kingdom Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings of the claimant's account as a whole could be relevant to the assessment of likely behaviour on return." (para. 126)

10. It is possible that there could be a case or cases where an Ahmadi person might be found to exhibit religious behaviour which would not entail a real risk to them, should they be returned to Pakistan: even in such cases, however, a fact-finder might need to consider whether a person or persons in such cases would, "by reason of" their "prominent social and/or business" status, still be "reasonably likely to be targeted" the target of persecution by non-state actors on their return. (para. 127)

Determination of the five appeals

The Upper Tribunal heard extensive evidence from experts and other witnesses. This evidence concerned the Ahmadi communities circumstances in Pakistan, and

the practices of that community: on hearing this evidence, the Tribunal then ruled that “had the First Tier Tribunal Judges heard this new evidence it is possible that they might have come to different conclusions”. (para. 128)

The Upper Tribunal went on to consider each appeal in light of the Country Guidance provided to it.

The Upper Tribunal found that the appellant MN had possessed a high public profile due to his business connections in Pakistan, which was increased by the publicity surrounding injuries he sustained in the mosque attack of 2010. In addition, the Upper Tribunal found “[i]t is reasonably likely that were he in Pakistan now his presence would become generally known. We further find that he has been particularly active in the UK in propagating his faith with a fervour that he had not evinced in Pakistan.” The Tribunal noted the fundamental role that faith played in the appellant’s life, and concluded that he was in need of protection. The appeal, in MN’s case, was therefore allowed on refugee grounds. (para. 139)

NH, the Upper Tribunal found, was both a genuine Ahmadi and one who “takes seriously the propagation of her faith as evidenced by her activity in the UK”. This contradicted the earlier adverse findings against NH, and was made on the basis of new evidence heard by the tribunal. In Pakistan, her expressions of faith had been discreet, due to the pervasive hostility expressed against Ahmadis by local legislation, mainstream Muslim opinion, and the threat of harm at the hands of extremists. The Upper Tribunal found that, because of her religious identity, she could not reasonably be expected to abstain from manifesting her faith, and thus concluded that she was in need of protection. Her appeal “was allowed on refugee grounds.” (para. 145)

In the case of ZN, the Upper Tribunal ruled that, “as they had heard no evidence from this appellant, and there was” no new evidence “to reach a different conclusion from the First Tier Tribunal on the importance of” the propagation of faith to this appellant, there was no alternative but to dismiss this appellant’s appeal. (paras. 147–148)

In the case of SB, the Upper Tribunal found that she had “practised her Ahmadi faith” whilst in Pakistan, and had preached to other Ahmadis. It also found that she had restrained her behaviour for the sake of avoiding persecutory treatment at the hands of the authorities and others opposed to her faith. The restrictions imposed “on her ability to live openly as an Ahmadi” in Pakistan were “matters of particular importance to her religious identity.” The Upper Tribunal therefore concluded that she was “in need of protection”: her appeal, also, was “allowed on refugee grounds.” (para. 152)

In the case of HQ, the Upper Tribunal did not clearly rule on the appellant’s activities in Pakistan. It did accept, however, that he had become “actively involved in his faith in the UK”, as a result of his devout Ahmadi faith. (para. 155) It concluded that, should HQ be returned to Pakistan, he would wish to continue manifesting his faith. He had demonstrated that “the restrictions on his ability to do so would undermine his religious identity.” He was, the Upper Tribunal ruled, in need of protection: his appeal was allowed. (para. 157)

In summary, errors of law were identified in the decisions of the First-tier Tribunal in the cases of MN, NH, SB, and HQ, and these cases were thus set aside. The Upper Tribunal remade the decisions, which were now allowed on refugee grounds. Where the case of ZN was concerned, the First-tier Tribunal was also found to have erred in law. Although the Upper Tribunal remade the decision concerning ZN in light of its Country Guidance, it still arrived at the same conclusion previously reached by the First-tier Tribunal. ZN’s appeal was dismissed on refugee grounds. (paras. 158-159)

Main quotations on cultural or religious diversity:

“We are in no doubt that Ahmadis are particularly vulnerable to prosecution for religious matters in a way that the majority Sunni population are not. This is in the light of the specific legislation against them. We accept from what we have heard from Dr Lau that they will be able to obtain bail but not without some difficulty in some cases. We further accept:

1. that there is a real possibility if Ahmadis are prosecuted under the blasphemy laws or under 298B or C they face a real risk of an unfair trial in the lower courts although it is likely any serious sentences will be overturned on appeal. We accept that the lower judiciary at least are unlikely, largely because of societal pressure, to guarantee a fair hearing for Ahmadis at first instance and

2. such prosecutions have occurred although relatively small in number (based on the conservative estimate of an overall Ahmadi population of 600,000 referred to in the UNHCR Eligibility Guidelines quoted above) and nevertheless, their effect is clearly to send a deterrent signal to the Ahmadi community not to practise their religion openly." (para. 61)

"The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned." (para. 70)

"We draw the following principles from the various authorities we have referred to…(f) If it is reasonably thought that an individual will engage in religious practices (which may include public manifestations of that religion) or would wish to do so because of the particular importance to the person concerned in order to preserve his religious identity, the fact that an individual could avoid a risk by abstaining from certain religious practices which will expose him to a real risk of persecution is irrelevant." (para. 100 (f))

"The evidence before us shows that Ahmadis are an oppressed religious minority in Pakistan. The relevant provisions of the Pakistan Penal Code set out above restrict the ways in which are able to express and practise their beliefs. If defied, the provisions expose to the risk of prosecution coupled with a risk of detention pending trial. In addition, they face hostility from sectors of the majority of society which is made up of Sunni Muslims. Disagreement with and disapproval of the

beliefs of Ahmadis has intensified with the increased Islamisation of Pakistan as well as the growth of fundamentalism. In addition to vulnerability to terrorist threats from the Taliban, they face vehement opposition from the Khatme-e-Nabuwat whose tactics not only include taking out FIRs against Ahmadis but also intimidation. Their influence is pervasive in Pakistani institutions." (para. 101)

"The ability of Ahmadis to defend any prosecution that may ensue after faith-based FIRs have been issued under the PPC, is hampered by the risk of unfair treatment by the police and the trial courts. These problems relate not only to the substance of any prosecution but also the ability of Ahmadis to readily obtain bail prior to or after proceedings have been brought […]. On the other hand Ahmadis can be reasonably confident that on appeal to higher courts unfair or unreasonable decisions are likely to be overturned." (para. 102)

"[we] do not accept that as a matter of internal protection law, there is justification for denying Ahmadis the right to call themselves Muslims and employ the manifestations of that faith, as well as preach, if the reason is simply to appease the majority when the basis is doctrinal disagreement. There is nothing in the behaviour and beliefs of Ahmadis that impinges on the rights of the majority in any way that justifies the repressive effect of the legislation. The anti-Ahmadi legislation may be a means of keeping the peace, but the evidence shows that it is the violent aggression of sections of the majority population that needs to be curbed." (para. 113)

"We earlier concluded that the legislation restricting Ahmadis is a disproportionate measure that furthermore undermines the fundamental right to religious expression. It has been in place for some time but over time the use of it by hostile non-State actors has made its effects pernicious. It is impermissible to expect Ahmadis who regard themselves as Muslims to comply with such legislation that undermines their fundamental identity and which, if flouted, runs the risk of persecutory ill-treatment. Furthermore, an active Ahmadi cannot be expected to be discreet about the practice and manifestation of his faith including its propagation if the decision to do so is to avoid coming to the attention of the authorities or non-state actors who are opposed to the fundamental tenets of the

Ahmadi faith." (para. 115)

"If an Ahmadi therefore, in the genuine pursuit of his faith, is unable to practise that faith openly in ways that are of particular importance to him and his identity as an Ahmadi because of the restrictions placed on him by statute in Pakistan, he is in need of protection in the light of the evidence that defiance would lead to a real risk of an unfair FIR under sections 298B or C or 295C of the Pakistan Penal Code leading to detention and the likelihood of an unfair trial at first instance with a risk of prolonged imprisonment until matters can be resolved on appeal. The risks stem from the sanctions in the legislation itself but also from non-state actors who use the law to pursue Ahmadis in a hostile way. Together, these factors are capable of amounting to a state-approved or state-condoned act of persecution within the meaning of the Qualification Directive and under the Refugee Convention." (para. 116)

"The risk faced by an Ahmadi from Rabwah for whom the restrictions in Pakistan means that they are unable to practise and manifest their faith in ways that are of particular importance to their religious identity is the same as for someone from elsewhere in Pakistan. It is national legislation and the way it is applied that is the mischief. Even if it may be thought that there is safety in numbers in Rabwah, our view is that such safety that there may be is precarious evidenced by the collective FIRs, although of questionable validity, that hang over the town and the likelihood that such relative safety is achieved by restraint which does not allow for the open expression of the religion. In the light of this, the option of internal flight to Rabwah is not reasonably available to an Ahmadi who is in need of protection." (para. 117)

Main legal texts quoted in the decision:

- Charter of Fundamental Rights of the European Union (adopted 26 October 2012) 2012/C 326/02 (the "Charter"), art 10
- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) and 1967 Protocol Relating to the Status of Refugees (adopted 31 January 1967)

606 UNTS 267

- Council Directive 204/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, arts 9 and 10
- Criminal Law (Amendment) Act 1986 ("Pakistan Penal Code"): blasphemy laws under Section 295-C, 298B and C
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 1953) ETS 5 (ECHR), arts 9 and 15

Cases cited in the decision:

UK cases:

- *Ahmed (Iftikhar) v Secretary of State for the Home Department [2000] INLR 1*
- *HJ (Iran) [2010]* UKSC 31
- *MJ & ZM (Ahmadis – Risk) Pakistan CG [2008]* UKAIT 0033
- *MT (Ahmadi – HJ (Iran)) Pakistan [2011]* UKUT 00277 (IAC)
- *R v IAT Ex Parte Shah [1999]* 2 AC 629
- *RT (Zimbabwe) [2012]* UKSC 38

Pakistan cases:

*Decision of the Supreme Court of Pakistan in Criminal Appeals numbers 31-K TO 35-K of 1988, Civil Appeals No. 149 and 150 of 1989 and Civil Appeal No. 412 of 1992 (Zaheeruddin)

Court of Justice of the European Union cases:

- *Federal Republic of Germany v Y* (C-71/11) & Z (C-99/11)

European Court of Human Rights cases:

- *Z & T v The UK (2006)* App no 27034/05

Commentary

Religious Persecution of Ahmadis in Pakistan - MN and Others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012] UKUT 00389 (IAC)

The Country Guidance (CG) system, introduced by the Upper Tribunal in 2001, has since become robust and well-established, and is today supported and endorsed by the higher courts within the UK. The importance of Country Guidance lies in the insights it can provide into cultural aspects of the case that would otherwise be unknown to judges, or at best misunderstood by them. The goal of CG cases is the promotion of consistency in immigration judges' application of eligibility criteria in asylum cases. Their determinations are to be treated as authoritative in subsequent cases, in so far as the appeal involves issues determined in the CG, and depends upon similar country conditions evidence. Where an immigration judge does not follow a GC, or fails to provide a reason or reasons as to why that CG is inapplicable, this may be an error of law on the judge's part.

As shown in this case, CG cases involve many witnesses, large document submissions, and relevant country of origin information that is weighty in nature, and which must be evaluated in order to assess risk on return for categories of asylum-seekers. Usually, the evidence is summarized and evaluated in the CG decision: detailed evidence is then included in appendices, rendering the factual evidence relied upon accessible to persons engaged in future appeals. Those who, in future, refer to the CG will be able to determine whether a document is truly "new", or if it has previously been considered in the CG (Kirk 2017: 151, 157–158).

In *MN and Others*, the Upper Tribunal linked the Guidance to the application of a particular conception of a refugee. The Tribunal ruled that the Ahmadi community is at risk of having its fundamental human rights –the right to security, the right to liberty, and the very right to life itself– violated. This concrete danger of persecution arises from existing national and provincial legislation prevalent in Pakistan: this includes such laws as the blasphemy provisions of the Penal Code, and "the practices of law enforcement agencies and judicial officers." (All

Parliamentary Group for International Freedom of Religion or Belief 2016: 13) There is also the problem of terrorism against the Ahmadi communities, a particularly acute threat, given that these communities are primary targets of militant Sunni groups.

This CG case is based on a principled approach, consistent with international human rights principles: it thus "represents" a significant "shift in the understanding of the plight of Ahmadi Muslims in Pakistan." (ibid. 83) The analysis of the Upper Tribunal considered the legal restrictions that weigh on practitioners of the Ahmadi religion, and concluded that they are not legitimate, as they amount to violations of religious freedom under both European and International law. This refers to the criteria set out in Articles 9 and 10 of Directive 204/83/EC, Articles 9 and 15 of the European Convention on Human Rights (ECHR), and Article 10 of the Charter of Fundamental Rights of the European Union, which require any limitation on freedom of religion to be in accordance with the law, and only when such limitation is necessary to protect other legitimate interests, such as the public safety, or when there exists a state of emergency. Where the anti-Ahmadi laws are concerned, the Upper Tribunal found "both that the purported objective of the laws – the appeasement of the majority of the population who disagree with the Ahmadi faith – are not legitimate, and that the measures chosen are disproportionate because the law undermines the Ahmadis' 'fundamental right to religious expression'" (Hathaway and Foster 2014: 267–8, 404–5).

Therefore, in interpreting the religious ground of persecution under the Refugee convention, the Upper Tribunal has taken an approach consistent with the broad meaning of freedom of religion in international law, a meaning which encompasses both the belief in, and the expression, of religion. However, the Upper Tribunal also recognized that the provision of the Pakistan Penal Code placing restrictions on the practice of the Ahmadi religion was not to be considered *per se* persecutory, since it does not pose a risk to all Ahmadis. Following the case *Federal Republic of Germany v Y* (C-71/11) & Z (C-99/11), the Upper Tribunal ruled that in order to establish a claim for asylum under the

Refugee Convention, the individual applicant must not only establish membership in a group in danger of persecution as a result of legislation: the applicant must also provide concrete evidence that goes beyond the mere existence of legislation inimical to his or her existence and that of his or her community, and that can potentially lead to persecution. The likelihood of persecution depends on individual circumstances, such as one's aspirations to manifest one's faith or belief (such aspirations may not involve preaching alone, but also the practice of one's religion in all areas of one's life), and the actions taken (or not taken) in that regard. (All Parliamentary Group for International Freedom of Religion or Belief 2016: 8, 11) For an Ahmadi person who is committed to his or her faith, public demonstrations of that commitment may be important. If that is the case, they cannot be required to modify their conduct so as to avoid harm by evading the scrutiny of those who would do them harm. It was found that the option of internal relocation, previously considered to be a feasible option, was, in fact, not reasonably available "to a person who genuinely wishes to" openly "practise and manifest their faith in Pakistan", in defiance of that country's legal restrictions. (Home Office 2018: para. 2.4.5)

An understanding of the central beliefs and practices of the Ahmadi faith is of high importance here. Regarding those beliefs and practices the Upper Tribunal decision relied on extensive country evidence, including evidence from (1) four expert witnesses, two witnesses belonging to the Ahmadi faith, and a witness from Pakistan who had been granted asylum; (2) relevant provisions of the Pakistan Penal Code; (3) reports by the Ahmadiyya Community of Incidents of Harm; (4) the *UNHCR Eligibility Guidelines for Assessing International Protection Needs of Members of Religious Minorities from Pakistan* dated 14 May 2012; (5) the US Department of State, *International Freedom Report* for 2011. In particular, it relied very strongly on the expert evidence presented at the hearing by Imam Rashed. (paras. 5, 34, 47)

The Upper Tribunal accepted that, based on his personal experience, Imam Rashed "was able to speak with authority about his religion" (para. 47): this was the case in spite of his not being an expert on the current situation inside

Pakistan, due to the length of time he had been living outside of that country. Nevertheless, in engaging with his evidence, the Upper Tribunal found it helpful regarding an important issue in the appeal, that of the religious obligations of Ahmadis. (paras. 47-48)

Imam Rashed's report addressed, among others, the following issues: the fundamental tenets of the Ahmadi faith, and the duty of Ahmadi persons to spread their faith – i.e. how fundamental is preaching and proselytization to the contemporary practice of that faith?

In his evidence, Imam Rashed set out those fundamental tenets of the Ahmadi faith: "The Ahmadi person will believe that Muhammad is khatamun nabiyyen, the seal of the all the prophets and will believe that Hadrat Mirza Ghulam Ahmad was the same Imam Mahdi and promised messiah whose advent was prophesied by the Holy Prophet of Islam, peace and blessings of Allah be upon him". (para. 186) In addition, it stated that an Ahmadis should "promise that he [sic] will try their best to abide by the ten conditions of bai'at (initiation) as prescribed by the promised messiah; that they will give precedence to their faith over all worldly objects; that they will obey the Khalifatul Mashi and everything good that he may require. Fundamental to this promise is that the Ahmadi "will spread his faith to others who are not Ahmadis and engage in doing good works." (para. 187)

Imam Rashed further clarified "that Ahmadis believe in open propagation" of their faith, and seek "dialogue with all communities" in the society in which they live. Notwithstanding any legal circumscription of their rights, Ahmadis remain "law-abiding citizens" who "do not resort to civil disobedience", take part "in public protests", or cause "civil unrest". (para. 189) He noted, further, that it "should also be remembered that whereas preaching is a requirement of each Ahmadi, an Ahmadi who does not or is unable to preach because of circumstances beyond his reasonable control will not be excommunicated. Different Ahmadis practise their faith at different spiritual levels but just because they have not manifestly preached does not mean they were less devout and sincere in their beliefs." (para. 189) He continued, and concluded, that "Quite obviously an Ahmadi must use wisdom and due diligence when engaging in preaching as in some countries,

for instance in the Middle East, free assembly and debate is prevented. In such places an Ahmadi is required to display a high moral standard so that others are attracted to that Ahmadi and his way of life and thus wish to enquire about his beliefs. This would be the minimum standard of discreet indirect preaching by leaving an impression on someone about one's chosen way of life expected of an Ahmadi. It is only due to the fear of persecution that Ahmadis are obliged to conceal a fundamental obligation of their faith and modify their preaching activities by being discreet to avoid such harassment. Ahmadis therefore believe that such forced concealment makes it persecutory." (para. 189) This final statement became the subject of questions at the hearing to which Imam Rashed responded by saying: "The duty to propagate beliefs is essential to the missions of prophets. The prophets have a constant urge to spread the message that they receive from God and rescue as many souls as possible and bring such souls closer to the ways of God rather than following ways towards darkness and evil. This work cannot be achieved by one person alone. Following the demise of the prophet, his works are carried on by his successors. Ultimately, it is therefore the adherents of that prophet who are the instruments to broadcast that message to the people.

The Arabic word is 'tabligh' and is not limited to the narrower translation of how preaching is understood in the UK. It incorporates preaching, proselytising and propagation of the faith." (para. 191)

On 6 March 2019, in the case of *WA (Pakistan) v Secretary of State for the Home Department* [2019] EWCA Civ 302, the Court of Appeal allowed the appeal of an Ahmadi who was unable to demonstrate that his case fell within *MN and Others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012]*. This is noteworthy due to the fact that the appellant claimed that he intended to preach openly in Pakistan, and that he would, as a consequence of such activity, be exposed to the risk of persecution. The First-tier Tribunal dismissed his claim, reasoning that the appellant would not expose himself to danger by the unwise action of seeking to engage in public religious activities in Pakistan. The decision was upheld by the Upper Tribunal, and the appellant sought to further challenge it before the Court

of Appeal.

Whereas the Court of Appeal followed *MN and Others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012]* to determine whether the appellant was genuinely an Ahmadi, it pointed out that the CG case did not consider the reason *why* an asylum seeker would refrain from engaging in religious activity that would expose him or her to a risk of persecution. Relying on *HJ (Iran)*, the Court of Appeal reasoned that where a case involves whether someone may live "discreetly", the real reasons for their choice must be scrutinized: *HJ (Iran)* provides the approach to take when "potential persecution may be avoided by concealment" or "discretion", as distinct from, or as part of, "internal relocation". (para. 75) In this case, "the Supreme Court was concerned with issues surrounding gay men": however, the principles at stake are applicable, also, "to cases other than those involving sexual orientation." (ibid.) These include those dealing with matters of religious persecution. Where asylum applicants conceal aspects of their identity due to fear of persecution, rather than through exercise of their own freedom of choice, they may have a claim for protection.

The revised guidance for a decision-maker can be summed up "as follows: i) Is the claimant genuinely" a person of Ahmadi faith? (para. 122) "In answering that question, the guidance set out in paragraph 5 of *MN"* is to be followed. (Ibid.) ii) If returned to Pakistan, will the claimant act and "behave in such a way" as to make persecution a likely response? Is the behaviour of the asylum-seeker an authentic expression of their religious belief? (para. 123) iii) If the decision-maker concludes that the claimant, if returned to Pakistan, is likely to avoid behaviour that would attract persecution, what will be the reasons for this avoidant behaviour? individual who wishes to live quietly may do so whether or not repression existed in relation to the freedom of expression of his or her faith. Such an individual may have different motives for behaviour of this type. If his or her quiet expression of belief is only an effect of cultural norms or social pressures, then it is unlikely he or she will qualify for asylum.(para. 76) In cases were a person can show that a material reason for such behaviour is the avoidance of threats, harassment and persecution, then that person's asylum claim is likely to be a valid one. "There is

no requirement that public expression of Ahmadi religious faith, of a kind which is likely to attract persecution, should be of 'particular importance' to the Claimant. Such a requirement is inconsistent with the test as laid down in *HJ (Iran)*." (para. 60)

Literature related to the main issue(s) at stake:

- All Parliamentary Group for International Freedom of Religion or Belief. 2016. "Freedom of Religion or Belief in Pakistan & UK", available at < https://www.worldwatchmonitor.org/old-site-imgs-pdfs/4335082.pdf> accessed on 5 September 2023.
- Hathaway, James C. and Michelle Foster. 2014. *The Law of Refugee Status*. Second edition. Cambridge: Cambridge University Press.
- Home Office. 2018. "Country of Origin Information Note. Pakistan: Ahmadis".
- Kirk, Linda J. 2017. "Improving Consistency in Protection Status Decisions in Australia: Looking to the United Kingdom for 'Guidance'". *Journal of Immigration Asylum and Nationality Law* 31 (2): 151–174.

Suggested citation of this case-law comment:

Bianchini, Katia (2024): Religious Persecution of Ahmadis in Pakistan - MN and Others (Ahmadis – Country Conditions – Risk) Pakistan CG [2012] UKUT 00389 (IAC), Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI013UK008, https://doi.org/10.48509/CUREDI013UK008.