



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09076/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 2nd February 2016

On: 5th February 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**JSM
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Turner, Counsel instructed by Middlesex Law Chambers

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Afghanistan born on the 1st March 1945. She appeals with permission the decision of the First-tier Tribunal (Judge Lucas) to dismiss her asylum and human rights appeal¹.
2. The Appellant is an Afghan Sikh, who is accepted to be a widow. She

¹ I have not been provided with a copy of the Immigration Decision but I glean from the Respondent's bundle that it was a decision to remove the Appellant from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999 dated 24th October 2014

has a number of relatives in the United Kingdom including her eldest son who has lived here for 12 years. When she claimed asylum in June 2014 she told officers that she had no one in Afghanistan to look after her. She is blind in one eye and has been living in a Gurdwara. When interviewed again in October 2014 she gave an account of many years of harassment and persecution by persons whom she suspected to be members of the Taliban. Her husband was killed 17 or 18 years ago after refusing to yield to their extortion demands; her sister was similarly murdered about 3 years before she made her claim. She has been pressured to give these people money. She is alone, without protection, and afraid.

3. The Respondent identified numerous inconsistencies in the Appellant's narrative of persecution by persons supposed to be the Taliban and rejected it on credibility grounds. Although the refusal letter states the 'Convention Ground' to be imputed political opinion, the Secretary of State does go on to consider whether the Appellant would be at any risk by virtue of the fact that she is a Sikh and a lone woman. Finding there to be no such risk, the claim is rejected.
4. The Appellant appealed and the case came before the First-tier Tribunal (Judge Abebrese). In a determination dated 2nd January 2015 Judge Abebrese dismissed the Appellant's account on the grounds that he could see no reason why the Taliban would possibly target her: "she has never been politically active or taken part in any course of action which would bring her to the attention of the Taliban". The appeal was dismissed.
5. On the 5th February 2015 First-tier Tribunal RA Cox granted permission to appeal to the Upper Tribunal on the basis that Judge Abebrese appeared to have "completely missed the point", that being that this was a Sikh widow with no family left in Afghanistan. The matter duly came before Deputy Upper Tribunal Judge Gibb who entirely agreed with the assessment of Judge Cox, as in fact did the Respondent, who agreed that the matter should be remitted *de novo*.
6. So it was that the appeal came before Judge Lucas. Given the history of this appeal thus far it was to be hoped that the First-tier Tribunal would take care to evaluate all possible risks to the Appellant, whether as a result of her imputed political opinion, or simply her identity as a lone Sikh woman.
7. In respect of the latter the determination concludes as follows:

"At this stage of the hearing, the Appellant has sought to add in the fact that she may be persecuted on the ground of her Sikh religion. This has not been pleaded before and is, in the view of the Tribunal, simply opportunism"

The appeal is then dismissed on the ground that the Appellant has failed to demonstrate that she has faced any past persecution in the past.

Error of Law

8. Let me begin by clearing up any confusion that the decisions of Judge Abebrese or Judge Lucas may have caused to the reader. It is correct to say that at her screening interview the Appellant did not elaborate on why she did not want to live alone in Afghanistan. She simply pointed out that her son lived here, her husband was dead and that she was a half-blind widow. It is not at all correct to suggest that the 'Sikh element' of her claim was raised belatedly or was at all obscure at the date of the decision under appeal. Although the Appellant's evidence was at times confused these extracts from her substantive asylum interview demonstrate that it clearly formed a central part of her case from the outset:
- “Q33. What is your religion?
A33. Sikh
Q34. Have you ever experienced any problems in Afghanistan due to your religion?
A34. No, after the revolution they are asking to convert to Islam and the young girls they take them away
Q35. Have you ever personally experienced any problems in Afghanistan due to your religion?
Q35. Yes my husband was killed and my sister was killed”
9. Although the Appellant did indicate at Q145 of that same interview she had not personally experienced problems because of her religion, in the very next breath she explained how the “other Muslims are saying abandon your religion”. It was no doubt the totality of her evidence which led the Respondent to very sensibly construe this claim as a 'mixed motivation' case, addressing both Convention grounds - political opinion and religion - in the refusal letter. That was a sensible approach. In the context of a group trying to enforce Wahhabi theocracy it would have been entirely artificial to separate the two. Quite why the First-tier Tribunal has seen fit to do so on two separate occasions is a mystery.
10. That deals with the Appellant's first ground of appeal, namely the failure to assess with anxious scrutiny the possible risk to the Appellant as a Sikh woman. As I note above that had formed a central plank of her asylum claim, it had been considered on that basis by the Respondent, and was indeed maintained to be the main ground of appeal in the grounds of appeal to the First-tier Tribunal. Before me Ms Everett agreed that it was an error of fact and law to dismiss that claim on the grounds that it was late and opportunistic.
11. The second ground of appeal concerns the approach taken to the risk of persecution. It is argued that the determination appears to equate a lack of past persecution with there being no risk in the future. Given the

comprehensive rejection of the Appellant's "flimsy and vague" historical narrative it is perhaps understandable that the First-tier Tribunal could see no reason to think that the Appellant would face any problems in the future. It is here that this ground of appeal melds to that discussed above: no assessment of future risk would be complete without giving express consideration to the Appellant's personal circumstances. This ground is therefore made out.

12. Finally it is pleaded on the Appellant's behalf that the First-tier Tribunal failed to follow the latest country guidance case of TG and Ors (Afghan Sikhs - persecution) CG [2015] UKUT 595 (IAC). In her Rule 24 response the Secretary of State points out that given the chronology that may not have been available to the Judge. In light of my findings on the foregoing grounds that is not now material. Suffice to say that in the remaking the First-tier Tribunal must have regard to the up to date guidance. I say the First-tier Tribunal because the Appellant has not to date had a reasonable assessment of her case at first instance. It follows that in fairness, her appeal should be remitted.

Decisions

13. The decision of the First-tier Tribunal is set aside.
14. The appeal is remitted to the First-tier Tribunal.
15. I maintain the order for anonymity made in the First-tier Tribunal.

Upper Tribunal Judge Bruce
2nd February 2016