



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02834/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 24th April 2017

Decision & Reasons Promulgated
On 16th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HARPREET SINGH CHOPRA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra (Solicitor)
For the Respondent: Mr D Mills (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O'Hagan, promulgated on 8th November 2016, following a hearing at Birmingham Sheldon Court on 3rd October 2016. 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 male, a citizen of Afghanistan, who was born on 12th December 1982. He is 34 years of age. He appealed against the decision of the Respondent Secretary of State dated 11th March 2016, refusing his claim for asylum and humanitarian protection and giving directions for his removal to Afghanistan.

The Appellant's Claim

3. The Appellant's claim is that he is a Sikh who last lived in Kabul, where he was married to Kuljit Kaur in 2006, and that they have a daughter. The daughter has a disability. The Appellant ran a shop in Afghanistan. In June or July 2015 the Appellant was targeted by the Mujahedeen in his shop. Three or four members of Mujahedeen went there and demanded that he pay money and also convert to Islam. He paid the money but refused to convert. The Appellant was then visited at his shop on ten occasions and some three or four times at his home. The men gave the Appellant ten days to reconsider his refusal to convert and threatened to take his wife and daughter if he did not. The Appellant's father arranged an agent, to whom he gave his shop, and arranged for the Appellant's departure from Afghanistan. The Appellant left Afghanistan on 6th September 2015, went to Iran, and from there came to the United Kingdom through various unknown countries (see paragraphs 4 to 5 of the determination).

The Judge's Findings

4. The judge observed (at paragraph 7) how it was that the Respondent Secretary of State had fundamentally accepted the basis of the Appellant's claim. This gave rise to some difficulty of risk assessment that was eventually arrived at. The judge made this clear when he stated that,

“Even more difficult to understand is that the Respondent, having accepted the factual matters relied upon, and having also accepted that the Appellant had a genuine and subjective fear, commented that his credibility was damaged by virtue of the matters set out in Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004.” (Paragraph 7).

5. Against this background, the judge observed that, although the claims made by the Appellant are not inherently implausible, this did not mean that these things actually did happen, because fabricated claims are usually shrouded in truth, and that it fell to the Tribunal to make findings with respect to what was alleged (see paragraph 28). On that basis, the judge went on to say that “there are significant concerns with the evidence given by the Appellant”. This included “the issue of his brothers” and whether there was one brother or more than one brother. (Paragraph 30). The judge observed that there were “other peculiarities in the evidence” such as whether the Appellant lived with his parents in Afghanistan or not (paragraph 31). There was also the issue of the “extent of the rasp and experience by the Appellant in Afghanistan” because, “it was not clear to me why, if the Appellant was being subjected to threats and ill-treatment because of his religion, this did not extend to the rest of his family” (paragraph 32).

6. After giving due consideration to the country guidance case of **TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595**, the judge went on to dismiss the appeal.

Grounds of Application

7. The grounds of application state that the judge's determination fell into error. It first concluded that the Appellant's account was not credible when, in fact, the refusal letter had stated that it was credible (see paragraphs 27 to 30). Second, it failed to consider and apply the relevant country guidance decision in **TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595**. Third, and by implication, it failed to apply the conclusions arrived at in that country guidance case to the facts of the Appellant's case.
8. On 29th November 2016, permission to appeal was given on the following basis. First, the judge found that the Respondent's concession regarding the Appellant's claimed adverse encounter with the Mujahedeen was unclear (at paragraph 7), whereas from reading the refusal letter as a whole (and in particular paragraphs 27 to 30) it is clear that the Respondent conceded that this element of the Appellant's account was accepted (see also paragraph 36). Indeed, at the hearing itself it was conceded by the Respondent through the Presenting Officer (as is referred to at paragraph 17 of the determination). Yet, the judge then appears to reject the appeal on the basis that the Appellant lacked credibility, and that the entirety of his evidence was suspect when taken as a whole (see paragraphs 29 to 33). This amounted to a "blanket" rejection of the Appellant's claim which was not sustainable.
9. On 10th February 2017, a Rule 24 response was entered by the Respondent to the effect that the Appellant had relied on new evidence at the hearing and was cross-examined on that basis and this the judge rejected, such that it was entirely open to him to come to the conclusions as to the Appellant's credibility as he did.

Submissions

10. At the hearing before me on 24th April 2017, Mr Samra, appearing on behalf of the Appellant, made the following submissions. First, the crux of the Appellant's claim is set out at paragraph 27 of the refusal letter, when it is noted how the Appellant claimed to have problems with the Mujahedeen in 2015. This recital ends with the statement that, "you continued to refuse their requests and on one occasion were told that you had ten days to reconsider" (paragraph 27). Mr Samra submitted that whereas the claim as a whole was accepted, namely, that the Appellant was subject to ill-treatment and persecution from the Mujahedeen in 2015, what was not accepted was that the Appellant was given ten days to reconsider his position, and this was clear from what is said by way of a follow up at paragraph 28. Yet, the judge does not deal with this question at all and makes no findings in relation to whether the Appellant was given ten days to reconsider or not. Instead, the judge goes on to directly challenge exactly that which has been accepted by the Respondent in her refusal letter, namely, that the Appellant was subject to problems with the Mujahedeen in 2015.

11. Second, at the hearing before Judge O'Hagan, the Presenting Officer began by saying that he accepted what was said in the refusal letter (see paragraph 17). The judge records that, "in his closing submissions," the Presenting Officer had 'sought to rely on the refusal letter dated 11th March 2016" (paragraph 17). If that was the case, then it was implicitly accepted that the Appellant did have problems with Mujahedeen in 2015 as conceded in the refusal letter.
12. Third, nowhere in the refusal letter does the judge then go on to make a finding as to whether the Appellant was given ten days to reconsider. Yet, this was the only basis upon which the rest of the refusal letter could be impugned. Otherwise all else was accepted.
13. Fourth, if the core of the Appellant's claim was already accepted then the only issue is whether the ten days reconsideration period changes anything, and if it does not, then the appeal should have been allowed.
14. Fifth, instead, however, without making a finding on the issue of the ten day reconsideration period, the judge then goes on to make adverse findings of fact against the Appellant, basing such findings on matters that are wholly extraneous to the essential claim before the Tribunal. This includes matters such as whether the Appellant had one brother or two brothers or, why it was that the Appellant himself was harassed, but no other member of his family was.
15. Finally, all of this leads to it being easily overlooked that the essential issue before the Tribunal was whether the Appellant was being required to convert to Islam by the Mujahedeen, because if that was the case, and it was accepted as being the case in the refusal letter, then the Appellant was a person who came squarely within the country guidance case of **TG and Others**, and his appeal should have been allowed.
16. For his part, Mr Mills submitted that the Respondent Secretary of State is entitled to depart from the contents of the refusal letter, otherwise there would be no point in cross-examining the witnesses, and it is in response to the answers given in cross-examination, that the judge had decided in the way that he had. Second, the Presenting Officer at paragraph 17 had accepted that, whereas he relied upon the refusal letter, certain core aspects of the claim were not accepted. Third, the only objection that the Appellant can have to such a way of proceeding at a hearing is if there is "procedural unfairness" to the Appellant, but having been given the opportunity to test the evidence, and to examine the witnesses-in-chief, it cannot be said that there was any procedural unfairness to the Appellant. Finally, the judge had plainly directed himself appropriately when he had made it clear that the Appellant's claim was not "inherently implausible" but that did not mean to say that everything had to be accepted.
17. In reply, Mr Samra submitted that, once it was accepted that the Appellant's claim was credible, in that he had been harassed by the Mujahedeen, then the appeal had to be allowed because the country guidance case of **TG and Others** made it clear that, "although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection ..." (see sub-

paragraph (iv)). If the Appellant, who came from Kabul, could not return back to the capital city, then what the country guidance case made clear was that he could not find internal relocation in a city like Jalalabad either, because, whatever the willingness of the Authorities to help, at a local level it had not been established that the police are able to provide such protection.

Error of Law

18. 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.
19. First, this is a case where the Respondent Secretary of State considered the Appellant's claim under the heading "your issues with the Mujahedeen" (see paragraph 27). The Respondent accepted the Appellant had problems with the Mujahedeen in 2015. She did not accept that the Appellant was given ten days to reconsider his position (paragraph 28). Thereafter, consideration was given to the human rights situation in Afghanistan. It was then concluded that, "it is considered that your account is consistent with the background information about societal discrimination. Therefore, this element of your claim is accepted to the lower standard of proof" (paragraph 30). If this was not clear, what followed thereafter left no doubt whatsoever in the Secretary of State's mind that the Appellant, on the lower standard of proof applicable to asylum cases, succeeded in his claim.
20. At paragraph 36 of the determination, it is stated that three aspects of the Appellant's claim are accepted. First, his nationality and identity. Second, the fact that he is a Sikh. Third, "your issues with the Mujahedeen". (Paragraph 36). The Respondent then goes on to say that,

"It is accepted that you have demonstrated a genuine and subjective fear on return to Kabul. However, for the reasons given below it is considered that your genuine and subjective fear is not objectively well-founded because there is sufficient protection provided by the Authorities in Afghanistan and there is an area of Afghanistan to which you could reasonably relocate ..." (paragraph 37).
21. Put thus, the issue as to whether the Appellant was given ten days to reconsider his position, pales into insignificance. Whether or not it was true, the Respondent had accepted that the Appellant had a subjective fear of, a well-founded fear of persecution because his story about being required to convert to Islam by the Mujahedeen was accepted.
22. The judge, however, while setting out the issue about the Appellant being given ten days to reconsider (see paragraph 4 and see paragraph 7) does not then make any findings in relation to this issue, which he had to if he was to reject the Appellant's claim in relation to what had already been accepted by the Respondent Secretary of State.

23. Second, and no less importantly, in relation to those matters with respect to which the judge does find the Appellant's credibility to be impugned, it is highly arguable that these matters were peripheral to say the least, if not entirely irrelevant. For example, whether or not the Appellant had one or two brothers was irrelevant to the question of whether the Mujahedeen had come to his shop no less than some ten times, and hence to his house no less than some four or five times, requiring him to convert to Islam. This is a matter which the Respondent had accepted. In the same way, "the nature and extent of the experience by the Appellant" (at paragraph 32) is irrelevant, if it is to be said that, "it was not clear to me why, if the Appellant was being subjected to threats and ill-treatment because of his religion, this did not extend to the rest of his family". This is because the Appellant, as a male member of the family, was being approached in his shop. He was then being approached at home. As the head of the family, the Mujahedeen may well have taken the view (although this can only be speculated upon), that if they were to convert the head of the household, then the others in the family would follow suit. Whatever the reason, it is irrelevant to the question of the Appellant having been visited at his shop, being required to convert, and then being given ten days to reconsider his position.
24. Finally, there is the question of the application of the country guidance case of **TG and Others**. The judge does cite this country guidance case (at paragraph 34) but does not then apply it in its essence to the facts of the Appellant's case. That case makes it clear that,

"Whereas members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment, the consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact sensitive".
25. Such an individual may face difficulties, including threats, extortion, and seizure of land. On the facts of this case, the Appellant already faced threats, and this was accepted by the Respondent in the refusal letter. The question then is whether the Appellant may seek relocation. He cannot return to Kabul because the capital city, to which most returnees are relocated, is one where he has already suffered ill-treatment. The question then is whether he may go to another part of Afghanistan.
26. The case of **TG** makes it clear that it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection. There is no evidence that the Appellant has relatives in any other part of the country. In addition, the case of **TG** makes clear that those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.
27. Given that the Appellant only has to satisfy the standard of proof at the lower level, such as to show that there is a reasonable likelihood of ill-treatment, I find that he has met that standard and the appeal must be allowed.

Notice of Decision

28. 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.
29. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

12th May 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 fee award of the entire amount that has been paid or is payable.

Signed

Dated

Deputy Upper Tribunal Judge Juss

12th May 2017