Case No: C5/2008/1165; C5/2008/1166

Neutral Citation Number: [2008] EWCA Civ 1433
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AS/02920/2005; AS/08048/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 10th October 2008

Before:

LORD JUSTICE RICHARDS

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Between:

ZM (PAKISTAN) **and** **MJ (PAKISTAN)**	**Appellants**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Mr TU Cooray (instructed by Thompson & Co) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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Judgment

(Approved)

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Lord Justice Richards:

1. The court has before it two linked applications for permission to appeal against a decision of the Asylum and Immigration Tribunal. The applicants are both from Pakistan and both claimed asylum on the basis of a fear of persecution arising out of their Ahmadi faith. In each case there has been a lengthy procedural history, including a prior appeal to the Court of Appeal and a remittal from that court to the AIT. The focus now is on the decision reached by a panel presided over by Senior Immigration Judge Gleeson on a reconsideration following the remittal.

2. In that decision, dated 20 March 2008, the Tribunal considered the cases of the two applicants together and dismissed their appeals. Permission to appeal against that decision was subsequently refused by Senior Immigration Judge Gleeson in the Tribunal and then by Sedley LJ in this court on consideration of the papers. The renewed application before me today has been presented by Mr Cooray, who also acted for both applicants before the AIT. The Tribunal's decision has been reported as a Country Guidance case: MJ and ZM (Ahmadis -- risk) Pakistan CG [2008] UKAIT 00033. Reference can be made to the reported decision for the detail of the Tribunal's analysis.

3. In outline, MJ's case was that he was an Ahmadi convert. For many years he had a small business in Sargodha, where he owns some shop units. He became integrated into the local Ahmadi community. He held various positions in the local Ahmadi mosque and he propagated his faith openly. He detailed a number of incidents of threats or violence to which this was said to have given rise. At one point in about 2000 his shops were closed down, but

his evidence to the Tribunal was that he soon re-opened them. He moved from Sargodha to Rabwah following threats, in October 2004, that he would be killed if he remained in Sargodha. He left for the United Kingdom a few days later, leaving his wife and children in Rabwah living on the rent from the shops and from the house in Sargodha. He said that if he returned he would be under an obligation to propagate the Ahmadi faith. I use the word "propagate" because the Tribunal accepted that "propagation" was a more appropriate term than "preaching" or "proselytising" to describe the range of activities in which an Ahmadi could engage.

4. ZM's case was that he was an Ahmadi who had lived and worked in Karachi. For many years he had no problems, but in the 1990s various relatives had come to the United Kingdom and had been recognised as refugees on the basis of problems with Khatme Nabuwwat (KN). His own profile was raised in 2001 when the president of his local Ahmadi community invited him to head the security team for the local mosque and community. He described an incident of violence in July 2002 and an arrest and short detention in October 2002, when he was accused of preaching to a Sunni Muslim and seeking to convert him. He also described an incident in Karimabad, a suburb of Karachi, in April 2003, when he was staying there with a Sunni friend and violence was threatened to him as a result of his taking the friend to an Ahmadi mosque. He then moved back to his ancestral village, Khewra, where he taught one or two children's classes in the library, which was run by Ahmadis. There was a complaint, as a result of which he was arrested and detained for two days in October 2003. On his release he fled the country. His wife and children remained in Karachi. Those facts are summarised in

the Tribunal's decision, although I should mention that Mr Cooray also took me back for greater detail to a previous decision of an immigration judge in which the credibility of the account had been accepted.

5. In its discussion in the decision under challenge, at paragraphs 67 and following, the Tribunal said that on the evidence it was time to revisit the analysis of the Ahmadis' obligation to propagate (da'wa) and the profile of those Ahmadis who would now be at risk. It referred in some detail to the objective material concerning conditions in the country. At paragraph 79 it referred to the decision of the Court of Appeal in SSHD v Ahmed [1999] EWCA Civ 3003 and to the changes that had occurred since that time. It stated at paragraph 82 that:

> "The evidence before us, nine years later, indicated that the propagation question would more properly be approached on a case-by-case basis with the risk dependent on the lengths to which an individual Ahmadi carried his da'wa observance."

6. It referred to the findings of the Tribunal in the case of IA and Others (Ahmadis:Rabwah) Pakistan CG [2008] UKAIT 00088, which concerned the safety of Rabwah for Ahmadis. I should mention that IA has since been upheld in substance by the Court of Appeal: see IA (Pakistan) [2008] EWCA Civ 580. At paragraph 20 of Sedley LJ's judgment in that case, the Tribunal's understanding of IA in the present case was effectively approved.

7. The Tribunal went on to state that, on the evidence before it, the analysis in IA remained good. The number of Ahmadis arrested and charged with

blasphemy or behaviour which is offensive to Muslims was small, and there was very sparse evidence indeed of harm to Ahmadis. It continued:

> "84…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.
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> 85. It may be, as the Tribunal said in *IA and others*, that in some individual cases the levels 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. Rabwah is no safer than elsewhere in Pakistan for Ahmadis, but the question whether it is an appropriate internal relocation option for an individual Ahmadi will always depend on the particular circumstances and facts of that individual's situation."

8. Turning to consider the individual situation of each of the appellants before it, the Tribunal accepted the general credibility of MJ's account but considered that he had exaggerated the seriousness of the threat to his safety overall. It concluded as follows:

> "91. We are not satisfied that the first appellant was ever at risk on account of his proselytising activities, which were carried on privately in the sense in which we have explained above. We conclude that the objective of the Khatme Nabuwwat mullahs in Sargodha was limited to stopping the open advertisement of the Ahmadi religion in the first appellant's shop, in which they were successful. The fact that they did not pursue the first appellant and his wife to Rabwah in our view is an indication of their limited and localised adverse interest.
>
> 92. We cannot exclude the possibility that if the first appellant were to reappear in Sargodha, re-establish his business and continue to advertise the Ahmadi religion, he might again attract the adverse interest of the local Khatme Nabuwwat mullahs who know him. The evidence before us is not sufficient, however, to establish to the appropriate lower standard of proof that if the first appellant were to re-locate to another part of Pakistan, such as Rabwah or Karachi, he would be at any greater risk than any other devout Ahmadi who was inclined to proselytise. We are not satisfied that the Sargodha Khatme Nabuwwat mullahs would become aware that the first appellant had returned or that even if they did, they would have any greater adverse interest in him than they appear to have in other Ahmadi officeholders in Sargodha.
>
> 93. We do not, therefore, consider that it would be unsafe or unduly harsh to expect the first appellant to exercise his internal relocation option within Pakistan if he considers that he remains at risk of harassment or difficulties in Sargodha."

9. As regards ZM, it accepted the credibility of his account but said that it was not an account of national pursuit by the KM. The difficulties he had in Karimabad and Khewra were wholly unconnected with those he had in Karachi and with each other. It continued at paragraphs 96 and 97:

> "96. The difficulties in Karachi, Karimabad and Koara were distinct and fortuitous, with no relation with each other; that is not evidence to any standard

> that the second appellant risks further adverse interest shown in him if he returns to Pakistan for any of those reasons.
>
> 97. The appellant accompanied the Ahmadi mosque President on a preaching team on a trip to Sindh without coming to any harm. His position in cross-examination was that his propagation of the Ahmadi faith was discreet and privately carried out. He would always do it indoors and always to an invited individual or audience, not to people at large. In these circumstances, if the second appellant were unable to return to live in Karachi we consider that he could relocate to an area of Pakistan where he was not known. In so doing, he would be at no greater risk than any other devout Ahmadi who was inclined to propagate the Ahmadi faith."

10. In the following paragraph it said that the risk of ZM's propagation activities coming to the attention of KN were so small, given the manner in which the proselytising would be undertaken, that it did not amount to a real risk and there was no indication that it would be unsafe for him to return to Pakistan now.

11. In presenting the case on behalf of the two applicants, Mr Cooray has made clear that he adheres to all the grounds of appeal, dealt with in some detail in his written submissions, and I have taken all those grounds into account. He has, however, sought to focus his submissions, helpfully, on certain key issues. He started with the case of ZM, but I think it more convenient to start with the case of MJ, who was the first appellant in the Tribunal and whose grounds of appeal are more extensive than those of ZM but cover a substantial part of ZM's grounds.

12. There are four main grounds advanced in relation to MJ. First, Mr Cooray contends that the Tribunal erred in assessing the religious practices of

Ahmadis. In particular, he says that the Tribunal fell into error in implying in principle that Ahmadis who preach privately do not face ill-treatment. This is one of the matters on which he focused in his oral submissions. He says that the position is that no Ahmadi can preach publicly or accost strangers in public places or make vocal announcements about their faith. They all have to employ discreet methods. Yet their activities can result in persecution. So it was wrong for the Tribunal to imply that because the applicant had preached in private he would therefore not face persecution.

13. In my judgment that submission fails to do justice to the Tribunal's overall analysis. The Tribunal looked carefully at the body of evidence presented to it about the risk to Ahmadis, about the extent of problems suffered and the circumstances in which they are suffered, including the way in which the faith is normally propagated. The Tribunal's conclusion that the risk to Ahmadis who propagated the faith was, in general, below the level necessary to show a real risk of persecution was both properly reasoned and reasonably open to it on the evidence. I agree with Sedley LJ on this point. The Tribunal accepted that the level of risk can be sufficiently enhanced to give rise to a real risk on the particular facts of individual cases. But it concluded on the particular facts here that there was nothing in the circumstances of MJ or indeed of ZM to give rise to such a real risk. In my view, that approach involved no arguable error of law.

14. The second ground challenges the Tribunal's finding that MJ had exaggerated the seriousness of the threat to his own safety. In reaching that finding the Tribunal referred to his evidence that he had re-opened his shops in Sargodha

and that his wife now rented them out. It contrasted that with what it described as his earlier clear position that the shops had been closed down for good. This indicated, in the Tribunal's view, that he was prepared to exaggerate the seriousness of his position. Mr Cooray contends that MJ did not say in his earlier accounts that he had closed his shops for good and that the Tribunal has put an unwarranted gloss on his previous evidence. In my view this was plainly a matter for assessment by the Tribunal. I do not accept that its assessment was perverse or not reasonably open to it, as has been contended, and in the absence of such perversity there is no basis for challenging it.

15. The third ground challenges the Tribunal's assessment of risk on return. Part of it is an accusation by Mr Cooray that the Tribunal was selective in its citation from the objective material. The other part is a contention that instead of asking whether the applicant would be likely to suffer similar ill-treatment as before if he continued to practise his faith in another part of the country, the Tribunal adopted a probability test or a statistical approach in order to determine the risk on return, an approach criticised by the Court of Appeal in IA (Pakistan), in particular at paragraphs 11 and following.

16. For my part, I am wholly unpersuaded that the Tribunal has misrepresented the effect of the objective evidence or has reached a conclusion which is even arguably untenable as to the effect of that evidence. I am equally unpersuaded that the Tribunal's approach involved any arguable error of the kind suggested. As I read the decision, its conclusion in relation to MJ, taking

proper account of his history, is that he would not be at risk of persecution even if he returned to Sargodha. Such risk of harassment as might exist from MK would not be of a level as to amount to a risk of persecution, but in any event the Tribunal found that he could relocate safely to another part of Pakistan such as Rabwah or Karachi. Relocation was not a necessary element in the decision but an additional reason for the dismissal of his appeal. But in any event, the findings that he would be safe, whether in Sargodha or elsewhere, were all based on a proper consideration of his individual circumstances -- that was the test specifically applied -- and not on the application of some generalised probability test or statistical argument. In my judgment the approach adopted was fully in line with that approved by the Court of Appeal in IA (Pakistan).

17. The fourth main ground is a separate argument that the Tribunal erred in its assessment of MJ's ability to relocate within Pakistan. As I read it, it amounts to an assertion that there is no part of Pakistan where a practising Ahmadi could safely relocate, rather than amounting to a focused specific additional challenge to the Tribunal's detailed reasoning. I regard the point as unarguable. The Tribunal's conclusion to the contrary was, in my judgment, soundly based on the material before it.

18. I think it unnecessary to deal with any of the more detailed points that arise in the course of the development, both in writing and orally by Mr Cooray, of the main grounds of appeal. It will be clear from what I have said that I do not consider there to be a real prospect of success on an appeal by MJ.

19. I turn to consider the position of ZM, which I can deal with much more quickly because most of the ground has already been covered in considering MJ. There are two main grounds advanced in relation to ZM. It is submitted, first, that the Tribunal's assessment of the nature of the persecution suffered by him was irrational and therefore wrong in law. This was one of the matters on which Mr Cooray focused his oral submissions. He submitted that the Tribunal wrongly based its conclusion that ZM would not be at risk on its view that there was no national pursuit of him by KM but three distinct and fortuitous incidents. It is submitted that, whilst the specific circumstances in which ZM was ill-treated were different, the underlying cause was the same in each case, namely religious persecution, and that there was nothing accidental or fortuitous about that. The extremists targeted him wherever he practised his faith and that made clear that he would be at risk of them doing the same if he were to return to Pakistan. It is said that the Tribunal erred in finding otherwise.

20. I do not accept that the Tribunal fell into error as submitted. It was entitled to take into account that these were three separate incidents and that the applicant was not being sought out by KM, and it was entitled to conclude that his propagation activities, if he were to return, would not give rise to a real risk of his coming to the attention of KM or of his receiving ill-treatment amounting to persecution. I do not think that the three incidents relied on by the applicant were sufficient to compel the conclusion that he would be at risk on return, having regard to the nature of those incidents themselves and the totality of the evidence concerning the country conditions, all of which were, in my view, assessed in a reasoned and rational way by the Tribunal.

21. The second main ground of appeal in relation to ZM is that the Tribunal's approach to the assessment of risk on return and the assessment of the objective conditions was flawed. That argument is, in substance, the same as I have already covered in relation to MJ. I do not think that any of the detail raised requires separate consideration by me in this judgment. It suffices to say that, for essentially the same reasons as I have given when considering MJ’s case, I do not think that there is sufficient substance in the point advanced on behalf of ZM.

22. It follows that, in his case too, I take the view that there is no real prospect of success on an appeal and that both renewed applications must be dismissed.

Order: Applications refused