Case No: C5/2008/1859

**Neutral Citation Number: [2008] EWCA Civ 1526**
**IN THE SUPREME COURT OF JUDICATURE**
**COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL**
**[AIT No: AS/20991/2004]**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 18th November 2008

**Before:**

**LORD JUSTICE RIX**

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**Between:**

**AM (PAKISTAN)**

**Appellant**

**- and -**

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

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**Ms M Phelan** (instructed by Messrs Thompson & Co) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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# Judgment

**(As Approved by the Court)**

**Lord Justice Rix:**

1. This is a renewed application for permission to appeal in the case of an asylum seeker, whom I will refer to as AM, who seeks permission to appeal from the decision of the Asylum and Immigration Tribunal, and in particular that of Senior Immigration Judge McGeachy dated 4 June 2008.

2. AM is a young woman, a citizen of Pakistan, who arrived in Britain on 24 July 2004 and applied for asylum three days later. Her appeal against a refusal of asylum was considered by the tribunal first in the decision of Immigration Judge Froom, in a decision dated 2 December 2006. Permission to appeal was then granted by Dyson LJ. The appeal was allowed by consent. The decision of Senior Immigration Judge McGeachy to which I have referred was the consequence of that appeal.

3. The facts of the case can perhaps most conveniently be found in paragraphs 9, 10 and 11 of SIJ McGeachy's determination where, having previously set out at paragraph 7 the applicant's evidence as recorded by Immigration Judge Froom, Senior Immigration Judge McGeachy records the findings of that first tribunal decision as follows:

> "9. In paragraph 25 he stated that he accepted that the appellant was an Ahmadi by birth and, in the following paragraphs he considered the submissions made to him by the Presenting Officer before, in [the following] paragraph 28 concluding:-
>
> *'I find therefore the appellant has given a reliable account of the main reason she left her country. I find she did get injured in a heated argument with fellow students in September 2002 and again in December 2002. I find that the last incident was followed by an incident of stone throwing against the appellant's house and a verbal threat to the appellant in January 2003. I accept the police did not investigate her father's report of the incident. I find the appellant's father decided to send her to Dera Ghazi Khan after he was threatened at the market. I find the appellant was active in the local Jamaat and for the first time held a junior office. She had no problems until the end of 2003 when the mothers of some children she had been teaching became hostile towards her. The appellant then returned to Lahore. In December 2003 the appellant was hit by a stone while walking back from the Ahmadi mosque. I find the appellant left Lahore for Multan in January 2004 after gunshots were fired at her father's door. I find the appellant stayed at home in her aunt's house until she left*

*Pakistan with an agent in July 2004. I find that the appellant has been active with the Ahmadi Muslim Association in Hounslow until recent ill-health prevented her from continuing.'*

He went on to say that he did not find that the appellant's house had been set alight as she had claimed in her witness statement"

10. Thereafter he stated that he would assess the appellant's claim on the basis of his findings taking into account paragraph 339K of the Rules. He considered that the two incidents in which the appellant was cut on her hand and [had] been knocked unconscious to be very unpleasant and frightening but nevertheless relatively minor. He stated:

*'The aggression, whilst not excusable, was directed at her as a result of heated arguments with other students and did not represent persecution or serious harm, albeit the arguments were rooted in religious matters. Equally the stone throwing incident in the street in Lahore, assuming it was connected with the appellant's religion, was nasty but hardly serious enough to constitute persecution. I consider the threats made to the appellant to be more serious, particularly when they involved gunshots. However, I find it significant these threats were not followed up with actual assaults on the appellant. They took the form of warnings and did not to my evidence evince a serious intention to harm the appellant physically. She accepted at her interview that she was never physically ill-treated by KN [that is a reference to a fundamentalist anti-Ahmadi organisation known as Khatme Nabuwat] and also that none of her family were. She was very honest and said she could not be sure that the people who fired in at the door were from KN. I find the appellant has not suffered past persecution or serious harm.'*

11. He then went on to consider what would happen to the appellant on her return to Lahore. He stated that the fact that she was an Ahmadi was insufficient to discharge the burden of proof and referred to decided case law. He then considered, how and how often, where and to whom the appellant would preach. He noted the appellant had said that she had kept her beliefs to herself

> throughout her education until the argument in September 2002 and she did not preach at college. She said that none of her family members had preached. He noted the last time she had preached was in November 2003 when she had returned to Lahore from Dera Ghazi Khan. He said therefore there was only a fourteen month period during which the appellant had been active in Pakistan. He did not consider the arguments with the students to be 'preaching'. He noted in paragraph 33 that the appellant never preached door to door and that she had never converted anyone. She had also said she could not really call what she had done in Dera Ghazi Khan to be preaching. He went on to say that he found that the appellant's description of only bringing up the subject once she got to know a person as consistent with her oral evidence. He then considered the appellant's claim against the case law and concluded that her situation was unexceptional. He found that the great majority of the 2,000,000 or more Ahmadis in Pakistan were able to live peacefully. He found that she was only minimally involved in preaching activities at university in Lahore and then only minimally in Dera Ghazi Khan. He accepted that she had occasionally joined groups of women setting up 'medical camps' and that this had drawn the wrath of KN to the extent of their issuing threats and warnings and said that was not enough to make her the target of serious harassment. He did not consider that her behaviour would be any different on return to Pakistan. He noted she had returned to Lahore and said it was reasonable to suppose that she would not have done so had she believed there was a serious threat to kill or kidnap her. He therefore found that she was not at real risk of persecution by non-state actors in Lahore even if she were to continue the practice of her religion there including the kind of activities which she had carried on in the past."

4. Following that first determination, as I have said, Dyson LJ granted permission to appeal. That was on 27 March 2007. He did so in the following terms:

> "But the appellant's evidence does suggest that she suffered serious persecution on account of her religion. It is arguable that, in evaluating the facts, the judge must have applied a test that was too high"

5. As I have also said, that appeal was then allowed by consent.

6. Before the matter came back following that consent disposal of the appeal to the Asylum and Immigration Tribunal, a country guidance case known as MJ and ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 00033 had been decided in the meantime. That was, I think, either in late December 2007 or early January 2008, I think the latter. That was a case which concerned two Ahmadis seeking asylum here on the ground of persecution on the basis of their faith in Pakistan. Those two Ahmadis were men. So far as the general situation concerning Ahmadis in Pakistan, paragraphs 82 to 85 of MJ and ZM are the latest definitive guidance. Those paragraphs also refer back to the previous decision of this court in Iftikhar Ahmed [1999] EWCA Civ 3003, I refer in general to those paragraphs 82 to 85 of MJ and ZM and in particular to the following matters:

> "83. … Whilst it is clear that local pressure is exerted to restrict the building of new Ahmadi mosques, schools and cemeteries from time to time, and some Ahmadis are arrested and charged with blasphemy or behaviour which is offensive to Muslims, the numbers recorded are small and have declined since the Musharraf Government took power. Set against the number of Ahmadis in Pakistan as a whole, they are very low indeed."

> "84. There is very sparse evidence indeed of harm to Ahmadis (though rather more anecdotal evidence of difficulties for Christians). We note the great care exercised by the preaching teams who operate out of private homes, by invitation only and after careful vetting of those to whom they propagate the Ahmadi faith. We remind ourselves of the number of small Ahmadi mosques with established officers and security guards in the towns about which we heard evidence, large and small. We remind ourselves that the first appellant was able to hand out leaflets on his stall openly without harm for many years. We note that the courts do grant bail and that all appeals against blasphemy convictions have succeeded in recent years. We consider that the risk today on return to Pakistan for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment and thus to engage any form of international protection."

> "85. It may be, as the Tribunal said in *IA and others*, that in some individual cases the level of

> risk can be shown to be sufficiently enhanced on the particular facts to indicate that that individual cannot be returned safely to their home area. Whether or not there is an internal relocation option, either to Rabwah or elsewhere in Pakistan, will then be a question of fact in relation to that individual …"

7. Having set out that as the general decision, the tribunal in MJ and ZM also considered the cases of the individual applicants there. In the case of MJ (see paragraphs 25 and 26 and 89), the most significant fact there for present purposes is that his family home had been attacked by KN mullahs and that he had been threatened with imminent death at his shop. As to that, in paragraph 89 the tribunal said that they took the view that had the mullahs been serious in seeking his death as an apostate, they would not have allowed him to leave Sargodha alive or to reopen his shops. So far as ZM is concerned, the most material fact there for present purposes is that (see paragraphs 37 and following, and 94 and following) is that he was both beaten up by KN activists and arrested and detained by the police. It was against the background of that country guidance case that this matter of AM returned before SIJ McGeachy in June of this year. SIJ McGeachy made detailed reference to that case as he did to another recent case, IA (Pakistan) [2007] EWCA Civ 580. In particular at paragraphs 28 and 34 of his determination, SIJ McGeachy said this:

> "28. I would comment that there were clearly some parallels between that appellant, ZM and the appellant in this appeal but that the reality was that ZM had been detained by the authorities and had been beaten up. That is not of the same order as what happened to this appellant. The only physical violence which she suffered was when she was shoved and things were thrown at her at university on 11th September 2002 and the stone was thrown at her on 19th December 2003 but these incidents, although no doubt frightening, were not, as is clearly indicated in her statement, of the same order as being beaten up. When the stone was thrown at her back she did not have any treatment. The cut to her hand when the other students threw objects at her was not caused by someone trying to stab her. These incidents, although no doubt unpleasant and painful are not of the same order as being set upon by a group of Mullahs and being beaten by them."

8. Pausing there for the moment, Ms Phelan, who has made submissions on behalf of AM this morning and in her written submissions, has pointed out in the latter that SIJ McGeachy there failed to refer to the additional incident of December 2002 when, as IJ Froom had found, she had been jostled by fellow students, and her evidence, I think, refers to her hair being pulled. However,

that incident had been referred to in the earlier part of the SIJ's decision when he had set out the findings of Immigration Judge Froom, and if on this latter occasion SIJ McGeachy had failed to make express reference again to that separate occasion in December 2002 I do not consider that to be a material oversight.

9. Continuing at paragraphs 30 to 34, SIJ McGeachy said this:

> "30. Be that as it may, however, when the task before me is to consider whether or not the appellant would face persecution in the future given what has happened to her in the past and given the presumption in Rule 339K, the determination in MJ and ZM is of assistance. In paragraphs 57 onwards of the determination the Tribunal in that case considered the distribution of Ahmadis in Pakistan, their duty to propagate the Ahmadi faith and the size of the Pakistani Ahmadi population and their safety. They quoted from the US State Department Report relating to charges against Ahmadis for blasphemy and the ill-treatment which they had suffered. They quoted at length from background documentation including the Religious Freedom Report. They also included an analysis of the information in the Human Rights Watch Report. They pointed out that the Amnesty International Report of May 2007 did not mention the position of Ahmadis in Pakistan.
>
> 31. The determination in that case is thorough and concludes that there is minimal likelihood of persecution from non state actors – that is Khatme Nabuwwat. Taking into account what has happened to this appellant in the past and that background information it cannot be concluded that there is a real risk that the appellant will suffer ill treatment from that group in the future particularly as she has said that she only told people about her beliefs when they asked her (Answer to question 110 of the interview). I also note that she said that she had 'not really preached' in Dera Ghazi Khan (Answer to question 108) and that when asked if she had ever been ill-treated by Khatme Nabuwwat her reply was 'none'. The incidents which she described in her statement are isolated and, even given the threats that were made, given the definition of persecution in the Regulations do not amount to persecution.
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> 32. I note the appellant has never suffered at the hands of the authorities. She has never been

> detained or charged. Although the police apparently told her father who told her mother who told her that she was on the Khatme Nabuwwat list there is nothing in the background documentation to indicate that such lists exist."
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> 33. The reality is that the appellant, on return to Pakistan, would be able to practise her religion and to propagate her religion in the discreet way in which Ahmadis are expected to preach -- the way in which she described in her answer to question 110 and I find that there is not a real risk that that would lead to persecution. I consider that, given that she is no longer a student -- indeed she is now married with a young child and would be returning with her husband, she would be even less likely to come to the attention of Khatme Nabuwwat. Given the clear guidance in the determination of MJ and ZM I can only conclude that the appellant would not face persecution in the future and would, moreover, not be entitled to humanitarian protection. It is therefore not necessary for me to consider the issue of internal relocation. I would comment, however, that should the appellant not wish to return to Lahore or to Dera Ghazi Khan, there is nothing to suggest that she would be unable to live elsewhere in Pakistan.
>
> 34. I therefore find that the Immigration Judge was correct to conclude that this appellant would not face treatment contrary to her rights under the ECHR on return nor would she face persecution for a Convention reason. His analysis, which I have quoted in paragraph 10 above, was correct and his conclusions were fully open to him."

Since then an application for permission to appeal in MJ and ZM has been refused, both on paper and subsequently on renewal to an oral hearing before Richards LJ. That was in the middle of October 2008.

10. The four grounds of appeal before me are, first of all, that MJ and ZM is wrong. Unfortunately for AM and Ms Phelan, that submission could not and has not been pursued this morning, seeing the failure to obtain permission to appeal in that case. Secondly, it is submitted that when the facts which were established before the tribunals were considered, and I have referred to them in detail, the position was that AM had suffered persecution in the past, therefore the presumption or inference spoken of in Rule 339K was to be applied and that SIJ McGeachy's finding to the opposite effect was ill-reasoned or insufficiently reasoned. It is submitted by Ms Phelan that the only

reason given, or perhaps assertion, as she would say, was the final sentence of his paragraph 31.

11. In my judgment, however, that submission cannot arguably succeed and would present no real prospect of success on any appeal. The issue, after all, is ultimately one of fact and has been decided by an expert tribunal with the assistance of a recent country guidance case. It is in my judgment not possible to say that SIJ McGeachy had applied the wrong test or misapplied it. The appropriate tests, whether under the Convention or the 2004 directive or under our domestic rules, had been set out or referred to in the decision, and of course these are extremely well known tests to the specialist immigration judges concerned. Nor is it possible to say that SIJ McGeachy's determination has not been adequately reasoned; it is founded both on detailed findings of fact and by reference to a recent country guidance case and by reference to the reasoning in the critical paragraphs which I have incorporated in this judgment. The fact is that not one but two specialist tribunals have considered that although AM has suffered from unpleasant harassment, that has not amounted to persecution; she has not suffered harm at the hands of KN, and the admittedly very unpleasant threats to her of death have not been persisted in and have not lead to any violence at their hands towards her.

12. In the absence of past persecution there is no presumption of future persecution; and in any event, the fully-reasoned finding is that there is no real risk of such persecution. There has been limited violence; there has been no arrest or detention or violence from the police; there has been no specific violence from KN. The aspect of AM's desire to propagate her faith, although it was a leading part of the submissions below, has not formed a particular strand of Miss Phelan's submissions on this application, perhaps because the findings there are really unhelpful to such a submission. In effect AM has confined her Da'wah duty of propagation essentially to members of her own faith or their children or to those whom, after careful approach, she had obtained consent so to speak.

13. In my judgment the analogy of AM's case to those in the country guidance case is apposite. AM is not an exceptional case that would take her position as an Ahmadi or a would-be propagator of Ahmadi faith out of the normal position of Ahmadis in Pakistan, who admittedly may not have an easy life. In those circumstances, the essential issue which Ms Phelan has presented before me today would have no real prospect of success. Ms Phelan submits that if returned to Pakistan, AM would simply face more of the same without state protection. The findings in effect are that she would suffer a risk of the sort of discriminatory treatment and harassment which is unfortunately handed out to Ahmadis in Pakistan, but nevertheless on the facts which are before me she has not suffered and there is no real risk that she would suffer persecution in Pakistan on return. That is essentially an issue of fact and I am therefore obliged to refuse this application.

**Order:** Application refused