Case No: C5/2008/1621

Neutral Citation Number: [2008] EWCA Civ 1495
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: HX/17843/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 23rd October 2008

Before:

LORD JUSTICE SCOTT BAKER

- -

SA (Pakistan)

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

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Mr T Cooray (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 Scott Baker:

1. The applicant is an Ahmadi, and has sought and been refused asylum. His claim was based on a fear of persecution for proselytising his faith. His case has a long history. He is 34 years old and was born in Ahmad Nagar, Pakistan. In October 1999 he left Pakistan with the help of an agent, arrived in the United Kingdom and claimed asylum on arrival. In April 2004 he married Hina Amtul Mujeeb, a lady who has indefinite leave to remain here. In August 2004 he was refused asylum and appealed. In March 2006 the AIT dismissed his appeal and refused permission to appeal. He sought the leave of the Court of Appeal and his appeal was stood out pending decisions in other cases. However, eventually on 18 February of this year his case was remitted for reconsideration.

2. It seems to me that there were two points and that they were interlinked: (1) the extent of his proselytising; and (2) the position in Rabwah. Mr Cooray for the applicant submits that it was not open on the reconsideration for the AIT to look at the extent of his proselytising, and I shall return to that shortly.

3. The reconsideration took place in May of this year before Immigration Judge Vaudin d'Imecourt. He found as follows:

> "46. I accept from the evidence that I have heard that the appellant, like the majority of Ahmadis, has and does proselytise. In his case it is quite clear from the evidence that he has given that the meaning to be attached to his claim that he 'preached' amounts to no more than discreet conversations with individuals singularly face-to-face on a one to one basis either at his father's pharmacy, at their invitation in their homes, or at his invitation in his own home. He claims that he supervised the refurbishment of his local Ahmadi mosque. I note that it was not the building of a mosque that he was concerned with but with the refurbishment of an existing Ahmadi mosque. I accept that this might have drawn him to the attention of the local KN members. I note that after he was told to desist from his activity the appellant states that he reduced his activity to very low key and moved away. Apart from the supervision of the refurbishment of the mosque, his other activities were in any event very low key anyway. It amounted to talking on a one to one basis with individuals interested in the Ahmadi faith.
>
> 47. Thereafter, his activities were in my opinion so low key, reverting to at most a one-to-one conversation with interested individuals as not likely to draw the appellant to the attention of KN."

And a little later:

> "I also believe that the appellant has grossly exaggerated his account by claiming that he was recognised elsewhere in Pakistan because of his activities. Even if his role is as stated in the letter from the Ahmadiyya Muslim Association UK, I do not find that purely by seeking to proselytise his religion in the discreet manner in which the appellant himself states that he had done, (which is in any event an obligation of every Ahmadi practising his faith) that the appellant is likely to bring himself to the adverse attention of the KN to such an extent that he is likely to be persecuted by them. If this were the case then every Ahmadi would be persecuted, and that is not the case."

And then a little later:

> "But if the appellant feels that he is unable to return to his local village, I find that he will be able, in his particular circumstances, to relocate either in Rabwah or elsewhere in Pakistan..."

4. The main thrust of Mr Cooray's submissions is that the immigration judge, Mr Vaudin d'Imecourt, exceeded his jurisdiction by going into matters that were not the subject of the remit. In particular, he submits that it was not open to the immigration judge to look afresh at the degree to which the applicant was proselytising. In this regard it is important to go back to what the original adjudicator, Mr Oliver, actually found. He said:

> "I had no difficulty in accepting that the appellant was an Ahmadi who preaches his faith. The question which causes me concern is the degree to which he does this."

And a little later, he said:

> "Accordingly, I accept the core case presented by the Appellant but I find that in important, perhaps crucial, parts it is exaggerated. It follows that I find that he has exaggerated the level of his preaching … he claimed to have made only convert."

Then he expressed his conclusions in these terms:

> "In the light of my finding that in general the Appellant is a credible witness I accept that he has established that he has a genuine fear of persecution at the hands of non-State agents in the event of return and that it is for a Convention reason and that what he fears is sufficient to satisfy the criteria."

Then these important words:

> "What is less clear is whether such a fear is well-founded, whether in this case internal flight is an option and whether the authorities are unwilling or unable to provide protection."

5. Then he went on to deal with the situation in Rabwah, which is a place where there are a large proportion of Ahmadis. The open question at that time was whether Rabwah was a safer haven for Ahmadis than other places, and the country guidance case IA and Others [2007] UKAIT 00088 which was subsequently decided has concluded in broad terms that Rabwah does not really fall into any different category from anywhere else. Mr Ockelton said at paragraph 25:

> "It therefore seems to us that despite Rabwah's special profile in the Ahmadi religion it has no special status in the refugee related discourse relating to Pakistani Ahmadis."

6. So the question was: at the time Mr Oliver decided this case, what was the situation in Rabwah? And it appears that he took a view that might well be said to have diminished the risk to the applicant of persecution in relation to any preaching that had or might take place in that place. But it seems to me that when the case was remitted by consent for reconsideration, it inevitably involved reconsideration not just of the position in Rabwah but also to clarify the extent to which the applicant proselytised. The two circumstances, it seems to me, were inextricably interlinked; and indeed when one looks at the statement of reasons underlying the consent order, reason (i) is that:

> "The Adjudicator accepted that the Appellant was an Ahmadi who preaches his faith, although there was a question over the degree to which the Appellant preached."

7. When the matter went back and was reconsidered by Immigration Judge Vaudin d'Imecourt, in my judgment he dealt with the matter entirely appropriately and he did not trespass onto any findings of fact favourable to the applicant that were not open for reconsideration. In these circumstances I cannot see that any appeal has a realistic prospect of success, and therefore this renewed application must be refused. In doing so, I note the reasons given by Senior Immigration Judge Jarvis in refusing permission in the first place, and it seems to me that those are entirely valid reasons. He said:

> "According to the agreed statement of reasons of 6 February 2008, in the Court of Appeal, it was agreed that the question as to the degree to which the Appellant preached was one that was in issue and was for the Tribunal to decide. There was no argument to the contrary before the Immigration Judge who did not go behind the accepted findings of the previous judge. It is not arguable that the Tribunal was without jurisdiction.

> Otherwise, the grounds … amount to an attempt to re-argue the case and do not disclose any arguable material error of law in respect of the decision in which the evidence was viewed as not showing real risk of serious harm for reasons that appear to have been open to the Tribunal…"

And then, finally:

> "…whilst the grounds assert that country guidance case law MJ and ZM [2008] UKAIT 00033 was wrongly decided, this bare assertion is not particularized and discloses no arguable error on the part of the judge or the Tribunal deciding MJ and ZM."

And that point is no longer pursued, and has indeed been overtaken.

8. Accordingly, this renewed application is refused.

Order: Application refused.