

R. v Secretary of State for the Home Department Ex p. **Ahmad** (Gulzar)
(CA) Court of Appeal
c.1990

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Where Reported

[1990] Imm. A.R. 61

Summary

Subject: Immigration

Keywords: Asylum; Pakistan; Persecution; Religious law

Catchphrases: Asylum; religious persecution; discriminatory government decree; Ahmadi community forbidden to proselytise; assertion that compelled to breach decree; whether refusal of political asylum reasonable; correct approach for Secretary of State

Abstract: It was the duty of the Secretary of State to find as a question of fact whether someone had a well-founded fear of persecution or that he was likely to suffer persecution. It was the duty of the courts to determine if that decision could be faulted on Wednesbury principles or, more specifically, whether the Secretary of State's decision could be described as perverse. As were citizens of Pakistan and members of the Ahmadi community. In April 1984 a government decree was promulgated which introduced new and additional discrimination against members of the sect. In particular they were forbidden to proselytise, which caused difficulties for adherents of a messianic movement. They arrived at Heathrow in August 1984 and claimed political asylum. Their applications were refused in April 1985. An application for judicial review was dismissed. On appeal, it was argued that persecution of the sect had increased after the ordinance had been promulgated. Affidavit evidence from As asserted that they had been victims of discrimination. Furthermore, the Ahmadis were an evangelical sect; its members had a duty to seek converts. If they carried out that duty they would suffer persecution under the ordinance. Relying on the decision in Bugdaycay, counsel also argued that the Secretary of State had not adopted the correct approach, nor had he carried out all the enquiries which he should have done. For the Secretary of State it was argued, inter alia, that while the ordinance per se was discriminatory, it would not make As liable to persecution simply by being members of the sect. They had not indicated to the immigration officer or the Secretary of State that they would personally feel bound to seek to make converts or otherwise breach the provisions of the ordinance.

Summary: Held, dismissing the appeals, that (1) the Secretary of State had not erred in his approach. He was obliged to examine the ordinance to establish its prohibitions, then to find out the practical impact of the ordinance on the ordinary lives of individual adherents to the sect, and then to consider the position of each A against that background. The evidence showed that he had done so; (2) their cases depended essentially on what they would feel obliged to do, in proselytising, if they returned to Pakistan. They had not put any such case to the immigration officer or the Secretary of State, nor had they ever been specific about the reasons why they might be driven to contravene the provisions of the ordinance; (3) the court had left open in Mendis the question whether a person could claim refugee status on the basis of what, if he returned to his country, he would feel obliged to say or do. The court, on the facts, found it unnecessary to decide that question in this case. Obiter, per Farquharson, L.J.: "It would

depend to a very large extent on where, in the spectrum of religious observance, a particular applicant proposed to be active; somebody who merely attended his place of worship from time to time throughout the year would...be contrasted with an active clerical figure" (R. v. Immigration Appeal Tribunal and Secretary of State for the Home Department Ex p. Mendis [1981] Imm. A.R. 6, [Bugdaycay v. Secretary of State for the Home Department \[1987\] A.C. 514](#) considered).

Cases Cited

[Bugdaycay v Secretary of State for the Home Department, \[1987\] A.C. 514; \[1987\] 2 W.L.R. 606; \[1987\] 1 All E.R. 940; \[1987\] Imm. A.R. 250; \(1987\) 84 L.S.G. 902; \(1987\) 137 N.L.J. 199; \(1987\) 131 S.J. 297 \(HL\)](#)

R. v Immigration Appeal Tribunal and Secretary of State for the Home Department Ex p. Mendis, [1981] Imm. A.R. 6