

THE HIGH COURT

JUDICIAL REVIEW

2007 1166 JR

BETWEEN

N. A. U. AND T. A.

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL (BEN GARVEY) AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT OF MS. JUSTICE CLARK, delivered on the 16th day of June, 2009.

1. The applicants seek leave to apply for judicial review of the decisions of the Refugee Appeals Tribunal (RAT), dated 26th July, 2007 affirming the earlier recommendations of the Office of the Refugee Applications Commissioner (ORAC) that the applicants should not be granted a declaration of refugee status. Ms. Agnes McKenzie B.L. appeared for the applicants and Mr. David Conlan Smyth B.L. appeared for the respondents. The hearing took place at the King's Inns, Court No. 1, on 26th March, 2009.

2. Pursuant to s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000 the applicants must show substantial grounds for the contention that the RAT decisions ought to be quashed. As is now well established, this means that grounds must be shown that are reasonable, arguable and weighty, as opposed to trivial or tenuous.

Background

3. The applicants are citizens of Pakistan and members of the Ahmadi Muslim faith. They claim to have been persecuted by reason of their religion which is treated as an apostate form of Islam by main stream Muslims. The main difference between Ahmadis and Muslims is that Ahmadis believe that Mohammed was the greatest but not the last prophet. Main stream or orthodox Muslims find this to be an error.

4. According to the applicants, they lived in the city of Gujrat where the Ahmadi sect made up about 300 people out of a population of about 50,000. They married in 2000 and have two children, the first born in 2003 and the second in 2006. They were well-known Ahmadis in their community; other Ahmadis would come to their house once a week to watch a sermon broadcast live from London. The first named applicant ("the husband") says he had difficulty finding a job after finishing school because of his religion but eventually he got work as an administrative manager in a "medical hall" run by an Ahmadi man who later became his father-in-law. It is a tenet of the Ahmadi religion that its followers

should try and proselytise and both the applicants engaged in some degree of proselytising. While working at the medical hall the husband made religious literature available to visiting non-Ahmadi people and the second named applicant ("the wife") did likewise at her home and in her work as a teacher. She had a high standard of education having a B.Sc. and M.Sc. in Botany and was employed first as a lecturer and then as a science teacher in a private secondary school. She was a member of the Ahmadi Women's Wing and did voluntary work in the evenings teaching the religious syllabus and giving religious instruction to young girls. She also provided books to people who showed an interest in the Ahmadi faith. Their meetings were held monthly in a Nasir Hall as Ahmadis were not allowed to build Mosques of their own or to call their prayer halls mosques.

5. In 2005, members of the Khatme Nabuwat (K.N.), an umbrella group of Islamists strongly opposed to Ahmadis, opened an office near Gujrat. On several occasions, members of the K.N. came to the applicants' home and threatened them. They view the Ahmadi sect as "non- Muslims" and are actively hostile towards the group. The husband had been threatened at work. The applicants were friendly with a schoolteacher and preacher named Munawar who was a senior member of the Organisation of Young Ahmadis. He and the husband often preached together in adjoining villages. In late July, 2006, the husband and Munawar were attacked and beaten by members of the K.N. They required medical attention for their injuries but no steps were taken by the police to investigate.

6. Eventually the applicants were charged with offences contrary to Articles 295C and 298C of the Criminal Procedure Code which prohibit blasphemy. The background to the charges which can carry the death penalty involved their proselytising and the conversion of a Sunni Muslim couple, who were teachers, to the Ahmadi faith. When the newly converted woman's brother learned of the conversion he informed either the K.N. or the police and the applicants' home was raided by the police when they were at the grocery shops. The raid was carried out on foot of a First Information Report ("F.I.R.") issued by the police on the 21st August, 2006 in which the applicants are charged under Articles 295C and 298C.

7. The wife's father phoned them about the raid and warned them not to return home. The applicants went to Sarghoda where they stayed with the wife's grandmother for a fortnight. The wife's father brought their children to them. He told them that the K.N. had murdered their friend Munawar the day after they had left Gujrat. He also told them their house had been raided on two further occasions and the police were actively seeking them. The applicants felt unsafe in Sarghoda as it was well known that they had relatives there so they went to Lahore and then on to Karachi where they stayed for five weeks while the wife's father made arrangements for them to travel to Ireland. They would normally feel safe in Rabwah but the police would know that they had gone there.

8. According to the applicants, the family left through Karachi airport and travelled via Bahrain and Oman, arriving finally at Dublin airport in October, 2006.

Extension of Time

9. There is a short extension of time necessary. An affidavit has been sworn by a solicitor of the Refugee Legal Service (RLS) which explains that the delay in commencing proceedings was occasioned owing to administrative delays including the time required to obtain a legal aid certificate and counsel's opinion, the taking of instructions, the drafting of proceedings, the large volume of documents (over

600 pages) involved and the fact that the delay occurred over the legal vacation. In the circumstances, I accept that there were good and sufficient reasons for the delay and I therefore grant the extension necessary.

I. THE HUSBAND

10. The husband made an individual application for asylum at the offices of the Refugee Applications Commissioner on the 13th October, 2006 through an Urdu translator. He submitted a copy of his driving licence as proof of identity. At his s. 11 interview he submitted a number of documents including a translation of a certified copy of the First Information Report (F.I.R.) dated 21st August, 2006, which records that the "plaintiff", an Imam, complained to the police that he saw the applicants and their daughter wearing "Muslim creed badges" and "*misleading people about Islam by preaching Ahmadiat to a gathering of men and women in the area in their drawing room*". The F.I.R. records that the "plaintiff" named two "eyewitnesses" to the incident and requested that legal action be taken against the applicants. The nature of the crime is recorded as 295/298-c TP and the police were "going to investigate".

11. The husband also submitted translations of two newspaper reports indicating that a man named Mr. Munawwar Ahmad – an Ahmadi school teacher – had been murdered in Gujrat on the 22nd August, 2006 by "two unknown persons riding a motor-cycle" who fled after the attack.

12. The husband did not succeed in being recommended for refugee status. The s. 13 report relied heavily on COI which confirmed "*discrimination against Ahmadis in Pakistan*" which was found not to amount to persecution. It was also found that blasphemy prosecutions were declining and that police in Pakistan must now investigate cases before charges are filed. The ORAC officer also addressed the option of internal relocation to Rabwah where there was a large Ahmadi majority where Ahmadis occupy positions at all levels of authority, including the police. He relied on UK immigration authorities which found that "*it will be the rare case in which an Ahmadi can establish that the authorities in Rabwah are unable or unwilling to offer him a sufficiency of protection*". Very strangely, the s. 13 report found that the applicant claimed that "*it was well known that they (the applicants) had relatives in Ireland and that his father in law arranged for them to travel to Ireland and that they came to Ireland and claimed asylum on 13 November 2006.*"

13. This decision was appealed to the Refugee Appeals Tribunal (RAT). The notice of appeal filed on the husband's behalf by the RLS specifically addressed the findings made in the s. 13 report and drew the Tribunal's attention to numerous extracts which varied from the COI relied on by ORAC especially in relation to the alleged safety for Ahmadis in Rabwah. It was submitted that the ORAC officer had erred in finding that there is freedom of religion in Pakistan for Ahmadis and that the K.N., a militant fundamentalist Islamic group, had an office near the applicant's home and were fully aware that the applicant and his wife were Ahmadis. It was submitted that the ORAC officer had failed to attach sufficient weight to the documentary evidence supplied, in particular the F.I.R. on a charge of blasphemy which was a very serious matter and which was punishable with death or for imprisonment for life. It was submitted that internal relocation to Rabwah was not an option and a report dated January, 2007 of the U.K. Parliamentary Human Rights Group (PHRG) mission to Pakistan into Internal Flight for Ahmadis entitled "*Rabwah: A Place for Martyrs?*" was with many other reports appended in support of this contention. It was also pointed out that the applicant never said that he had any relatives in Ireland and that he had applied for asylum in October and not November, 2006.

14. It was submitted that although there was a general reduction in prosecutions under the blasphemy laws, of the 60 cases brought in 2005, 25 were in Rabwah alone where the Ahmadi *"community suffers more severely because of the presence of a Khatme Nabuwwat mosque and a madrassa which regularly incites hatred against Ahmadis leading to systemic intimidation and violence."*

15. An oral appeal hearing took place in May, 2007 at which the husband was represented by Ms. McKenzie B.L. and a solicitor's note of the evidence given by the applicant at the hearing is before the Court. It records that the applicant outlined his position as an Ahmadi and explained that in his religion there is a duty to preach. He outlined the discrimination against them and how their problems started in April/May 2005 when an anti-Ahmadi group moved into an office near his home. They mostly kept quiet but when there was a raid on their house by the police they were afraid and left for the city of Sarghoda where he did not feel safe as everyone knew they had relations there and it would be assumed that they would go there or to Rabwah to escape. He discussed the contents of the F.I.R. and denied that he, his wife and daughter were wearing badges as alleged in the first instance complaint. When questioned regarding his travel arrangements he said that they gave an agent four photographs and the agent arranged their passports which the agent showed to immigration for them on the journey. It was put to him that it is not the procedure at Dublin airport and everyone has to show his own passport but he confirmed that they had travelled through Dublin airport.

The impugned RAT decision

16. A negative appeal decision issued in July, 2007 and it is that decision that is challenged in these proceedings. The decision sets out the applicant's claim with a synopsis of the evidence given and the submissions made. The assertion that the applicant's wife was implicated in converting an Orthodox Muslim and that the couple had no real problems until the K.N. opened an office in their town in 2005 is recorded. The issue of the F.I.R in 2006 which gave rise to their difficulties was outlined. The applicant's claim that when it became known that his wife's friend converted to the Ahmadi faith, members of the Orthodox faith threw stones at the applicant and his wife and warned them to stop preaching was noted. The same mistake as was made by the ORAC officer was repeated, i.e. that the applicant *"claims it was well known he and his wife had relatives in Ireland."*

17. In his "analysis" the Tribunal Member said he found the applicant to be "an articulate well educated person" who left Pakistan because of his alleged religious persecution. He found that to *"preach religion to a community which is not of the same persuasion as the preacher and to encounter difficulties in doing so is not religious persecution"*. The Tribunal Member basically rejected the applicant's evidence on the basis that Rabwah would be the obvious place to go to avoid any threat or discrimination and that his reasons for not going there were found unconvincing. He found that there was some discrimination against Ahmadis but no institutionalised persecution within Pakistan and that *"the Constitution provides for freedom of religion and there has also been a significant reduction in Blasphemy cases in Pakistan and more strenuous rules governing police in investigating cases of Blasphemy"*.

18. He also found that the applicant did not give a full and true explanation of how he travelled to and arrived in Ireland and that his contention that he could pass through immigration in the manner described using a false passport was neither plausible nor credible. Reference was made to s. 11B (c) of the Refugee Act 1996, as amended. It was also noted that Ireland is not the first safe country in which he has arrived since he departed from Pakistan. The Tribunal Member

found that the applicant's failure to seek asylum in the intervening countries was *"not consistent with an intention to flee from one's pursuers and therefore the concurrent imperative to seek haven where one can."*

19. Ultimately, the Tribunal Member concluded that the husband had not demonstrated that there was an absence of protection available to himself and his family within Pakistan, especially Rabwah which is the headquarters of the Ahmadi movement in Pakistan and is made up of 95% Ahmadis. He also attached importance to the fact that the husband's father-in-law continues to live and operate his medical hall within Gujrat. He relied on the same decision of the U.K. Immigration Appeal Tribunal (IAT) to which reference was made in the s. 13 report (*M.C. (Ahmadi - IFA- sufficiency of protection)*) [2004] UKIAT 00139) and he also referred to the IAT's subsequent decision in *KK (Ahmadi - Unexceptional - Risk on Return) Pakistan* [2005] UKIAT 00033, to which he said reference was made in the submissions. The documents submitted were described as "secondary evidence" to be weighed in line with his general evaluation of the applicant's testimony.

II. THE WIFE'S ASYLUM CLAIM

20. The second named applicant ("the wife") made an individual application for asylum at the offices of the Refugee Applications Commissioner on the same day as her husband and was provided with an Urdu interpreter. Their two children were included under her application. She submitted her national ID card as proof of identity. At her interview it was suggested to her that a U.S. Department of State International Religious Freedom Report of 2006 indicates a decline in the number of blasphemy cases in Pakistan. She replied that Ahmadis were killed on a large scale and, although there was "a little bit of peace nowadays", blasphemy prosecutions continue to occur quite often.

21. During her s. 11 interview she submitted a copy of her will, made out in 1998, requesting that she be buried in an Ahmadi graveyard in Rabwah. She also furnished a copy of the F.I.R sent to her by her father which she believed he had obtained from the police station. In addition she submitted three newspaper articles which record that a teacher called Munawar Ahmad had been murdered.

22. As with her husband, the wife and her children were not recommended for refugee status. In the s. 13 report the ORAC officer referred to U.K. Home Office COI as a source for establishing the guarantee of religious freedom and freedom to manage religious institutions, in establishing places of worship, the training members of the clergy and freedom to parents to raise children in accordance with religious teachings and practises of their choice in the privacy of their home. She referred to the U.S. Department of State International Religious Freedom Report 2006 which stated that there was a decline in new blasphemy cases due, perhaps, to the implementation of a revision to the procedures for the implementation of the blasphemy laws and hudood ordinances; police must now investigate such cases before charges are filed. She also noted that there is a ban on terrorist and sectarian organisations known to be active in the country - their assets remain frozen and their leaders were under surveillance.

23. The ORAC officer ultimately found that the wife's account of the events that apparently led to her departure from Pakistan lacked credibility. In particular she found that there is no way of establishing whether or not the wife was a member of the Ahmadi Women's Wing and as the F.I.R. is a photocopy, its authenticity cannot be verified or refuted. She noted that the President of the Ahmadi Women's Wing was still living in Gujrat as was the wife's father, also Ahmadi living and practising medicine in Gujrat. She pointed out that the wife was never

actually harmed or arrested and she found it surprising the wife's colleague had converted within the time-frame outlined. She made reference to s. 11B of the Refugee Act 1996, as amended, with respect to the wife's account of their travel to and arrival in the State and their failure to apply for asylum in Muscat or Bahrain en route. She also found that the applicant had an internal relocation alternative. She noted that the applicant had said she thought the police were attempting to trace the applicants in the Punjab and as the police in Karachi were not aware of their identity and considering Karachi has a population in excess of 9 million and is over 1000kms from Gujrat it is difficult to see how the applicants would have been located in that city.

The Appeal

24. The RLS submitted a Form 1 Notice of Appeal on behalf of the wife in which detailed submissions were made. As in her husband's case, the Tribunal's attention was drawn to extracts from numerous COI reports appended. It was submitted that the ORAC officer erred in doubting the wife's credibility and that the reasons given for doubting her credibility were inadequate and not supported on an evidentiary basis. It was further submitted that insufficient weight was accorded to the F.I.R. and the other documents submitted. It was submitted that internal relocation was not an option and reference was made to a U.K. Home Office which stated that "*relocation for Ahmadis may only be a temporary solution given the ease with which Ahmadi affiliation can be detected*".

25. An oral hearing took place in May, 2007 at which the wife, like her husband, was represented by Ms. McKenzie B.L. A note of the wife's evidence is before the Court. Counsel on behalf of the wife submitted that the wife's claim is based on the freedom of religion, that part of their religion is preaching and that the applicants had high roles. The Presenting Officer made submissions with respect to the credibility of the wife's account of her travel, s. 11B (a), (b) and (c) and the s. 13 report.

The RAT decision

26. The wife's appeal was not successful and a negative RAT decision issued in July, 2007. The Tribunal Member set out the wife's claim and in the analysis section he reiterated what had been found in the s.13 report, i.e. that the F.I.R. "cannot be verified as being authentic". He had "serious doubts about her application" in relation to whether she engaged in preaching and found it unlikely that she would engage in such, stating as follows:-

"Given the nature of the society in Pakistan it is somewhat foolhardy to engage in preaching to the non-converted and expect no fall out from such actions. If one preaches religion in an area whereby others become offended it is hardly surprising they would become intolerant of such actions. There are areas of the world including this country, where one does not preach or look for converts when it would cause offence. It is not plausible therefore to claim religious persecution when members of a community do not subscribe to the faith that is preached at them."

27. The Tribunal Member noted that while the applicant claims to be persecuted because she a member of the Ahmadi Women's Wing, the President of that group is still living in Gujrat as was her father, an Ahmadi, who continued to practise his trade in Gujrat. He observed that the applicant says she was threatened by the K.N. but it does not appear she came to any harm in Pakistan. He repeated the wording of the s. 13 report that "*Considering Karachi has a population of in excess of nine million and is over a thousand kilometres from Gujrat, the alleged*

location of her problems, it is difficult to see how she could have been located in that city."

28. He was not convinced by the evidence that she feared arrest because of the F.I.R. but had no problems with the authorities in Karachi airport and found that if the authorities were keen on arresting her "*she would not have left Karachi Airport in the manner described*". He found that that she did not provide a full and true explanation of how she travelled to and arrived in the State – and he made reference to s. 11B (c) of the Act of 1996. He found that it was not credible that she could simply walk through four international airports without handing her own documents.

29. He also found that she did not provide a reasonable explanation to substantiate her claim that Ireland is the first safe country in which she arrived since departing from Pakistan and that her failure to seek asylum elsewhere "*is not consistent with an intention to flee from one's pursuers and therefore the concurrent imperative to seek haven't wherever one can.*"

30. The Tribunal Member concluded that overall, as in the case of the husband, she lacked credibility. He stated that he had considered all relevant documentation including the Notice of Appeal and COI.

III. THE ISSUES IN THE CASE

31. Ms McKenzie B.L., counsel for the applicants, argued that the RAT decisions made in respect of husband and wife must be viewed individually while Mr Conlan Smyth B.L., counsel for the respondents, argued that both claims depend on whether it was believed that the wife was charged in an F.I.R. on the 21st August, 2006 with being a preacher. He submitted that the husband's claim is ancillary to the wife's claim and depends critically on the evidence given by the wife, and that the decision in respect of the husband must therefore be read in conjunction with the decision relating to the wife. He submitted that although it was accepted that they were members of the Ahmadi faith, it was found that the wife did not engage in preaching and both of their claims fell on that basis.

Assessment:

32. I accept the respondents' submission that both of the applicants' claims depend on each other as the stated reason for their flight was the F.I.R. directed against the wife on an occasion when she was allegedly conducting a teaching / preaching session at her home. While the applicants made individual claims, the basis of their focused targeting by the K.N. was the assertion that the wife had friends in her profession who through her influence had converted to Ahmadi. When the woman who had converted was observed emerging from an Ahmadi prayer meeting by her brother, it became known that the wife had played a role in the couple's conversion. Their claim is that because of this fact and the recent opening of an office by the KN very near their home, they became the subject of stone throwing, taunts and finally the issuing of the F.I.R. In the circumstances, while each challenge to the decisions will be assessed individually, the successful challenge of one will affect the other and the failure of one party will similarly affect both. I will address the challenges brought by the husband and the wife individually and I will then address the challenges that are common to both decisions.

(I) THE HUSBAND'S CLAIM

33. Counsel for the applicants argued that the reasons for the rejection of the husband's appeal were threefold and she made submissions on each.

(a) No evidence of friendship with Munawar

34. Counsel challenged the Tribunal Member's finding in relation to the absence of evidence that the husband was a colleague of Munawar, the Ahmadi man who was murdered after the applicants left Gujrat. Counsel argued that this finding demanded too high a standard of proof as it was unreasonable to expect the applicant to submit evidence of his friendship with Munawar. She argued that it was immaterial whether the applicants were friends with Munawar and the relevant issue was that a member of the Ahmadi faith had been murdered in Gujrat. She pointed to para. 43 of the UNHCR Handbook on *Procedures and Criteria for Determining Refugee Status* which indicates that what happened to an applicant's friends, relatives and members of the same racial or social ground may well show that his fear that sooner or later he will also become a victim of persecution is well founded.

35. The respondents argued that the documents submitted establish no link between the murdered man and the applicants nor do they indicate that he was murdered for religious motives.

Assessment:

36. While there is some merit to the argument here, I do not believe that it reaches the level required for a substantial ground. COI documents do indeed refer to the murder of an Ahmadi teacher in Gujrat named Munawar who was shot dead by unidentified assailants on the date claimed by the applicants. While it may well be imposing a very high burden on the applicants to establish friendship with Munawar, the murdered member of their sect, the Tribunal Member would be well aware that if this information was widely published in the local newspapers its value without more would be somewhat diminished. This is a conclusion which could reasonably have been arrived at and the Tribunal Member cannot be challenged on this count although in other circumstances, the threshold of requiring the applicant to establish a relationship with the victim may be somewhat high. The applicants' evidence was that Munawar was a colleague from Gujrat who sometimes preached with the husband. Evidence of his murder was included in their account as he was a fellow Ahmadi who was targeted by the K.N. My understanding of what was argued was that if he had been murdered, then it was possible they too could also have been murdered. I do not believe that either the husband or the wife claimed that Munawar was killed because he was a friend of theirs or that they were at risk because they were associated with him. I do not propose to grant leave to pursue this argument.

(b) He could have gone to Rabwah

37. Counsel challenged the Tribunal Member's rejection of the husband's explanations for not going to Rabwah. When asked if they had ever considered moving to Rabwah, he said at his s. 11 interview and at his oral appeal that this would not be a safe option as the police and the K.N. would have known that they would move to Rabwah as that is the main enclave of Ahmadis and would be the first place they would look for the applicants. At her oral hearing the wife confirmed her husband's evidence on this point by saying that it would be fine to visit Rabwah but if the police were looking for them they would be caught there as Rabwah is the first place Ahmadis go to.

38. It was argued on the applicants' behalf that in rejecting these explanations the Tribunal Member relied on two U.K. IAT decisions - *M.C.* (which was also referred to in the s. 13 report) and *K.K.* Counsel on behalf of the applicants argued that these decisions are distinguishable because the applicant in each case was an "unexceptional Ahmadi" who had no particular profile in the Ahmadi faith and certainly was not the subject of a First Information Report under the

Blasphemy Laws. She argued that the situation pertaining to the applicants in this case was quite different and warranted that the Tribunal Member should have taken account of the U.K. Home Office OGN of 19th June, 2006 and U.K. Parliamentary Human Rights Group (PHRG) in 2007 entitled "*Rabwah: a place for martyrs?*". Both of those documents were before the Tribunal Member but no express reference was made to either of them and no reason was given for rejecting their contents. Counsel drew the Court's attention to p. 23 of the PHRG report which states:-

"Where a first information report is issued by someone outside Rabwah in respect of a person residing in Rabwah they arrest the person with the cooperation of the police station where the first information report issued."

39. She also drew attention to the following statement at page iv of the report:-

"The report itself draws no conclusions, allowing the facts to speak for themselves. However, the statistic that out of a total of 60 blasphemy FIRs recorded in 2005 against Ahmadis, 25 were in Rabwah alone, indicates that the misuse of the law is as severe in Rabwah as in the rest of Pakistan."

40. In response, counsel for the respondents argued that as the Tribunal Member found that the husband was not at risk of persecution, there was no obligation to consider the option of internal relocation. He submitted that the PHRG report expressly states that it is drawing no conclusions from the conversations it had with various persons that the group met in Pakistan and he argued that some of the accounts were regarded by the group as being over-pessimistic about the problems facing Ahmadis in Rabwah.

Assessment:

41. There was a very large volume of COI furnished which I have read in full. Some of it is repetitive which is attributable to some extent to the two cases of the husband and wife being heard together. I have given some attention to the contents of what one hopes is an objective assessment of the position of members of the Ahmadi schismatic Muslim faith described in the U.K. Home Office OGN of June, 2006. I have also considered the contents of the more specifically focused PHRG report of 2007 and I am satisfied that these were important documents for the consideration of the Tribunal Member at the appeal. They were specifically referred to in the notice of appeal and they were, if considered, capable of questioning the validity of the complete acceptance by the ORAC officer that the city of Rabwah was a safe haven for Ahmadis in view of their very substantial majority there.

42. If the reports were considered by the Tribunal Member, then it is remarkable that their contents were neither commented upon in the decision nor were any reasons given for rejecting their contents. Having read these two reports, I have difficulty reconciling the Tribunal Member's finding that if the applicants had been in fear in Gujrat, there was nothing to stop them going to Rabwah. One particular passage from page iv of the PHRG report was striking:-

"This report makes clear the precariousness of life for Ahmadis in Rabwah, starved of opportunities for education and employment, menaced by the Khatme Nabuwat and their rent-a crowd mobs bussed in from miles around, prevented from buying land in the town they developed. They are deprived of the right to manifest their religion in worship, observance, practice and teaching, as laid down in the UN Covenant on Civil and

Political Rights, and they are constantly under threat of prosecution under the infamous blasphemy laws. This place is not a safe haven for Ahmadis fleeing persecution elsewhere in Pakistan; it is a ghetto, at the mercy of hostile sectarian forces whipped up by hate-filled mullahs and most of the Urdu media."

43. There is no reference to this passage in the RAT decision which arrives at the same conclusion as contained in the s. 13 report notwithstanding that these two COI reports were not before the ORAC. I believe that a substantial ground has been made out here.

(c) No institutionalised persecution

44. Counsel for the applicants challenged the finding that although COI indicates that there is some discrimination against Ahmadis, there was no evidence that they were subjected to systemic persecution. This was a finding first made in the s. 13 report and was attributed then to the U.S. Department of State country report of 2006 appended to that report. Ms. McKenzie argued on behalf of the applicants that if that U.S. Department of State report were read as a whole it would not support the finding made by the ORAC officer or by the RAT. She argued that the Tribunal Member failed to take account of the up-to-date COI that was before him which indicates that Ahmadis were and continue to be subject to sustained persecution; that he failed to give any explanation for rejecting the substance of the numerous reports; and that he arrived at a perverse finding relating to the absence of persecution against Ahmadis.

45. Counsel for the respondents accepted that there was a large amount of COI before the Tribunal Member but argued that there is no obligation to exhaustively consider that COI where the personal credibility of an applicant is not accepted. He submitted that the personal credibility of both applicants had been rejected. He further contended that the COI indicates that there is a certain level of discomfort for Ahmadi people in Pakistan / Gujarat but he argued that it is only those who come to the attention of the authorities who are at risk of serious harm.

Assessment:

46. I completely accept the respondents' submission that there is no obligation to consider COI in cases where personal credibility is found to be lacking as the information becomes irrelevant particularly in situations where the applicant is not believed to be of the ethnicity, religion or political opinion claimed and that aspect is core to his claim of persecution. The country information which is essential to the assessment of credibility in such cases is then simply not relevant. However, I question whether the personal credibility of the husband was rejected to the extent that the core foundations of his account were disbelieved. It seems to have been accepted that he and his wife were Pakistanis of the Ahmadi faith. In those circumstances, the consideration of the husband's account should have been viewed in the light of COI to determine if what he was asserting as persecution might be true.

47. While serious and unassailable doubts were raised regarding the credibility of the applicants' travel arrangements, they were not in my opinion such as to negate the obligation to consider the COI reports relating to the position of Ahmadis in Rabwah that were before the Tribunal Member. The least which could be said of those reports is that when viewed objectively, a reader would be aware that the safety of Ahmadis in many parts of Pakistan today was precarious and that they do not paint such a positive picture as was found by the Tribunal Member. Included in those reports was an article from the US-based

correspondent to the Pakistan Daily Times entitled "*Rabwah: a place for martyrs*" dated 28th January, 2007; a further Pakistan Daily Times article entitled "*Ahmadis remained deprived of their rights in 2006*"; an Amnesty International Public Statement of October, 2005 entitled "*Pakistan: Killing of Ahmadis continues amid impunity*"; and a *ThePersecution.org* Newsreport of October, 2006 entitled "*Narrow escape from murder attempt*". As those reports support a view that some journalists and NGOs believed that persecution of Ahmadis was taking place, it seems to me that it was incumbent upon the Tribunal Member to at least give reasons for rejecting their substance when arriving at his sanguine assessment of the situation of Ahmadis as a group and finding that they were subject to some discrimination but no systemic persecution.

48. I have read the relevant part of the U.S. Department of State report in its entirety and I am satisfied that substantial grounds have been established for the contention that the Tribunal Member engaged in selective reliance on one section of the report to the exclusion of other relevant sections. Substantial grounds have also been shown for the argument that the quotations of the U.K. Home Office OGN of June, 2006 contained in the RAT decision do not reflect the general tenor of the full report. While the OGN begins by stating that in general, the Constitution provides for freedom to manage religious institutions, it goes on later to detail the prohibitions applicable to Ahmadis including the 1974 constitutional amendment declaring Ahmadis to be non-Muslims; the insertion of s. 298C into the Penal Code in 1984; the fact that during 2005, the authorities conducted surveillance on Ahmadis and their institutions and several Ahmadi mosques were reportedly closed while others were reportedly desecrated or their construction was stopped; the tacit endorsement given by the government to campaigns against the perceived dangers of the Ahmadi faith conducted by Islamic clerics; the prohibition of preaching; the prohibition on travel on the Hajj; the banning of Ahmadi publications; the Hudood ordinances and the blasphemy laws; threats to kill those acquitted of blasphemy charges and the 51 Ahmadis facing criminal charges based on their religion. In the circumstances I am satisfied that the applicants have established substantial grounds in this issue.

49. I also note that an error of fact relating to the applicants' relatives in Ireland made in the s. 13 report was followed through by the Tribunal Member in both decisions pertaining to the husband and the wife. The submissions made in their Notices of Appeal in that regard appear to have been disregarded by the Tribunal Member. While this aspect of the decision was not specifically challenged by the applicants it was drawn to the Court's attention. I find the repetition of findings made in the s. 13 report in this and a number of other aspects of the evidence somewhat disturbing. Contrary to what is stated in the RAT decision, nowhere in any of the records of the hearings is there any evidence to support the presence of any family members in Ireland.

(II) THE WIFE'S CLAIM

50. Counsel for the applicants submitted that the credibility findings made in respect of the wife were irrational and unreasonable as it had been accepted that the wife was a member of the Ahmadi faith. This was not accepted by counsel for the respondents who relied upon a rejection of all aspects of the wife's personal credibility. The wife's challenge was to a number of findings being:

(a) She did not engage in preaching

51. Counsel for the applicants argued that at all times the wife's evidence was that she was involved in speaking about her religion as that was part of their faith. She did not say she preached from a pulpit or on the hills but rather by communicating her beliefs to other by answering questions and by sharing

literature on her religion. Counsel for the respondents argued that there was an inconsistency in the wife's evidence in that in her s. 11 interview she made no claim to be a preacher but said when that someone asked her about her beliefs she spoke about them. She also said she did not actively seek to convert her colleague but only told her about her beliefs. The wife's claim then evolved so that when she came to her oral appeal hearing she claimed that being an Ahmadi meant one had to preach about one's faith.

Assessment:

52. It seems to me that both parties are arguing the same case and the answer may be a semantic difference. There are many ways to proselytise; from the firebrand preacher to the quiet practitioner who takes opportunities to spread a message by example. In her questionnaire the wife said:-

"I was a member of the Ahmadi Women's Organisation in Gujrat. I was appointed as Secretary for the recitation of the Holy Quran and my responsibility was to teach the Holy Quran and religious education. I was at this job for the past two years. Ever since I became a member I actively participated in the welfare and preaching activities of the organisation."

53. At her s. 11 interview she said that as an Ahmadi she attended meetings and was a member of the Ahmadi Women's Wing. She and other women in that group elected a President and the President chose women to form a team to do voluntary work for her and that her role as Secretary Nasirat was to teach religious instruction to girls aged 14 years old and under, and to teach them how to read the Holy Quran. When asked if her work involved talking about her faith with non-Ahmadi she said "*Wherever someone asks us we tell them about our beliefs.*" On the subject of the conversion of her teaching colleague she said:-

"She used to come to my home with her husband. We used to have discussions about religion. I gave them some books to read. They also watched a live address of our Caliph from London and they were very impressed. [...] They also had a meeting at my home with the preacher of the town."

54. She also said "We did not force them into conversion. We only told them our beliefs. I have no idea what they liked in our religion. Whenever someone talks to us about religion we clarify the false stereotypes spread by the opponent."

55. At her oral hearing she again said her activities were preaching, teaching children, attending meetings and being part of the Women's Wing. When asked if the family could have stayed in Pakistan if they ceased preaching she say "maybe" but preaching was part of their religion. This appears consistent with her evidence at the s. 11 interview.

56. I believe that the wife has established substantial grounds to argue that it was unreasonable to find that she did not engage in preaching her religion.

(b) It was foolhardy to preach to the non-converted

57. Counsel for the applicants argued that the Tribunal Member's assertion that the applicants' conduct of preaching to the non-converted was "somewhat foolhardy" amounted to a gross contravention of her fundamental right to freedom of religious expression, particularly given that preaching to the non-converted is a duty of all members of the Ahmadi faith.

Assessment:

58. I am not satisfied that the wife has established that this comment by the Tribunal Member is capable of impugning the validity of the decision. Neither of the applicants was refused refugee status on the basis of this expression of opinion. The Tribunal Member may well have believed that that preaching an alternative form of Islam was provocative in Pakistan but this view was not determinative of the negative decision. The applicants' case was not that they were subject to an increasing form of discrimination but that they were targeted because they were Ahmadis by the K.N., a powerful fundamentalist Islamic organisation tolerated by the authorities. The stated reason for their flight was that they have been charged with criminal offences of blasphemy carrying very serious penalties arising from their preaching / teaching of their faith and the alleged wearing of Muslim symbols / badges.

(c) She came to no harm in Pakistan

59. Counsel for the applicants took issue with the finding that the wife had come to no harm in Pakistan as she had never been arrested or physically harmed. She argued that the Tribunal Member did not take into account the wife's experience of avoiding harm by moving from place to place before leaving Pakistan and he also failed to take account of the husband's experience of having been badly beaten when going to preach: the Tribunal Member merely noted that her husband had been "stopped" one day when going to the country to preach.

60. Counsel for the respondents argued that the finding that the wife came to no harm in Pakistan is an unimpeachable finding on a factual basis.

61. **Assessment:** I am not satisfied that substantial grounds have been established in this regard. It is a matter of fact that the wife came to no physical harm as, according to her narrative and her evidence, she fled Gujrat before the investigation of the complaint against her had been commenced. As I am satisfied that leave should be granted on other more substantial grounds I am not prepared to grant leave to impugn the decision on this ground.

(d) Her father is still in Gujrat

62. The Tribunal Member recorded that the wife's father remains in Gujrat and continues to run the medical hall. Counsel for the applicants argued that this indicates he did not take account of the submission made in the husband's Notice of Appeal that his father-in-law had moved to a village outside of Lahore because he and his family were being threatened. Counsel argued that while this error may not on its own render the decision unsustainable, the cumulative effect of the errors renders the decision unsafe. Counsel for the respondents disputed that there was error of fact but he argued that if an error was identified it was a minor error and could be severed.

63. **Assessment:** I am not satisfied that there is a clear error of fact in this regard. The fact of the father-in-law's relocation was mentioned in the husband's Notice of Appeal but not in wife's Notice of Appeal. At her s. 11 interview, she clearly said that her father continued to work in Gujrat and without problems with the K.N and that he was not actively involved in preaching. This ground is not made out.

(e) She could have stayed in Karachi

64. Counsel for the applicants argued that it was unreasonable for the Tribunal Member to conclude that the reasons the wife gave for not staying in Karachi were implausible. The wife said the family was afraid of being traced and being caught anywhere in Pakistan. Counsel submitted that given that an F.I.R. had

issued in respect of the applicants, the Tribunal Member's conclusion was irrational.

65. Counsel for the respondents pointed out that it was not believed that the wife was a preacher or proselytiser and the veracity of the F.I.R. was not accepted. He argued that in circumstances where the family was not considered to have a prominent profile in the Ahmadi community, there was nothing irrational about the conclusion that they could have relocated internally within Pakistan.

Assessment

65. It is difficult to see how this aspect of the finding can be specifically criticised in the context of the Tribunal Member's view of the authenticity of F.I.R. which will be dealt with later. If he did not attach importance to the F.I.R. then he would logically view that the applicants could as ordinary Ahmadis relocate to a place the size of Karachi, relying on the U.K. Home Office O.G.N. which advised that internal relocation was not unduly harsh for ordinary Ahmadis. If he accepted the authenticity of such a F.I.R. then he would have considered the seriousness of the applicants' situation throughout Pakistan. While it is a fact that the F.I.R. cannot be authenticated and that in those circumstances the Tribunal Member was perfectly entitled to attach whatever weight he deemed appropriate to the document and hold the view he did, this particular challenge is subsumed by a later challenge and finding.

(f) Her account of her travel was not credible

66. Counsel for the respondents pointed out that the applicants are not challenging the findings made by the Tribunal Member under s. 11B with respect to their travel to and arrival in the State on which the Tribunal Member placed considerable emphasis. He argued that the applicants' evidence that the agent showed the documents on their behalf at the airport is obviously untrue and the Tribunal Member was entitled to apply his commonsense as to known procedures at Dublin airport.

67. **Assessment:** The applicants' travel to and arrival in the State are matters of which decision-makers are obliged to take account under s. 11B of the Refugee Act 1996. In this case, the applicants said they travelled through four international airports including Dublin airport without personally showing any travel documents and without plane tickets. In the circumstances I am satisfied that there was sufficient evidence before the Tribunal Member on which he could have found their account implausible. This is not a finding that can be challenged and indeed was not challenged.

(g) She did not apply for asylum in Muscat or Bahrain

68. Counsel for the applicants argued that the Tribunal Member failed to have regard to the applicants' explanation for not applying for asylum in any of the other countries through which they transited, which was that those were Muslim countries. Counsel for the respondents argued that there was no obligation on the Tribunal Member to recite the explanation given by the applicant and he argued that the explanation given was not reasonable. He contended that the wife did not submit any evidence that Muscat and Bahrain were not safe places to apply for asylum.

69. **Assessment:** This is not a major part of why the applicants failed in their appeals but it is part and parcel of the negative credibility findings based on the possible failure on the part of the Tribunal Member to consider all the COI reports which outlined the intolerant view taken by many Muslims to the schismatic Ahmadi sect. It is at least arguable that in this regard the Tribunal Member failed

to fully consider the wife's evidence that the applicants did not apply for asylum in Muscat or Bahrain because those were Muslim countries.

(III) (BOTH CASES) CONSIDERATION OF THE CORE ISSUE

70. Counsel for the applicants argued that in both cases, the Tribunal Member failed to assess the core issue of the claim which was that the applicants were at risk of persecution because they have been charged with offences contrary to Pakistan's blasphemy laws. Counsel argued that the Tribunal Member was therefore in breach of Regulation 5(1) (a) of the European Communities (Eligibility for Protection) Regulations (S.I. 518 of 2006) which requires the decision-maker to take into account "*all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied*". Counsel pointed out that Regulation 9(2) of S.I. No. 518 of 2006 states that for the purpose of s. 2 of the Refugee Act 1996, acts of persecution can inter alia take the form of (b) "legal, administrative, police, and / or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner" or (c) "prosecution or punishment, which is disproportionate or discriminatory". Counsel urged the Court to consider that on the subject of the enforcement of blasphemy laws the Tribunal Member had before him extracts from *ThePersecution.org* Newsreports compiled in July, September and November, 2006, entitled "*Four Ahmadi booked under Ahmadi specific law*"; "*Ahmadiyya press subjected to fresh attacks by authorities on fabricated charges*" and "*Vicious application of the Blasphemy law*" but he failed to consider those reports.

71. Ms. McKenzie argued that it was unreasonable for the Tribunal Member to disregard the contents of the F.I.R. simply by reiterating what was said in the s. 13 report, i.e. that it was a photocopy and so its authenticity could not be verified or refuted. The wife's Form 1 Notice of Appeal stated that it is well known that it is not possible to obtain an original of an F.I.R. as the original is always retained by the police and she claimed that the copy was a certified copy of the F.I.R.

72. Counsel for the respondents rejected this argument and argued that at all times, the Tribunal Member clearly addressed his mind to the issuing of an F.I.R. as he made reference to the fact that the applicants were not arrested going through Karachi airport even though allegedly the subject of a F.I.R. He urged the Court to consider that the evidence given by the wife at her oral hearing was that she was not stopped at the airport because the authorities were tracing the applicants only in Punjab and the Karachi police were not aware of their identity.

Assessment:

73. I am satisfied that the applicant has made out substantial grounds for the contention that the Tribunal Member failed to assess the core issue that these applicants were Ahmadi facing an investigation or prosecution under the Ahmadi directed blasphemy laws. COI that was before the Tribunal Member indicates that those offences were introduced after the parliament passed *Ordinance No. XX of 1984* which forbids Ahmadi from calling themselves Muslims and from preaching or practising their faith and that the Code of Criminal Procedure had been amended to create several new offences relating to the practise of the Ahmadi faith. Those new offences carry penalties including death and imprisonment for life. The Tribunal Member did not refer to Ordinance XX, the Code of Criminal Procedure or the blasphemy laws of Pakistan in his decision. The decision does not refer to the husband's claim that he and Munawar were beaten in July, 2006 and required medical treatment for their injuries and there is no reference in either decision to the specific charges contained in the First Information Report or

to the penalties that the offences with which they were charged carry. While there is some reference to the effect of an F.I.R., it is arguable that the Tribunal Member attached insufficient significance to the fact of the complaint made which is the core of the applicants' claim.

74. The PHRG report of 2007 which was before the RAT states as follows with respect to F.I.R.s:-

"A First Information Report (FIR) is the process through which the police take notice of alleged transgressions of the penal code and forms the legal basis for arrest. The Ahmadi Community Representatives explained the procedure for and consequence of filing an FIR. An FIR is lodged at a police station with the Station House Officer (SHO). Where the FIR involves a cognisable offence (those the police can consider without the need for a court to investigate, including the blasphemy laws) the police have to take immediate action and arrest the person concerned. There is no time limit between the issuing of an FIR and the detention of the suspect(s), but once an arrest has taken place the police must complete their investigation within 14 days. Following arrest no legal assistance is allowed at the police station and the accused must be produced before a magistrate within 24 hours."

75. Thus COI that was before the Tribunal Member indicates that the issue of such an F.I.R. is a potentially serious step with grave consequences for the subject of the complaint. The possibility that the contents of the certified copy of the F.I.R. might be true was not fully considered and this was the core of the applicants' joint and individual claims.

Conclusion

76. I propose to grant leave on grounds which refer to both applicants relating to Rabwah and to the assessment of COI relating to Ahmadis in Rabwah, the assessment that COI supported a finding that there was no institutionalised persecution of Ahmadis, and the failure to consider the core claim. In relation to the wife I grant leave on the grounds relating to her preaching and her failure seek asylum in Muscat or Bahrain - grounds 1, 2, 3, 4 (i), (j), (k) and (l); 6, 7, 9 (iii). I also propose to grant leave on the second sentence of ground 11 (*"The errors of fact and law are such as to render the decision of the first named respondent invalid"*).