



Upper Tribunal
(Immigration and Asylum Chamber)

AB (Ahmadi letters) Pakistan [2013] UKUT 00511(IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 30th July 2013

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Before

MR JUSTICE BLAKE, PRESIDENT
UPPER TRIBUNAL JUDGE PETER LANE
UPPER TRIBUNAL JUDGE COKER

Between

AB

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr R Halim, counsel, instructed by Dean Manson LLP Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

In deciding a claim to international protection based on a person's Ahmadi faith where credibility is in issue, the more that a letter from the Ahmadiyya Association UK contains specific information as to the claimant's activities in the United Kingdom, the more likely the letter is to be given weight.

DETERMINATION AND REASONS

Introduction

1.

We make an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant.

2.

The appellant appeals a decision of a panel of the First-tier Tribunal (Judge Warren L Grant sitting with a non-legal member, Dr J O De Barros) who dismissed his appeal against a decision dated 11 January 2011 that the appellant is subject to automatic deportation pursuant to s32(5) UK Borders Act 2007. The panel concluded that none of the exceptions provided for in the Act apply. On 25th July 2012 Upper Tribunal Judge Goldstein found an error of law in the following terms:

1.

At the hearing before me on 27 July and as reflected in my typed and contemporaneous Record of Proceedings and subsequent Directions dated 15 August 2012, I found that the First-tier Tribunal had materially erred in law, on the basis that as contended in Grounds 1 and 2 of the Appellant's Permission to Appeal application, there had been a failure to make material findings as to the applicability of the guidance in HJ (Iran) and HT (Cameroon) [2010] UKSC 31 and to make any findings as to whether the Appellant on return to Pakistan would be at risk as an Ahmadi with a high profile father.

2.

Having made this clear to the parties at the hearing I set aside the determination of the First-tier Tribunal promulgated on 9 November 2011 save that their findings over paragraph 35 to 38 inclusive should be preserved.

3.

The factual findings preserved from the First-tier Tribunal determination are as follows:

35. We find that the appellant's mother has exaggerated a number of issues in her evidence. Despite her claim that the factory is not doing well we accept the appellant's evidence that it employs 150 workers and that it supplies plastic bags to retail outlets inside Pakistan. There is no evidence that it has been attacked or that the management or workers face discrimination or difficulties on account of the faith of the owners. The appellant seeks to rely upon two complaints allegedly filed at the Race Course police station in Lahore. The reports purport to have been filed by the manager of the factory and by the appellant's mother. The reports state that threats have been made by one Kamil Khan to burn down the factory on account of money allegedly owed to him by the appellant's late father. If there is a date on the report filed by the manager it has not been translated by the translator but the mother's complaint is dated 19th October 2010. According to the translation the complaint bears her thumb print although we do not believe that she was present in Pakistan on 19 October 2010. The translation states, "I have recently come here from Pakistan" which makes little sense. The complaint states that she had been receiving threatening phone calls on what is clearly a mobile phone in London from a mobile phone in Pakistan. We do not know how a total stranger could have found out her mobile phone number but we are not assisted by the print out of phone calls made/received which follows. It appears from a separate document that the manager allegedly lodged his complaint on 31 August 2010 and we find that if a threat was made as long ago as August 2010 the maker of the threat would have made good his threat long before November 2011. We find that the appellant or someone on his behalf has manufactured evidence and we make an adverse credibility finding against both him and his mother.

36. We also find that despite claims made by the appellant and by his mother that the close relatives in Pakistan have either all emigrated [sic] there is an aunt who may well believe that she is entitled to succeed to her late brother's ownership of this factory. Although the appellant's mother claimed that this aunt is a member of the Pakistan People's Party and that she has (if we heard correctly) forsaken her Ahmadi faith for that of Islam, the appellant's mother runs the factory by phone and by email,

keeping a careful eye on the accounts and visiting the factory as necessary. Despite her ailments she managed to visit on her own in January 2011 and we find that she has exaggerated her health problems in order to try to show that she is dependent on the appellant. There is a thriving business in the ownership of an Ahmadi family and we reject any suggestion that threats of any kind have been or are being made to the management.

37. We find that the appellant's older brother was already in Pakistan at the time of the murders and that the appellant and his mother arrived on the following day. The appellant has variously stated that he stayed in the family home in Lahore which we find the family (most probably his mother) still owns. It seems that this is the address which appears at the top of the complaint allegedly filed by her with the Lahore police in October 2010. The appellant claims that he stayed there with his sister-in-law and his two nephews but that he posted extra guards. He and his mother have also stated that they were advised that terrorists were watching the house so they stayed in a hotel. Both versions cannot be correct and there is no explanation to show how anyone could have known that terrorists or any other people were watching the house. If they were so interested in the appellant and his mother that they watched the house they will have known that they checked into a hotel especially when we take into account the appellant's claim that he was known to be his father's son and that far from keeping a low profile he gave interviews to Al- Jazeera. He further claimed in his interview that the Taliban made threats to him through phone calls to the factory and to his mother but we have rejected the possibility that threats were made to the factory and we find that his mother remained in Pakistan for 6 weeks after the murder without suffering any adverse consequences. The appellant has also claimed that during his imprisonment in the UK the Taliban have phoned someone else to make threats against him but his mother makes no mention of these later phone calls.

38. We find that the conflicting accounts show that the appellant and his mother have exaggerated their stories to try to create adverse interest in the appellant whereas in fact there is none. We find that on 16 December the appellant signed a disclaimer withdrawing his asylum claim. He claims that he thought he could rely on the grant of indefinite leave to remain but on 30 October 2010 he had received a notice of liability to deportation and we believe that he well understood that ILR would not avail him. He sought to withdraw his asylum claim because he knew that there was no basis to seek international protection. He now seeks to reinstate it based upon a conflicting account which is lacking in credibility.

4.

Further undisputed facts are as follows:

a.

The appellant's father was a prominent Ahmadi businessman and philanthropist who was killed during Friday prayers when an Ahmadi Mosque in Lahore was attacked on 28th May 2010.

b.

The appellant arrived in the UK, with his father and other family members, on 30 November 2002 and was granted indefinite leave to remain in 2007 along with his other family members. The appellant was aged 15 when he arrived and has resided lawfully since then.

c.

The appellant's mother, father and siblings were all naturalised as British citizens in 2008. The appellant did not apply to naturalise.

d.

The appellant was convicted on 13th August 2010, following a trial, of robbery (a street mugging for a mobile phone) for which he received a sentence of 18 months imprisonment. He was aged 22 at the date of conviction. The Judge's sentencing remarks noted that it was "... absolutely clear that you planned to rob someone if someone came by. The claim that your co-defendant was responsible....I regard as equally incredible. It is perhaps unfortunate that you didn't plead guilty at an earlier stage....you have not faced up to the fact that you committed this offence and you apparently continue to deny it." Having regard to the Sentencing Guidelines for Robbery it appears that the court concluded that this was a level 1 offence with aggravating features.

5.

Before us the appellant submitted that his deportation would result in persecution for reasons of religion, both as an individual who would actively observe and preach his faith and because of his social and business links to a prominent Ahmadi family; would be a breach of Articles 2 and 3 of the ECHR and would be a breach of Article 8 of the ECHR. We also heard submissions from Mr Halim with regards to Article 8.

6.

We heard oral evidence from the appellant, his mother (through an interpreter) and Mr Imran Zafar who is the head of all security arrangements in the UK for the Ahmadiyya Muslim Association UK. The appellant and his mother gave sworn evidence. The appellant was reminded that his previous evidence both to the criminal court and to the First-tier Tribunal had been disbelieved and that this panel would take this into account when assessing his credibility today. He was advised on the importance of complete candour and frankness when giving his evidence.

Evidence

7.

In addition to the standard respondent's bundle we were referred to a bundle of documents marked "Part A subjective evidence", a skeleton argument filed on behalf of the appellant, witness statements dated 3rd June 2013 filed on behalf of all three witnesses (which incorporated all of relevance from their earlier witness statements), 2 photos, various news extracts and a letter dated 6th June 2013 from the Ahmadiyya Muslim Association UK to the appellant's solicitors. A large bundle of "Objective Evidence" was also filed on behalf of the appellant together with an essential reading list although we were not, during submissions, referred to any particular document therein. Since this appeal was heard and determined by the First-tier Tribunal and since an error of law was found by Judge Goldstein the country guidance case of MN and others (Ahmadis - country conditions - risk) Pakistan CG [2012] UKUT 00389 (IAC) has been reported and we have of course taken this into account in reaching our decision.

The appellant's religious observance

8.

The appellant's evidence was that whilst in detention he had become more devout in his religious observance. Since release he has been mentored by Mr Zafar whom he sees regularly and through whom he participates in activities organised by the Ahmadiyya Muslim Association UK. Those activities include attending and participating in religious community activities such as book stalls, handing out leaflets and door to door leafleting. He also claims to preach although he did not start this activity until about a year after his release on licence because it was not until then that he felt sufficiently knowledgeable about his faith. There was some discrepancy in his evidence as to how often he claimed to preach; his oral evidence varied between every month to at least once a month, to

every week. A letter from the Ahmadiyya Association UK dated 6th June 2013 (“the 6th June letter” quoted more fully below) refers to the President of the Fazal Mosque branch in London confirming in writing to the Ahmadiyya Association UK head office that he preaches to his friends and contacts in London.

9.

Although his witness statement says [33] that he had taken “full participation in all religious activities ever since [he] came to the UK and with greater commitment after [his] release from detention”, in oral evidence he made no claim to having practised his religion prior to detention in any manner other than attending Friday prayers. His witness statement sets out the manifestation of his devotion in the UK including undertaking special duties involving regular preaching and door to door leafleting, attending Jalsa Salana , and performing Eid prayers. Although he states these activities are not possible in Pakistan he does not, either in his witness statement or in oral evidence, state that he intends to or would wish to undertake them in Pakistan, save in [54] which also refers to him having been discreet in his religious observance whilst in Pakistan prior to coming to the UK aged 15.

10.

The appellant’s mother said in her evidence that the appellant had been “quite active” in his faith in Pakistan but that after his father’s death he became more active. This was not the appellant’s evidence, which was that although he had always had faith, his time in prison and since had been influential in the degree of his expressed observance; he had not gone to the Mosque as frequently prior to prison. The 6th June letter refers to the appellant’s activities “Since his arrival in the UK”. Neither the writer of the 6th June letter nor the President of the Fazal Mosque who appears from the letter to have given that information to the writer, filed a witness statement or gave evidence before us and it was not therefore possible to ascertain what was meant by this phrase. The appellant’s mother said that the appellant attended the Fazal Mosque in England. The 6th June letter says that he attends Friday prayers at the Fazal Mosque regularly and observes his prayers in congregation regularly.

11.

The appellant’s evidence as to the name of the President of the Fazal Mosque, (the position held by the writer of the 6th June letter) and as to the full name of the organiser of the preaching, was unclear, contradictory and confused. He said, variously, that the President of the Fazal Mosque was the writer of the 6th June letter; that the president was not the writer of the letter; and that he did not know the name of the President of that Mosque. He did not know how the writer of the 6th June letter had obtained the information contained in the 6th June letter. The appellant did not know how the President of the Fazal Mosque who, according to the 6th June letter had written a letter dated 4th June containing information about the appellant’s Ahmadi religious activities, had obtained that information (the letter of 4th June was not produced to us). The appellant then said he thought that possibly his mentor (Mr Zafar) had provided the information. What was apparent was that whoever the President of the Fazal Mosque is, the appellant had no direct contact with him and the information recorded in the 6th June letter had come from a letter dated 4th June which had been written by someone who himself had received that information from other individuals.

12.

The appellant relied on two photos which show him standing in a street at a stall and handing out a leaflet. He said these were taken on the same occasion (he could not remember with any accuracy when) and show him standing with others. He had no other photos of such activities.

13.

A letter from the Ahmadiyya Association UK dated 6th June 2013 refers to the President of the Fazal Mosque branch in London confirming in writing to the Association head office that the appellant delivers leaflets at stalls in "Edgware Road and in Surrey villages each week". The appellant was unable to confirm that he had ever delivered leaflets to a "Surrey" village, although his witness Mr Zafar did refer to activities that the appellant had undertaken in Surrey.

14.

Mr Zafar is the head of security and responsible for youth. Mr Zafar said in evidence that he personally prays every day at the Fazal Mosque save that for Friday prayers he goes to the Morden Mosque. Mr Zafar confirmed that the appellant went regularly and frequently to prayers but explained that, other than at Friday prayers, one might well not see particular people, although they had been there, because (other than Fridays) prayer time was a private event. He was unable to confirm that he had seen the appellant during the week at mosque on a regular or frequent basis.

15.

He mentors the appellant (although he made clear that there is a mentoring team responsible for those activities but he was involved because he knew the family) since his release from detention and sees him usually twice a week although sometimes more frequently. He usually goes to his home although also sees him occasionally at the Mosque, youth association gatherings at the Mosque and at the community farm in Guildford where the Association holds youth events. The various events are organised from the centre for youth (those aged between 16 and 40) and for the elderly (those over 40). Mr Zafar explained that there was a difference between leafleting and preaching although the distribution of a leaflet was not merely that; it could lead to a discussion and this would then be called preaching. He had not directly seen the appellant undertake these activities but had seen the photos of him in Edgware Road and had spoken to other "boys" and sources who had confirmed to him that the appellant had undertaken these activities. Mr Zafar confirmed he had known the appellant's family for some 8 years but had more active involvement with the appellant since his release from detention. He explained that part of his role from the community and security side was to mentor or arrange mentoring for boys going through difficult times. He said the appellant does community work both at his direction and at the direction of his local Quaid (loosely translated as the local youth area organisation) between once and three times a week.

16.

Mr Zafar was asked specifically about the appellant's faith based activities:

"Q. Does he ever do anything without instruction, when he has not been told to do it?"

A. Well, because he has been under this mentoring thing, so, obviously, if he has got things, then he will come up - like recently he was interested in setting up someone in business, so he was going to get some advice for himself and then he has been going out and checking with some agencies how can he start work, so, obviously, he is using his own, obviously, brain and, if he has got anything to do, then he do consult and go out and look for it.

THE CHAIRMAN: When he attends the mosque on the days other than the Friday prayers, is that something he is directed to do or something that he does of his own free will?

A. No, his own free will. There is no need to push him.

JUDGE LANE: Is your mentoring of him primarily directed to getting him to engage in the charitable and other works that you have described or to what extent is it religious in nature; to what extent are you attempting to bring him deeper into the Ahmadi faith so that he may be able, for example, to go on preaching to others?

A. This is to keep our youth connected rather than getting in ... because we live in a society where very easily you can get into things, you can go out and ... I mean, as most things, I would have said that people go out and their spare time is (inaudible) dating and clubbing and this and that, so we try to have things, have some sports matches or meetings or gatherings or seminars, so that youth can get together, sit down and learn rather than just wasting their time.

Q. Is it fair summary of that answer that activity, youth and community activities, are to keep the youth away from distractions that may put them into problems with society ----

A. That is right.

Q. - and doing criminal offences.

A. Yes, and also to enhance their knowledge as well about the religious - what their beliefs are and when you talk to someone how can you tell what the differences are and everything, so ...

THE PRESIDENT: And how do you rate AB's understanding of the religious faith?

A. In the beginning he was not that knowledgeable, but now with time he has learnt a lot and he does question a lot as well, anything that is bothering him, if he is not understanding, then he will try to get answers. I think that he searches on the net or there are a number of books that he can read. I know they have a big library at home."

17.

Mr Zafar, in his witness statement dated 3rd June 2013, refers to the appellant's involvement in night security, assisting at the annual convention in Alton and that since his imprisonment and release he has seen a great change in him; he has become more mature and responsible [5] and [6].

18.

In his own witness statement [54] the appellant says

"...It is clear that the open propagation of my faith, such as engaged in by me in the United Kingdom, would not be permitted in Pakistan. It is to be noted that I was discreet in this conduct whilst in Pakistan because of general hostility towards and disapproval of Ahmadis by the mainstream Muslim population, legislative restriction and fear of harm from extremists."

Although this paragraph was not put to him directly, the appellant in his oral evidence and indeed earlier in his witness statement confirms that he was not devout in his religious observance and that his desire for such expressions of observance arose following the death of his father and, of more consequence, his imprisonment.

Business involvement

19.

The appellant claimed that he helped his mother, who is disabled, with her business interests. In his witness statement dated 3rd June 2013 he states [29] that he looks after his mother's business under an agreement and profit sharing and is committed to slowly taking over the family business responsibilities and that he plays a "vital role assisting [his] mother in day to day duties"[30]. When

asked specifically what he did he said “Accounts, maybe audit accounts” and, that he would “do what she has asked [him] to do which she cannot understand. It is just generally helping her out.” In his witness statement [47] the appellant said he manages the family properties in the UK with tenants, letting and maintenance arrangements and that he intends “to continue to assist [his] vulnerable mother in managing these given her disability.”

20.

The appellant’s mother, when first sworn, appeared to give an impression of not understanding what was being asked of her. It rapidly became clear however that, in so far as her business acumen was concerned at least, she was astute and competently running the family business and philanthropic interests in Pakistan both through her visits to Pakistan and from the UK. In his statement the appellant said that “Most of [their] Ahmadi employees have already left Pakistan...” [40]. In oral evidence the appellant said there were about 150 employees; he did not know how many were Ahmadi and how many were not Ahmadi; there were quite a few Ahmadi employees; that the manager was not Ahmadi.

21.

When asked what the appellant did to assist her she said that he was

“..... in learning classes now, so he will be entering into supervision, but he never goes to Pakistan, he will do business here in the UK.”

When asked if he did anything at the moment she said

“He looks after some of my properties and he is going to markets and trying to start some business.”

Mr Tufan put to her that the appellant had said he audited accounts. She replied

“We receive weekly reports from Pakistan and some reports I check and some are checked by him”

22.

In her witness statement dated 3rd June 2013 she said that she had struggled whilst the appellant was in prison to manage the properties in the UK and that there is now a backlog of work to be dealt with by him [15]. She refers in [17] to the appellant being her principal carer and that he has been helping her with her responsibilities, taking over from her husband.

23.

Her other son, Z, was, she said, ill and unable to work hard. There was no indication from her that he was involved with the family business or interests.

The death of the appellant’s father

24.

Although it is clear that the appellant’s father was a prominent businessman and member of the Ahmadiya community who was murdered in a bomb attack on his Ahmadi mosque in Lahore, there is nothing in the evidence before us that threw any doubt on the previous conclusion of the First-tier Tribunal that this was an indiscriminate attack against those attending the mosque and not a personal targeting of the appellant’s father.

Medical evidence

25.

There was considerable medical evidence before the First-tier Tribunal which was taken into account when they reached their decision. In addition to that evidence, we had before us a letter from Falcon Road Medical Centre dated 9th October 2012 and a psychiatric report from Dr C Rehman dated 18th July 2012.

26.

According to the report from the Medical Centre the appellant's mother suffers from Type II diabetes mellitus, osteoporosis of hips, spine and knees; vitamin D deficiency, chronic anxiety and asthma; she is physically dependent upon the appellant. The report states that the appellant helps her in running the businesses and concludes that his removal from England would be detrimental to her health.

27.

The psychiatric report by Dr Rehman sets out his assessment of the appellant's "mental state, diagnosis, prognosis, risk to mental health if returned to Pakistan, ability to maintain himself in the UK, need for physical/emotional support in the UK and his fitness/ability to give witness and cross examination." Dr Rehman, who is a consultant psychiatrist, prepared the report on the basis of information from the appellant, his mother and documents provided by the solicitors. According to the report the appellant continues to assert his innocence of the crime of which he was convicted. The report states he was diagnosed as suffering from a Severe Depressive Episode without psychotic symptoms and Post Traumatic Stress Disorder. He was then prescribed Escitalopram and Mirtazapine. There was no up to date medical evidence produced.

Consideration and findings

28.

In coming to our decision we have considered all the evidence before us, including material to which we have specifically referred and that we have not specifically mentioned. We have looked at all the evidence, including the medical evidence, in the round before making any findings.

29.

The essence of the respondent's submission is that the appellant was not at risk of being persecuted merely because he was an Ahmadi; that this appellant does not fall into any of the categories considered to be at risk as referred to in MN and that there was no error in the assessment of the First-tier Tribunal findings as regards Article 8.

30.

Mr Halim on behalf of the appellant in essence submitted that the appellant does fall within a protected risk category: he is a committed Ahmadi who will actively manifest his religion on return to Pakistan; in addition or alternatively he comes from a high profile Ahmadi family; that he has established family and private life in the UK such as engages Article 8 and to deport him would be disproportionate.

International protection

31.

The current country guidance of MN replaces earlier guidance and although specifically dealing with Qadiani Ahmadis, Lahori Ahmadis are also included in the guidance. The italicised head note reflects the conclusions of the Tribunal set out in paragraphs 118 to 127 inclusive of the determination ¹ .

32.

The issue to be determined by us is the extent, importance and nature of the appellant's religious identity and observance in the light of his claimed post imprisonment manifestation of religious practice and belief and the appellant's intention and/or desire to continue such manifestation (such as it may be) on his return to Pakistan. In reaching our decision we have, in accordance with the guidance given in MN considered not only the oral evidence and that of the witnesses and the documentary evidence but the evidence from the Ahmadiyya Association UK as set out in the 6th June letter and from Mr Zafar. We are satisfied for the reasons set out below that the appellant is not reasonably likely to engage or wish to engage in behaviour set out in paragraph 2(i) of the italicised country guidance in MN . We are also satisfied, for the reasons set out below that the appellant is not reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his prominent social and/or business profile.

Personal religious belief

33.

The appellant's evidence was that although Ahmadi by birth and from a prominent Ahmadi family it is only since his criminal conviction that his religious observance has come to be a significant element of his belief, such observance involving discourse with others, including preaching and waqar-e-amal (cleaning, clearing up, looking after guests, helping in the organisation of the branch). Although he claims in one paragraph of his witness statement that he was prevented through fear from overt observance and practice of his faith whilst in Pakistan, we do not accept this assertion. It contradicts all of his other evidence which is to the effect that his faith has become more important to him and become overt since his imprisonment and release from detention; prior to that he had faith and personal belief. He was asked if he went to mosque regularly and he replied that he "used to go to mosque a lot, but not as much as [he] did when [he] came out of prison." He was asked when his commitment began and he replied "in prison". There was no evidence before us other than as set out in [54] of his witness statement that he had manifested his belief in any way whatsoever whilst in Pakistan. In submissions Mr Halim referred to the appellant as having "come to consciousness in prison" and wished to rely upon the appellant's stated intention to proselytise as set out in [54] "notwithstanding the drafting of the statement."

34.

We have not found the appellant reliable in his evidence to us as to the extent of his current religious observance. There were significant discrepancies in his professed activity - in particular the number of occasions he claimed to preach and where he preached. He did not know the name of the person who ran the mosque which he attended (he claimed) every day; he did not know the full name of the person who organised the preaching/leafleting activities despite claiming lengthy involvement in preaching since about the end of May 2012 ie about a year after his release from detention on licence. The appellant was very uncertain about the date of the two photos that were produced to show him preaching. After much thought he tentatively suggested that they were taken in about August 2012 although we note that the individuals in the picture are heavily clothed and there are no leaves on the trees.

35.

There is no photographic or other evidence to support his claim to have been preaching for a lengthy period. The two photos produced do no more than show that on one occasion during the autumn/winter he was standing at a stall handing out leaflets. Although the appellant's inability to remember when the photographs were taken may be no more than a problem of memory as to detail, it does not suggest that the event was a particularly important one in the appellant's mind, and there is no

support for a proposition that his inability to remember the particular event was because he was doing similar activity so frequently. His witness statement as to his professed activity in Pakistan up to the age of 15 is inconsistent with his oral evidence and the balance of his witness statement was clear: he was not active in his religious observance whilst he lived in Pakistan before coming to the UK aged 15. Although he claims to wish to continue the manifestation of his religious observance in Pakistan as in the UK this claim is in that same paragraph [54]. We do not accept this accurately reflects his intention given the lack of reference in the rest of his statement or in his oral evidence to active, devout manifestation of his faith and when considered alongside the other evidence before us. We conclude that a significant part of his written statement is unreliable, and much of his oral evidence as to his present state of religious observance is vague, unsupportive and by itself unconvincing.

36.

Mr Zafar, who has been mentoring the appellant since his arrest prior to conviction and in particular since his release from detention, has no direct personal knowledge of the appellant's claimed manifestation of his religious belief. He said he had received reports from various individuals but none attended the hearing to give evidence before us and there were no witness statements. The person whom the appellant claimed organised the preaching and leafleting activities (whose full name the appellant did not know) did not give evidence. Despite the 6th June letter referring to the appellant preaching to friends and contacts in London, none were named and none gave evidence to that effect. Given that his claim to be actively involved in preaching and furthering the observance of his religion in the UK where there is no inhibition to his doing so is a critical element in the assessment as to what he would do in Pakistan, the lack of such evidence is significant.

37.

We have paid particular attention to the 6th June letter. The first numbered paragraph of the letter pays tribute to the appellant's father, his role in the Ahmadiyya community in Lahore, his business and philanthropic interests and his death. There was no challenge to these references by Mr Tufan. The second numbered paragraph which refers specifically to the appellant was, however, strongly challenged by Mr Tufan.

38.

That paragraph reads as follows:

"Since his arrival in the United Kingdom, the President of our Fazal Mosque branch in London has confirmed to the Head Office in writing dated 4th June 2013 that [the appellant] has:

i)

Observed prayers in congregation regularly.

ii)

Attended the mosque for Friday prayers with regularity.

iii)

Distributed introductory leaflets about Islam and other literature at Tabligh (preaching) stalls held in the Edgware Road area and in Surrey villages each week

iv)

Preached to his friends and contacts in London about Islam.

v)

He appears to have a passion for propagating and telling others about his faith and will try anyway to strike up a conversation with a new person and then gradually introduce to him Islamic values and why such values are welcome for this society.

vi)

He has been performing waqar-e-amal (lit. manual labour, in this context meaning undertaking cleaning, clearing up, looking after the guest, feeding them, helping in the organisation of meetings of the branch).

vii)

Has shown a marked change in his character by cooperating with the community's office bearers in undertaking any responsibility assigned to him. He has been very keen to help in undertaking security and surveillance duties and has worked for late hours in the car park at our Annual Convention held in Hampshire each year.

viii)

Paid his contributions as a member regularly.

ix)

His mother is disabled and is dependent upon the above named person who looks after her with great care."

The letter concludes with

"5. The [appellant] has been and remains an active member and his and his family's very strong links, participation and devotion to the Ahmadiyya Muslim community show that he attaches a significant importance to his identity as an Ahmadi Muslim...."

39.

In particular Mr Tufan referred to the appellant's lack of knowledge of who the President of the Fazal mosque was; the lack of production of the letter of 4th June 2013; that the information in the letter has come at least third hand and lacks specific detail; that the appellant had not claimed to distribute leaflets or preach in Surrey villages and when this was specifically put to him he displayed ignorance of this claim; there was no evidence for 2(iv) and 2(v) other than appears in the letter; it was not clear to whom the phrase "Since his arrival in the UK" refers - to the appellant who has been in the UK for the last 11 years or the President of the mosque. The 6th June letter is signed by Mansoor Ahmed Shah whom the appellant initially said he did not know and then said was the President and then said he was not.

40.

The evidence before us was that the appellant undertook such activities as he did under the direct instruction of those mentoring him. The appellant comes from a prominent Ahmadi family and Mr Zafar, and the Ahmadiyya community generally, have taken a very laudable active interest in ensuring that this appellant (and it seems other young people with similar or potentially similar difficulties) does not re-offend and that he is enabled to develop into a young man who will not discredit the community. What this appellant does not, from the evidence before us, do is participate of his own volition in preaching or other activities; he participates in activities he is required to undertake and to a very large extent these involve assistance at events rather than initiating leafleting or preaching. That is not to minimise the importance of such activities but in so far as this appellant is concerned

the evidence before us leads us to conclude that were it not for the strictures placed upon him by the community leaders he would not undertake those activities.

41.

We note of course that the country guidance in MN at [122] (italicised words paragraph 9) indicates that evidence from the UK Ahmadi headquarters regarding the activities relied upon in Pakistan and confirmation from the local community in the UK where the appellant is worshipping is likely to be highly relevant. In MN Dr Ayaz (a senior member of the Ahmadiyya Muslim Association UK and National President of the UK Chapter) is recorded as being of particular assistance in describing how the Ahmadiyya Muslim Association UK is run and that the Association has a rigorous system for verifying that a person is an Ahmadi ([217(iv)]). Of course there is no dispute but that this appellant is an Ahmadi.

42.

Dr W, a Doctor of Philosophy from Punjab University gave evidence in MN that Tabligh and da'wa (preaching and propagation of the faith) are "for Ahmadis the lifeblood and raison d'être of the movement..... tabligh can take various forms as well as direct preaching and that "individual efforts, individual actions and individual personal examples are classed as 'the most important ingredients of tabligh'" "[161(i)]. The importance of tabligh was underlined by Imam Rashed (Imam of the London Ahmadi Mosque and missionary in charge, planning and supervising missionary activities in the UK) in his evidence [195]. He said that "Propagation goes beyond just leading a good life. Going from door to door has attracted dislike so instead Ahmadis try (in the UK) to invite and meet people for one to one sessions" [200].

43.

There is no challenge to that evidence in this appeal, but this appeal concerns not whether someone is an Ahmadi, but the extent to which someone who was not an active member of the faith either in Pakistan or first arriving in the United Kingdom has now become one, since arrest and detention for a serious criminal offence. Whilst it is possible that a combination of his father's murder and his awakening spiritual needs in detention have made the appellant into a fundamentally different person, we must also be alert to the possible re shaping of his asylum claim in the light of the MN decision. We have found the appellant's own testimony written and oral not to be persuasive; although we found Mr Zahar to be a credible witness we have found the limited evidence he could give about the appellant's personal commitment and activities significant. The 6th June letter does not identify with any rigour how this appellant's activities in the United Kingdom were investigated. Much of what is said is reportage and assertion and the evidence before us does not sustain those assertions to the extent that it appears that some may be in error: for example the appellant preaching to contacts, leafleting in Surrey and elsewhere each week. There was no evidence before us as to how the Ahmadiyya Association undertakes its inquiries as to an individual's UK activities or on what basis they set out and describe those activities. In so far as this appellant is concerned the lack of any corroborating evidence, such evidence being readily available if it existed together with the contradictions in the evidence before us and what appears in the letter, results in us placing little weight upon the description of the appellant's activities in the UK as set out in the 6th June letter.

44.

In a case such as the present where credibility is a significant issue, the more that a letter from the Ahmadiyya Association UK as to an individual's activities here can be supported with specific information the more likely they are to be given greater weight. We would expect the Association to be in a position to explain the source of the information given in the letter, how the source is able to

speak to such matters and what records are kept of the activities referred to in the letter. Overall we are not persuaded by the evidence that there is a reasonable degree of likelihood that the appellant is a spiritually active Ahmadi who is committed to preaching or similar acts of proselytising in Pakistan and has a well founded fear of persecution arising therefrom.

45.

The appellant claims that his membership of a prominent Ahmadi family, particularly where the senior member of the family was killed, albeit not targeted as an individual Ahmadi, renders him at greater risk of being persecuted on return to Pakistan. We note that the family continues to hold business interests in Pakistan and to run a clinic and other philanthropic activities. The appellant's mother continues to travel to Pakistan, despite her disabilities, about three times a year. She says she does not travel with her children because she would not wish them to be in danger. Although she says she goes secretly, she transacts business whilst in Pakistan. The purpose of her visits is to ensure that the businesses are running efficiently and smoothly. We do not accept that she travels in secret or, once there that she visits the businesses in secret. We note that she says that whilst there she stays in the family home which is heavily armed and that additional guards are employed whilst she is there. There was no evidence before us as to threats received, other than that which she gave to the First-tier Tribunal, which was disbelieved. We are not satisfied that she is the target of threats whilst in Pakistan. The appellant does not run the business and his role in the business, such as it is, is peripheral. There was no evidence that he would take a greater role in Pakistan than he does here. We are satisfied that returning as the son of the deceased owner of a family business will not place him at any greater risk than his mother who visits and continues to visit regularly and is not threatened.

46.

We have taken account, in reaching this conclusion, that the appellant is the eldest son and that the family were well respected in Lahore as prominent Ahmadis. We note that in MN, it was concluded that MN was in need of protection. MN was himself high profile; he was not a family member of someone who was high profile. The appellant ZN in MN was a Doctor in a clinic owned by her whereas this appellant is a family member of the family who own the clinic. There was no credible evidence before us that those employed in the appellant's family business or clinic have received threats

47.

There was no evidence brought to our attention that individuals who have not established a desire to proselytise albeit they are members of prominent Ahmadi families - are at risk of being persecuted. An Ahmadi who is a member of a prominent Ahmadi family whether in terms of religious observance or business and philanthropic activities is not, on the basis of the evidence before us, at risk merely through this family connection.

48.

We conclude that the appellant is not at risk of being persecuted for his religious belief either in fact or imputed and he is not at risk of sustaining serious harm if returned to Pakistan.

Article 8

49.

The First-tier Tribunal held that it was not disproportionate to remove the appellant to Pakistan. The grounds seeking permission to appeal the First-tier Tribunal determination challenged the weight placed by the First-tier Tribunal upon the medical evidence as to the appellant's mother's health. The 26 page skeleton argument dated 22nd July 2012 relied upon by the appellant before Judge Goldstein

refers in the last 4 pages to the legal principles to be applied when considering deportation and Article 8 and essentially objects to the weight placed by the Tribunal upon the various factors relied upon by the appellant.

50.

The First-tier Tribunal determination set out the law on Article 8, considered the evidence before it and reached a conclusion on that evidence that the deportation would not be a disproportionate interference in the appellant's private and family life. Judge Goldstein did not find an error of law in that decision. Although not argued in terms by Mr Halim that he was seeking permission to appeal the Article 8 decision, in response to our question as to what was missing from the First-tier Tribunal determination that requires us to rebalance the conclusion, Mr Halim referred to the passage of time. We reminded Mr Halim that no error of law had been found with regards to Article 8; we asked him to identify anything that would change that conclusion. He said that he was not relying on the medical evidence that had been submitted after the First-tier Tribunal decision but relied upon the cumulative aspects of private life including the further 20 months that has elapsed; that there have been positive developments in the appellant's behaviour and conduct, that the family picture has not changed and that he was highly unlikely to commit further offences. He referred to the Maslov criteria.

51.

The First-tier Tribunal reached its decision after careful assessment of the evidence in accordance with the requisite legal principles. As accepted by Mr Halim, the additional factor now before us is that a further 20 months has elapsed since the hearing before the First-tier Tribunal and the appellant has not been involved in any further criminality.

52.

We are satisfied that there was no error of law in the First-tier Tribunal decision as regards Article 8; there was nothing in the submissions before us by Mr Halim that enabled or required us to reach a different conclusion. There was no significant evidence before us that differed from the First-tier Tribunal determination such that the decision should be overturned; even if there had been an error of law as regards Article 8 we would have reached the same conclusion namely that removal was not disproportionate.

Conclusions:

The making of the decision of the First-tier Tribunal as regards international protection involved the making of an error on a point of law.

That part of the First-tier Tribunal's decision is set aside.

We re-make that part of the decision in the appeal by dismissing it on asylum and ECHR Article 3 grounds. The appellant is not entitled to the grant of humanitarian protection.

Date 17th September 2013

Judge of the Upper Tribunal Coker

¹ In so far as is relevant to this appeal this reads as follows:

1.

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. 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.

8.

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 in the claimant's account as a whole may be relevant to the assessment of likely behaviour on return.

10. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile.