



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12096/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 1 February 2018

Decision & Reason Promulgated
On 5 February 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

TS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel

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

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as TS.

Introduction

1. The appellant is a Sikh and a citizen of Afghanistan. He arrived in the United Kingdom ('UK') with his wife and son (who was born in January 2012 and shall be referred to as 'A' in this decision), and claimed asylum in February 2014.

2. It is undisputed that the appellant's case has been substantially narrowed and turns entirely upon a single issue: A's ability to access education in Afghanistan. If A is unable to do so, then the parties agree that in accordance with the guidance and reasoning in TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595, and the updated country background evidence on the issue, that this will constitute such serious discrimination, which together with the more general difficult conditions for Sikh children, is such that A faces a real risk of persecution. There is also no dispute that if A is entitled to refugee status on this basis, his parents should also benefit from such status in line with him, and the appellant's appeal should be allowed.

Procedural history

3. In a decision dated 5 September 2016, after a hearing on 22 August 2016, the First-tier Tribunal dismissed the appellant's appeal on asylum and humanitarian protection grounds.
4. In a decision dated 23 May 2017 I found that the First-tier Tribunal erred in law in its approach to the education of A in Afghanistan and the decision should be remade by me. At a resumed hearing on 21 September 2017 both parties confirmed that the only issue in dispute was A's ability to access education in Afghanistan. The parties also agreed that in order to properly address this issue, consideration must be given to whether the family will be able to afford the fees for a private primary school in Afghanistan (said to amount to \$40-190 a month), and that much will turn upon the evidence provided by the appellant and his wife. However, no interpreter was booked. I therefore adjourned the appeal to enable the appellant to submit further evidence addressing the affordability issue.

Hearing

5. At the beginning of the hearing both representatives agreed that the issue in dispute remained a narrow one. Given the changes in the country background evidence relevant to education for Sikh children in Kabul, it was also agreed the sole issue for me to decide is whether the only viable education available to A in Kabul (and it was not suggested the family should go to another part of Afghanistan) at a private primary school would be accessible, given the resources and potential income of his parents and wider family members.

Evidence

6. Given the two adjournments and the piecemeal manner in which further evidence was submitted, the evidence available to me was in a state of disarray. It was unclear what evidence continued to be

relied upon. At the beginning of the hearing I invited both representatives to make a list of the country background reports they each relied upon. This evidence was clarified, albeit both representatives continued to agree that there remained one narrow issue in dispute.

7. Mr Bates clarified that the only country background material he relied upon is a response to an information request dated 23 June 2017 concerning education for Sikh children and the evidence summarised in the decision letter. Mr Bates however acknowledged that the information request only referred to a school in Nangahar and a school in Ghazni, and this information was not particularly relevant as it was accepted that the appellant and his family would be returned to Kabul.
8. Mr Brown submitted a short list of country background reports he relied upon, in addition to Dr Giustozzi's country expert report dated 21 June 2017.
9. I then heard evidence from the appellant and his wife. They both confirmed the witness statements prepared specifically for the hearing before me. They re-emphasised that they have no family left in Kabul and would not be able to afford private school fees. Mr Bates briefly cross-examined the appellant and his wife about their family links in Afghanistan, the families' businesses and employment prospects in Afghanistan and their access to funds to pay for A's education.
10. During the course of cross-examination of the appellant, Mr Bates explained that he wished to check 'the system' in order to clarify the appellant's claim that his father is an asylum seeker in the UK, who sold his business in Kabul. I pointed out that the appellant's statement is dated 28 September 2017 and was served back in October 2017. In the circumstances, it was simply too late to seek to rely on further evidence not currently available to the Tribunal.

Submissions

11. Mr Bates relied upon the decision letter. He however acknowledged that the issues had substantially narrowed and the only real question was the ability to afford school fees for A. He asked me to note that the appellant and his wife have a strong incentive to paint a picture of an absence of financial support and invited me to find that there is insufficient cogent evidence to support the claim that the family business has been sold or could not be restarted.
12. Mr Bates reminded me that there was no evidence from the appellant's father or the family business and the appellant could

have provided this given that his father is in the UK as an asylum seeker. Although the appellant claimed that various family members were in the UK but elderly and receipt of pensions, he provided no documentary evidence to support this. He therefore asked me to find that important evidence is reasonably available and adverse inferences should be drawn from the failure to adduce it.

13. Mr Brown acknowledged the finding at [36] of the First-tier Tribunal decision but invited me to find that there is now sufficient evidence that family members that were in Afghanistan at the time in 2016, are now in the UK. He reminded me that the appellant's account of his entire family leaving Afghanistan is consistent with a familiar exodus of Sikhs from Afghanistan, as set out in the country background evidence.
14. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

Country background evidence

15. The country background evidence paints a consistently bleak picture of Afghanistan generally but particularly for children in Kabul – see EASO's report on children in Kabul dated 23 August 2017. The harassment and discrimination experienced by Sikhs in Afghanistan, including Sikh children is set out in detail in TG.
16. The headnote of TG provides the following guidance (my emphasis):

"A consideration of whether an individual member of the Sikh and Hindu communities is at real risk of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following...d) access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them."
17. TG also said this regarding children (my emphasis):

“94. In relation to Sikh and Hindu children a number of areas of concern arise from the evidence we have been asked to consider. The evidence indicates that there have been occasions of Hindu and Sikh families not sending their children to school in Afghanistan, especially girls, as a result of the fear of harassment and ill-treatment which is corroborated by the evidence. Within the state system where children of all denominations are taught there is evidence of requirements to learn and recite the Koran, discrimination, and lack of adequate education facilities. In areas where numbers warrant, such as Kabul, special schools have been set up to provide education for children by Sikh teachers and some children are taught within the Gurdwara as a result. Such education is only provided however up to and including primary level with the requirement that at secondary level children will be taught

within the state system where they become exposed to problems referred to in the evidence unless an individual's family has the means to pay them to be educated privately. If credible evidence is provided of a real risk of such ill-treatment and harassment to a child on return sufficient to prevent them receiving a proper education, which is shown to be a fundamental element of their personal identity, that they wish to pursue, rather than a child not being further educated as a result of the traditional belief that they will continue within a family business and therefore do not require to be further educated or for some other reason, then this may amount to such serious discrimination either on its own or cumulatively with other forms of discrimination such as to cross the threshold of persecution. However, this is a fact sensitive issue that must be considered in each case.

95. In relation to children, the UNHCR in the 2013 report identify a number of potential areas of concern at pages 57-62 including child-specific forms of persecution, including under-age recruitment, child trafficking, bonded or hazardous child labour, domestic violence against children, forced and/or underage marriage, child prostitution and child pornography, and the systematic denial of education. The position of the UNHCR in relation to children is summarised as being:

'Depending on the particular circumstances of the case, UNHCR considers that children falling under the following categories may be in need of international refugee protection:

- a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;
- b) Children from social milieus where bonded or hazardous child labour is practised;
- c) Victims of violence against children, including sexual and gender-based violence, as well as children from social milieus where such violence is practised; and
- d) School-age children, particularly girls. Depending on the individual circumstances of the case, they may be in need of international protection on the ground of their membership of a particular social group, their religion and/or their (imputed) political opinion."

18. In his 2017 report Dr Giustozzi described the harassment of young Hindus and Sikhs in the schools to have continued unabated. He is not a lone voice in making this statement. The other reports referred to by Mr Brown entirely support this such as the International Religious Freedom Report on Afghanistan for 2015.
19. Dr Giustozzi's report details specific research carried out by his researcher in Kabul on 20 June 2017. She visited the Sikh community in Kart-e Parwan (the area in Kabul that most Sikhs live) and made enquiries about the educational opportunities available to Sikh children at the time. The information reported back was that Sikhs had stopped sending their children to state schools because of the levels of harassment and absence of sufficient protection but those who could afford it sent their children to private schools. Dr Giustozzi described these schools as guaranteeing parents that children would not be harassed. Fees for such schools vary between

\$40-\$190 per month. Dr Giustozzi however concluded that as the average salary of a government official is \$150 per month, affordability is an issue of concern.

20. The reference to the 'special schools' available in Kabul in TG must now be seen in light of further evidence post-dating that decision. Sikhs continue to leave Kabul because of discrimination and harassment. The International Religious Freedom Report on Afghanistan for 2017 reported that in December 2016, the nongovernmental organization National Council of Hindus and Sikhs (NCHS) reported that there were fewer than 200 families, or about 900 individuals, from these two communities remaining in Afghanistan.
21. Discrimination and harassment toward Sikh children in schools has got to such a level that even primary school age children are no longer sent to the state 'special schools' and the only viable schooling option for them is attendance at private schools. Mr Bates acknowledged that this was a reasonable inference to draw from the updated evidence, hence the concession that the sole issue in dispute is that of affordability.
22. There are two references to schooling in Kabul in the refusal letter. At [16] the US IRF 2011 is referred to as the source for there being schools for Sikh children in Ghazni and Helmand and one in Kabul that teaches a few classes. This evidence has been overtaken by events and is entirely out of date. At [19] the refusal letter refers to the US State Department report on International Religious Freedom for 2011, which outlines the impact of abuse and discrimination on the availability of education for Sikhs. It is not disputed that this continues to be a significant concern.
23. The options for the education of Sikh children have narrowed since TG. The special primary schools that were set up have dwindled because of the continued decline in the Sikh population and the loss of economic independence. Children taught within the state system are at risk of exposure of serious harm and discrimination. The only option is for children to attend special private schools.

Discussion

24. It is important to take into account as a starting point, the First-tier Tribunal's factual findings. Although the First-tier Tribunal accepted that the appellant and his family experienced harassment for reasons relating to their religion, it did not accept the credibility of the claim that A was subjected to an attempted kidnapping or that family members were shot. At the time of the First-tier Tribunal hearing in August 2016 the appellant's father remained in Afghanistan and his

business had not yet been sold. It is in this context that the First-tier Tribunal found that some family members remained.

25. Over 18 months has elapsed since the First-tier Tribunal hearing. The appellant and his wife have provided updated evidence regarding the circumstances of family members, and have been cross-examined regarding this. Their evidence was entirely consistent with one another as well as consistent with the country background information that Sikhs, face a greater degree of harassment and discrimination such that their community continues to find it very difficult to reside in Afghanistan and their numbers continue to dwindle.
26. Having heard oral evidence from the appellant and his wife, I accept their description of the circumstances of their family members. I accept that they have no immediate family members in Afghanistan. They both gave detailed accounts of the whereabouts of their family members. I accept that the appellant's parents arrived in the UK with his sister in January 2017, and have claimed asylum. One of his brothers is an asylum seeker in Leeds and the other has gone missing in Afghanistan. Unfortunately, this is not unusual given the country conditions.
27. I accept that it is reasonably likely that the appellant's father sold the family business selling clothes in Kabul in order to fund the trip from Afghanistan to the UK and they are now entirely reliant upon the support they receive as asylum seekers. I note Mr Bates' concern that no attempt has been made to proactively rely upon evidence regarding the sale of the business in this appeal. The appellant explained that the evidence in support of his father's departure from Afghanistan, including property sale documents, was submitted as part of his father's asylum claim, and he thought that the SSHD would be able to access this information if it was required. In my view the appellant was reasonably entitled to believe that the SSHD would have access to that information. However, the appellant has had the benefit of professional advisors who could have sought this information. I acknowledge that the burden of proof is upon the appellant, albeit to the lower standard of proof. When all the evidence is considered in the round I am satisfied that the appellant's father sold any assets held by the family in Afghanistan in order to fund the long journey to the UK for himself, his wife and their daughter. I note that in his asylum interview the appellant explained that his parents had not left Afghanistan with him because of a shortage of funds. It is reasonably likely that the family did not have generous savings or assets, and the appellant's father had to work for a few more years to generate the savings to fund the journey for three people.

28. I accept that the appellant has an aunt in London and his wife's parents have been recognised as refugees. I accept that they rely upon a state pension and would not be in a position to assist in the funding of A's education. It would have been more helpful if the appellant had obtained confirmation of their income for this appeal. However, I am prepared to accept the appellant's evidence as it is supported by the evidence given by his wife.
29. I therefore find that the appellant does not have any family members in a position to financially support A's education and any family business in Afghanistan ceased when the appellant's father left in January 2017.
30. I now turn to Mr Bates' alternative submission that the appellant can simply re-start his father's business or a similar business. I do not consider this to have any realistic prospects given the prevailing attitude to Sikhs and Sikh businesses in Afghanistan. It is one thing to have continued a business in existence for the entirety of the appellant's life. It is quite another to restart a business after years of absence from Afghanistan without any support from family members and in the face of generalised harassment and discrimination. Reliance cannot be reasonably placed upon the Sikh community as so many have left Kabul and the numbers remaining are so few. I accept that the appellant's pessimistic outlook on the chances of restarting a business in Kabul is well-founded given the prevailing attitude toward Sikhs and the substantial decrease in their numbers.
31. The appellant has consistently been candid about the business he worked in with his father, as set out in his asylum interview. He worked with his father for his whole adult life until he left Afghanistan. He knows nothing else. He is unlikely to be able to re-start a business or secure any meaningful employment in Kabul given the time he has spent away from Kabul (some three years), the lack of family and community support and the prevailing discrimination toward Sikhs.
32. Mr Bates did not refer to the resettlement funds that the appellant may receive if he returns to Afghanistan and was content to rest his case on the appellant's ability to pay the school fees with help from family members or from the appellant's own business activities in Kabul.

Conclusions

33. For the avoidance of doubt, I accept the appellant's evidence that A has already started to benefit from schooling in the UK, and that it is particularly important that he continues to attend school to assist him with his anxieties. This is a case in which education has been shown to be a fundamental element of A's personal identity and something that his parents proactively wish him to pursue.
34. When all the evidence is considered in the round I accept the appellant's claim that he will not be able to afford the fees for private school for A because he will be unable to rely upon financial support from family members and will be unable to generate a meaningful income in Afghanistan.
35. I accept that upon return to Afghanistan, A would not be able to attend state schools because of the level and extent of discrimination against Sikh children.
36. I am satisfied that credible evidence has been provided of a real risk of ill-treatment and harassment to A on return sufficient to prevent him from receiving a proper education in a state school and his family will be unable to afford a private school. A's education has been demonstrated to be a fundamental element of his personal identity, that he and his parents wish to pursue. The serious discrimination faced by A, together with the more generalised discrimination toward Sikhs is such as to cross the threshold of persecution.

Decision

37. I re-make the decision by allowing the appeal.

Signed:
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
2 February 2018