



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

Appeal Number: PA/00647/2016

THE IMMIGRATION ACTS

**Heard at Stoke
On 14th June 2017**

**Decision & Reasons Promulgated
On 03 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS H K A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sidhu, Counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born on 1st January 1970. She has three dependants, her husband T born on 1st January 1965 and her two children D born 1st January 1999 and I born 1st January 2006. The three dependants are not specifically referred to insofar as they do not have

individual file numbers but such claims they may have are intrinsically linked to that of the Appellant.

2. The Appellant applied for asylum based upon a fear that if returned to Afghanistan she would face mistreatment due to her religion as a Sikh. Her application was refused by Notice of Refusal from the Secretary of State dated 11th January 2016. The Appellant appealed and the appeal came before Immigration Judge Graham sitting at Birmingham on 31st October 2016. In a decision and reasons promulgated on 6th December 2016 the Appellant's appeal was dismissed on all grounds.
3. On 16th December 2016 Grounds of Appeal were lodged to the Upper Tribunal. On 23rd February 2017 First-tier Tribunal Judge Hodgkinson refused permission to appeal. Renewed Grounds of Appeal were lodged on 2nd March 2017.
4. On 21st March 2017 Mr Justice Mitting granted permission to appeal. The Honourable Judge concluded that it was reasonably arguable that there were flaws in the fact-finding and reasoning of the First-tier Tribunal Judge that led him to reach a perverse, and so legally erroneous, conclusion. He set out the following factors that were open to criticism:
 - (i) His conclusion in paragraph 27 that the use of forged documents to gain access to the United Kingdom taints the Appellant's credibility.
 - (ii) His analysis of the names of participants in the applicant's account in paragraphs 29 and 31 is unconvincing and appears to be insecurely founded.
 - (iii) His conclusion in paragraph 32 that no doctor or police officer in Jalalabad was involved in the aftermath of the alleged death of the Appellant's daughter is speculative and unfounded on objective evidence about the current situation in Jalalabad.
 - (iv) His criticism of the differences in the reasons given by the applicant for refusing to approach the police in nit-picking.
 - (v) His criticism of the Appellant for stating in her screening interview that her husband was mute and had had a mental breakdown and was not able to give coherent evidence was unfair. The report from the general practitioner that her husband had told a colleague in December 2015 that he was stressed by the death of his daughter to the extent that he was even unable to speak for a few months was not inconsistent with her claim that he was mute in her screening interview on 17th November 2015.
 - (vi) His rejection in paragraph 40 of the Appellant's claim that she and her husband had handed their shop

and family home to an agent to pay for their travel to the UK was implausible. The Honourable Judge went on to agree with Judge Hodgkinson that paragraph 43 of the decision on sufficiency of protection was arguably an error but unlike him did not consider that the error was material. Mr Justice Mitting concluded that if there was no basis for rejecting the Appellant's claim that she and her family had nowhere to return to because they had sold their shop and home and therefore the error may matter.

5. I have recited herein the basis for the grant of permission because as Mr Justice Mitting sets out in his grant they do not correspond precisely with those set out in the Notice of Appeal. The parties' legal representatives however have indicated to me that they are both prepared to accept an amendment to the Grounds of Appeal so that they reflect the grant of permission.
6. On 31st March 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that the First-tier Tribunal Judge had directed himself appropriately. They point out at paragraphs 3 to 6 those areas where clear findings are stated by the judge and that the findings dismissing the appeal were open to the judge to make.
7. It is on that basis that the appeal comes before me for determination as to whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel, Mr Sidhu. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Submission/Discussion

8. Mr Sidhu submits that this case turns on issues of credibility and Mr Justice Mitting in granting permission found the decision to be perverse. He takes me through the various bases upon which Mr Justice Mitting has granted permission starting by pointing out that the judge is correct to have concluded that people use illegal documents when they cross borders. Mr Bates however reminds me that at paragraph 28 of the First-tier Tribunal's Judge's decision he has not based his findings on credibility on the use of false documents alone and that he has found other factors which he sets out thereafter to be relevant.
9. Mr Sidhu briefly addresses the various factors set out by Mr Justice Mitting dealing with individual factors in general terms. He submits however that they are valid points and that the case law is clear that the police are ineffective. However whilst accepting that the judge has made reference to the country guidance authority of *TG & Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 585 (IAC)* the judge has failed to consider the relevant passages to be found within that objective evidence. Rather he submits that Mr Justice Mitting is correct in his attack on the findings of credibility and that Immigration Judge Hodgkinson was wrong in

his assessment pointing out that at paragraph 41 the judge has failed to give due and proper consideration to the best interests of the child. He asks me to find that overall the decision is not safe and asked me to remit the matter back to the First-tier Tribunal for rehearing.

10. In response Mr Bates accepts paragraph 27 of the decision so far as it relates to a finding on travel documents is an error but submits that that is overcome by the judge pointing out at paragraph 28 that he found other factors to be relevant. He submits it was open to the judge to conclude that the names refer to paragraph 29 and 30 such that he was entitled to conclude that the names did not indicate they were one and the same person and submits that all the Appellant is doing is merely disagreeing and that the judge had given clear reasons for accepting the main difference at those paragraphs. Further he contends the documents regarding the Appellant's daughter's death went to issues of credibility and that the judge was entitled to reach the conclusion that the documents were not reliable to rely upon in the round and that the judge made findings overall that he was entitled to with regard to the Appellant's husband's mental health albeit that he acknowledges that this is in contradiction to the view expressed by the judge granting permission.
11. Briefly turning to the issue of sufficiency of protection he points out that the finding on credibility has been rejected and that generally when looked at in the round the submissions made on behalf of the Appellant are mere disagreement. He asked me to find that there is no material error of law and to dismiss the appeal.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of

evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. In this case the First-tier Tribunal Judge made adverse credibility findings. A proper approach to credibility requires an assessment to the evidence and of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly, the consistency of the claim with external factors of the sort typically found in country guidance. I acknowledge it is theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility and in nearly every case external information against which the claim could be checked will be available.
15. The thrust of the submissions now made turn very largely on the view expressed by the Honourable Mr Justice Mitting in granting permission to appeal. It is the submission made by Mr Bates that there are no material errors of law, that the judge was entitled to reach the findings that he did and that all that is being put forward on the Appellant's behalf is mere disagreement with the original findings.
16. In granting permission to appeal the Honourable Mr Justice Mitting has set out detailed basis upon which he challenges those credibility findings. I am satisfied that those grounds justify the finding that there is a material error of law in that if they are looked at differently then a judge may well come to a different conclusion. I am not satisfied that they are as the judge describes perverse but they are ones that perhaps if looked at again may or may not lead a different judge to a different conclusion.
17. The case law is clear that generally Sikhs are discriminated against in Afghanistan and I accept the submission that the decision of sufficiency of protection is arguably an error because if there was no basis for rejecting the Appellant's claim that the Appellant and her family had nowhere to return to and as no finding has been made that the Appellant and her family could re-establish themselves back in Afghanistan then there is a material error which may well have bearing on the outcome of the appeal.
18. In such circumstances the correct approach is to find material errors of law, to set aside the decision of the First-tier Tribunal and to remit the matter back to the First-tier Tribunal for rehearing. It is however emphasised to the Appellant that this is not to say therefore on a rehearing of the matter and on consideration of the facts that another judge would ultimately come to a different conclusion to that of the original First-tier Tribunal Judge.

Notice of Decision

The decision of the First-tier Tribunal Judge contains material errors of law. The decision is set aside and the matter is remitted to the First-tier Tribunal for rehearing. The following directions are to apply:

- (1) That on the finding that there are material errors of law in the decision of the First-tier Tribunal Judge the decision is set aside and the matter remitted to the First-tier Tribunal sitting at Birmingham on the first available date 28 days hence with an ELH of three hours.
- (2) That no findings of fact are to stand.
- (3) That the appeal is to be heard before any First-tier Tribunal Judge other than Immigration Judge Graham.
- (4) That there be leave to either party to file and serve up to date subjective and objective evidence upon which they intend to rely. Such evidence to be served on the other party at least fourteen days prior to the restored hearing date.
- (5) That a Punjabi interpreter do attend the restored hearing.

The First-tier Tribunal Judge made an order regarding anonymity. No application is made by either party to vary that order and that order will continue.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed D N Harris

Date: 28th June 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed D N Harris

Date

Deputy Upper Tribunal Judge D N Harris