



Case No: C5/2007/2933

**Neutral Citation Number: [2008] EWCA Civ 1616**  
**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL**  
**[AIT No: HX/07471/2003]**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday, 4<sup>th</sup> December 2008

**Before:**

**LORD JUSTICE WALLER**  
**LORD JUSTICE THOMAS**  
**and**  
**LORD JUSTICE MAURICE KAY**

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**Between:**

**MA (PAKISTAN)**

**Appellant**

**- and -**

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

**Respondent**

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(DAR Transcript of  
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**Mr J Gillespie** (instructed by Morden) appeared on behalf of the **Appellant**.

**Mr D Edwards** (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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**Judgment**  
**(As Approved)**

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## **Lord Justice Thomas:**

1. There is before the court an appeal against the decision of the AIT on 5 September 2007 which is brought by permission of the single Lord Justice. It concerns the refusal of a claim for asylum by a Pakistani citizen of the Ahmadi faith. It is important to stress at the outset that this appeal turns on the particular circumstances of the individual case and no general issue arises.
2. It is necessary therefore to begin by setting out the basic facts and the appellant's evidence. The appellant was born in Gujranwala, Pakistan, in September or October 1971. As I have said, he was a member of the Ahmadi faith by birth. In September 1993, when he was 22, he joined the Pakistani police force and was posted to Farooqabad. It was the appellant's evidence that he started preaching when he was 16 or 17 and continued to preach and to proselytize after joining the police force. He converted one of his colleagues in the police force, Mehdi Hassan, to the Ahmadi faith in January 1996. The local Khatme Nabuwwat (to which I will refer as "KN") mullah learnt of this either during the course of 1996 or early in 1997. He accused the appellant of being an infidel who should be killed.
3. The appellant's evidence was that in about March 1997 three henchmen of the mullah attacked him. He submitted a written report. He was taken to a medical clinic. The appellant was subsequently, on his evidence, dismissed from the police force.
4. The appellant then moved to Rabwah and remained there for about three years. It will be necessary briefly to refer to the evidence he gave in relation to that, but that is a very important factor in this case. He was there without apparently any serious incident but I shall refer in a moment in more detail to that evidence.
5. His evidence was that in 2000 he moved to his place of birth, Gujranwala, where he was appointed a Qaid which has been variously translated as "guide" or "president of the youth wing" of the Ahmadis in that location. His evidence was that he preached to two non-Ahmadis, Nasir Khan and Muhammad Ali, who converted. The local KN mullah in that town learnt of this and organised a group which forced their way into the appellant's house on 10 January 2002. He was out at the time and the family was told that they were to produce him to be dealt with. He did not return home and moved to his sister's house in Islamabad, where he remained for two months, before on 12 March 2002 fleeing Pakistan for the United Kingdom and claiming asylum.
6. His application for asylum was refused in May 2002. His appeal was heard by Mr PJ Knowles, then designated as an immigration adjudicator. He dismissed the appeal. He found, largely on the appellant's own evidence, that the appellant was not an active or a high-profile member of the faith and that he had kept a low profile. He also found that the appellant had never been arrested, detained or prosecuted. However, he went on to make a number of

adverse findings about the appellant's credibility. He said, because there was no documentary evidence, that there was no evidence to support the claim that the appellant had any high role in the Ahmadi youth organisation and none to support the claim he was a president or a guide. Secondly, he did not accept the account of the way in which the KN learnt of the supposed conversion of Mehdi Hassan in 1996 because of a discrepancy in the dates and the appellant's actions as a police officer in complaining about the attack on him. His decision also makes clear that he did not really accept the credibility of the account of the conversion of Mehdi Hassan. He also found that he did not think it reasonably likely that the conversion of Nasir Khan and Muhammad Ali in Gujranwala would have been laid at the appellant's door by the KN and did not accept the appellant's account that he was sought out.

7. In relation to the time he had spent in Rabwah, the immigration adjudicator made two findings, and it is necessary to set those out. First of all, he set out the appellant's evidence in these terms:

“He says that he was worried that [KN] extremists might follow him to his home in Gujranwala. He told me he had experienced some problems, even in Rabwah where most people are Ahmadis. He said that he had not mentioned this earlier because he had not been asked about it.”

Then, at paragraph 42 of the determination, he went on to make this finding:

“There is no evidence that the appellant experienced problems during the three years he was living in Rabwah, save for his vague mention of it for the first time at the hearing. In my judgement, had the appellant encountered any significant difficulties in Rabwah, it is not unreasonable to expect those to have been in the forefront of his mind when submitting a claim for asylum. I do not think that the appellant has proved that it is reasonably likely that he suffered any, or any significant, problems during the three years that he lived in Rabwah.”

8. Between the date of that determination and 2006 the appellant appealed, submitting fresh evidence as he was then entitled to do. Permission to appeal was refused; judicial review was sought; and that was compromised by an agreement that there would be a redetermination. This came before Senior Immigration Judge Eshun who heard the reconsideration. By a decision dated 5 September 2007 the Senior Immigration Judge decided that the original decision of the immigration adjudicator should stand.
9. It is the principal ground of this appeal that the Senior Immigration Judge did not properly approach the fresh evidence; had she properly considered that

fresh evidence it is clear that the adverse findings of credibility made by the original immigration adjudicator could not stand. Two pieces of fresh evidence were relied upon. The first were letters, in particular a letter from the Ahmadiyya Muslim Association, and the second piece of fresh evidence was a police report of 10 July 1997 relating to the 1997 incident. Before turning in a little more detail to those two pieces of evidence and the conclusion of the Senior Immigration Judge in respect of those, it is necessary to refer to one short passage in the decision of the Senior Immigration Judge:

“The fresh evidence which was produced goes some way to rebut the Immigration Judge’s negative credibility findings.”

10. Although the Senior Immigration Judge said that, when she turned to deal with the two pieces of fresh evidence the way in which she dealt with them was very different.

(i) First, the letter from the Ahmadiyya Muslim Association. The principal letter relied upon was very short and dated 18 May 2003, a date after the decision of the Immigration Adjudicator in 2003. It simply said that:

“Our headquarters in Pakistan has also confirmed that [the appellant] has been actively serving voluntarily in community’s youth organisation as Organiser for spiritual and morale training...and guide for the youngsters... He is also serving UK Association actively by performing various duties and voluntarily”

In considering that evidence the Senior Immigration Judge, in paragraph 17 of her determination, effectively said that this made no material difference.

(ii) The second piece of evidence was the police report of 10 July 1997. This document set out an account of the dismissal of the appellant. It showed that he had been dismissed because of preaching to a colleague. It was argued that this therefore supported significantly his account of what had happened and specifically undermined the negative finding that had been made in respect of this to which I have earlier referred. The Senior Immigration Judge in essence took the view that this did not strengthen the appellant’s case. It was not consistent with his evidence and did not show he was persecuted.

11. There was also further evidence before the Senior Immigration Judge but that is not relied upon in this court. The two pieces of evidence to which I have referred were the only evidence relied on.

12. It has been very forcibly argued, both in the skeleton argument and in his oral submissions today to us, by Mr Gillespie that these two pieces of evidence taken together show that the findings of credibility made by the original immigration adjudicator cannot stand. It is said that if both are taken together

they provide support to the account given originally by the appellant. Therefore, looking at the matter as a whole, none of the findings on credibility can stand.

13. It seems to me that although that powerful argument can be made, it is not necessary for this court to decide whether that argument is well-founded because it is possible, in my view, to proceed on the assumption that that argument *is* well-founded and that the evidence of the appellant in relation to what happened on the various occasions which I have set out, as set out in his evidence, are credible. I therefore proceed to consider the matter on that assumption, without the necessity of considering whether the Senior Immigration Judge was wrong in the conclusion that she reached that effectively the documents made no difference to the findings on credibility.
14. I do so because of the position in relation to Rabwah and the fact that the appellant had lived in Rabwah for three years without any incident. Before turning to the reasons why I have reached the view that it is possible to proceed in this way, it is necessary to refer very briefly to the decision of this court in SSHD v IA (Pakistan) [2008] EWCA Civ 580, where at paragraph 19 Sedley LJ, giving the judgment of this court, set out the approach that should be taken in respect of a person who was said to be able safely to relocate to Rabwah. At paragraph 19(a), he stressed in particular:

“What matters therefore is the particular risk faced by the individual Ahmadi and the reasons for it.”

15. Prior to that decision of this court, the Immigration Appeal Tribunal, in MJ and ZM(Ahmadis -- risk) Pakistan CG, [2008] UKAIT 00033 had given a further decision in relation to Ahmadis. At paragraph 83 to 85 it set out the particular risks.
16. The Immigration Adjudicator in his original determination had found:

“The appellant lived for three years in Rabwah without evidence of serious problems, and I have no reason to think that it would be unduly harsh to expect him to live there again.”

17. The question that arises for determination, in my view, is whether the conclusion that was reached by the Immigration Adjudicator is sustainable, on the assumption that the evidence of the appellant as set out in his statement has to be accepted as credible.
18. In my view it is sustainable. My reasons for that are as follows. First of all, he had lived at Rabwah for three years. It is true that the Immigration Adjudicator did say that, in respect of the time, he did not accept there were any material adverse incidents; but he rejected the appellant’s evidence in that respect not on the basis of general credibility but, as is clear from the passage which I have set out, from his view that if there had been anything significant it would have been mentioned and it had not been. Secondly, there is nothing that can be derived from the 1997 incident which occurred prior to his going to Rabwah that can affect the position, if one accepts, as on this hypothesis one

must, that the appellant had in fact converted a colleague and been dismissed from the police force. That had in fact happened before he went to Rabwah where he lived without incident.

19. The third reason is that I do not consider that there is any evidence that shows that what happened subsequently in 2002 affects the position. Again, on this hypothesis, I accept the position that the appellant did convert two people and did have a visit from the KN in the circumstances he described. However, it had been his own evidence that his approach had always been low profile. There was nothing in the letter from the Ahmadiyya Muslim Association to suggest that his position as “guide” had made any difference or that the incident in 2002 in a very different location had made any difference. Those three factors have to be taken into account in the context of the passages in the two decisions to which I have been referred. It seems to me, looking at the whole of the evidence before us, and accepting on this hypothesis that the appellant’s account is credible, there is nothing that leads me to believe that the ultimate conclusion reached by the Immigration Adjudicator that there was no reason to think that any adverse consequences would eventuate to him if he was returned to Rabwah was wrong. For those reasons therefore I would dismiss this appeal.

**Lord Justice Maurice Kay:**

20. I agree.

**Lord Justice Waller:**

21. I also agree.

**Order:** Appeal dismissed