



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

Appeal Number: PA/00351/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 29th September 2017**

**Decision & Reasons
Promulgated
On 23rd October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[B S]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J. L. Blair (Counsel)

For the Respondent: Mr S. Staunton (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Colvin, promulgated on 3rd March 2017, following a hearing at Taylor House on 10th February 2017. In the determination, the judge dismissed

the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Afghanistan, and was born on [] 1981. She appealed, with her four dependent children, against a decision of the Respondent made on 19th December 2016, refusing to grant her asylum or humanitarian protection.

The Appellant's Claim

3. The essence of the Appellant's claim is that her husband was arrested after the seizure of her father-in-law's land.

The Judge's Findings

4. This was a case where there had been a previous determination by Judge McDade, so that the principles in **Devaseelan** applied in this case. However, the previous decision with respect to the Appellant did not take into account the latest country guidance case of **TG and Others [2015] UKUT 00595**, to which the judge now made reference (at paragraph 31). The judge held, however, that no new matters were raised in the appeal now, which suggested, on the basis of the fact sensitive findings made in the previous decision by Judge McDade, that the appellant would be persecuted upon return to Afghanistan for ethnic or religious grounds. Judge McDade was not satisfied that the Appellant was a reliable witness and that she would not have access to a male supporter upon return in the form of either her husband or her father-in-law (see paragraph 34). The appeal of the Appellant and her children was refused, with the exception of her eldest child, [DS], whose appeal was allowed on the basis of human rights (Article 8) because the judge found that there was harassment and ill-treatment in the school system, where the Appellant, now aged 14, would have to return to, and this would involve the risk of abduction as well as a female sick child, who had different cultural attitudes and behaviour. (Paragraph 52).

Grounds of Application

5. The Grounds of Appeal state that the judge had erred in allowing the appeal of the eldest female child, [DS], but not that of the Appellant and her other children. Most importantly, however, the judge had evidence from the Appellant and her oldest child, in the form of their witness statements, which was referred to by the judge at paragraphs 36 to 41 of the determination, and this had led the judge to conclude that, "I am satisfied that, in principle, these matters may give rise to a serious breach of human rights so as to cross the threshold of persecution ... I nevertheless do not find that there has been adequate expert evidence ..." (paragraph 42). It was submitted in the Grounds of Appeal that the

requirement by the judge of expert evidence being produced considerably elevated the threshold that the appellant had to satisfy. This was exacerbated by his further statement that,

“In my opinion these are serious and important issues based on gender that require more extensive background and expert information in order to support a more developed argument than that which was presented before me. I am therefore satisfied even to the lower standard of proof that the Appellant has not shown that she is at real risk of persecution or treatment in breach of Article 3 on this new ground” (paragraph 43).

6. On 24th July 2017, permission to appeal was granted on the basis that if the judge considered there was insufficient evidence then the judge could have adjourned the hearing for additional expert evidence to be obtained but that it was incumbent upon the judge to make a finding in relation to the appeals of the Appellant and the other three children, just as the judge had made a finding in relation to the eldest child, [DS], but the judge could not reject the appeals on the basis that there was a requirement that there should be a production of an expert report.

The Hearing

7. At the hearing before me on 29th September 2017, Ms Blair, appearing on behalf of the Appellant, submitted that there were two essential points here. First, that on the facts as accepted by the judge the appeal should have been allowed. Secondly, that on the basis of the country guidance case of **TG and Others [2015] UKUT 00595**, the appeal should have been allowed on the basis that the Appellant and her other children were refugees. She proceeded to develop both points.
8. First, she stated that it was clear that the Appellant, as a Sikh woman could not access her cultural, religious, and sociological rights in Afghanistan, and the determination of the judge did not suggest otherwise.
9. Secondly, the case of **TG and Others** makes it clear that the Appellant cannot openly live as a Sikh woman in Afghanistan. Ms Blair went on to state that the facts of **TG and Others** were similar to this case in that the Tribunal there accepted that where, a girl with similar aspirations as [DS], stood to face discrimination outside the family home, then her mother would also similarly face the same discrimination, such that both qualified for asylum refugee status. The judge had ignored this aspect of **TG and Others**. Instead the judge had gone on to say that, “I nevertheless do not find that there has been adequate expert evidence before me on other aspects, such as restrictions of Sikh women practising their religion and being fully housebound” (paragraph 42), when **TG and Others** had addressed precisely this same issue.

10. For his part, Mr Staunton submitted that he was in difficulty in being able to side step what was stated in the country guidance case of **TG and Others** because this case clearly indicated that the facts here stood to fall in favour of the Appellant's application for asylum and refugee status.
11. Second, he submitted that it was unclear what the judge meant at paragraph 43 in stating that "These are serious and important issues based on gender that require more extensive background and expert information ...".
12. To require anything further, submitted Mr Staunton was to raise the threshold that the Appellant had to satisfy, given that **TG and Others** addressed these very issues in its decision.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. This is a case where, on the facts before the judge, if the claim of the eldest child of the Appellant, [DS], was to succeed, then the claim of the Appellant and her other children would also fall to succeed, and it was irrational to conclude otherwise.
14. First, the judge required there to be "adequate expert evidence" on matters "such as restrictions on Sikh women practising their religion and being fully housebound" (paragraph 42), whereas in **TG and Others** it had already been established that Afghan Sikh women face being housebound (see paragraph 91 and paragraph 135).
15. Second, the judge's findings in any event appeared to suggest that there existed here a well-founded fear of persecution attracting a viable protection claim. This is clear in relation to the eldest child, [DS], where the judge refers to her "returning with different cultural attitudes and behaviour" and with a strongly held wish "not to be returned to being a prisoner in her own home and being required to wear a burka when she does go out in public" (paragraph 52).
16. In **TG and Others** it was accepted by the Tribunal that the deprivation of education or employment opportunities for both boys and girls can itself give rise to a viable refugee protection claim in Afghanistan (see paragraph 94).
17. Third, it was irrational for the judge to require that the Appellant herself provide expert evidence on this very issue, whilst accepting the same in relation to [DS], her eldest daughter.

Remaking the Decision

18. I remake the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have set out above.
19. I also, in particular, allow this appeal because of what was said at paragraph 132 of **TG and Others**, which involved the Appellant's daughter, who was studying in year 13, and had achieved good grades at GCSE, and was in education in the United Kingdom, would put good prospects of reaching her full potential in this country.
20. She had said that Afghan Sikhs have very limited secondary or university level opportunities and the Tribunal had concluded that "The evidence indicates there is a high degree of likelihood of discrimination and the possibility of such a person being targeted based upon their religious beliefs, which may include abduction, forced marriage, or other forms of ill-treatment".
21. The Tribunal, however, had then gone on to state at paragraph 135 that, "The situation of the fourth Appellant's wife and daughter would be similar with the additional factor that they are unlikely to be able to leave the very difficult conditions at the temple without male support to provide a form of protection ...".

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

19th October 2017

TO THE RESPONDENT FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have made a full fee award.

Signed

Date

Deputy Upper Tribunal Judge Juss

19th October 2017