



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02841/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 30th January 2018

Decision & Reasons Promulgated
On 6th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR LS
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J. Weatherall, Counsel, instructed by Legal Justice Solicitors

For the Respondent: Ms. Petersen, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant made a claim for protection with his wife and two children as dependants. The claim was he is from Kabul, Afghanistan and to return him there would place him at risk. The risk of persecution relates to his Sikh religion.
2. The appellant lived in Kabul and ran a clothing shop. He claimed a stone with a message attached was thrown at his house telling

him to change his religion. He was subsequently threatened in person. He reported this to the police but believed they were taking no action. Finally, he was kidnapped by men he believed were Taliban. They said that if he did not convert to Islam he would be killed. He managed to escape. The respondent noted the men spoke Punjabi which was not consistent with the country information. His account of being able to escape was considered implausible.

3. It was accepted he is an Afghan Sikh but his claim of past problems with the Taliban was not. Reference was made to the country guidance decision of TG and others Afghan Sikhs persecuted CG [2015] UKUT 595 with the conclusion that mistreatment of Sikhs did not reach the threshold of persecution. The current country situation would not breach article 15 (c) of the Qualification Directive. Taking his claim at its highest the respondent felt there would be sufficiency of protection and he had the option of relocating, for instance, to Jalalabad.

The First tier Tribunal

4. His appeal was heard before Judge of the First-tier Tribunal Hands at North Shields on 21 April 2017. In a decision promulgated on 8 May 2017 it was dismissed.
5. The judge did not find the appellant credible. The judge found his account to be generally internally consistent but not plausible and referred to the fact that he had been able to continue a day-by-day existence for many years. The judge referred to the appellant's account of his life and that of his family in Afghanistan and concluded he had not provided sufficient evidence to establish discrimination or harassment, never mind persecution. The judge concluded that he could return to Kabul and that a partner had continued to run the business in his absence and it remained a source of income for him. Given the claim he had signed his home over to the agent the judge concluded that with the income from his business he could rent accommodation. In the alternative, if he had not truly signed over his home then it will be waiting for him on return. The judge found he only needed temporary support from the Gurdwara on return and his children would be able to access education. The judge did accept he could not relocate to Jalalabad.

Permission to appeal

6. The grounds contend that the decision does not reflect the country guidance caselaw or the background information. Reference was made to an early warning system he had described whereby if the Taleban approached his business premises other shopkeepers would give an indication and he

would shut up shop. It also claimed his children did not go to school and they only went to their place of worship infrequently because of the risk. It was argued that the judge's findings were against the weight of the evidence.

7. Permission to appeal was granted on the basis of the grounds advanced. In a rule 24 response the respondent submits that the judge was entitled to find the appellant was not credible and had given adequate reasons at paragraph 38 and 39 and had considered the country information in arriving at the conclusion that the appellant and his family could return.

The Upper Tribunal

8. At hearing, Ms Weatherall relied upon the leave application. She also argued that the judge did not adequately consider the best interests of the children. In response, Ms. Petersen relied upon the rule 24 response. She pointed out that the grounds did not indicate any real challenge to the negative credibility findings made. The judge had referred to the availability of private schools for the children. She submitted the grounds amounted to simply a disagreement with the outcome.

Consideration

9. The judge did not find the appellant credible and the grounds do not specifically challenge this conclusion. However, a disagreement can be inferred as well as an argument based on past events that he would face persecution if returned. There is reference to the early warning system in place in the market and the claim that the family did not leave the house often or go to the Gurdwara out of fear. A separate argument was that the judge did not adequately consider the best interests of his children aged nearly 11 and 7.
10. At para 27 the judge sets out a summary of the country information presented. This refers to the declining Sikh population because of how they were treated. Their reduced presence leaves those remaining even more vulnerable. There was mention of institutional discrimination. Reference was also made to the country guidance decision of AK (Article 15 (c) Afghanistan CG [2012] UKUT 00163 and the 1.
11. The judge then refers to the appellant's ability to go about his work and daily living in the past. The judge then finds the account of his being kidnapped and escaping implausible. I find the judge placed undue weight on the fact the appellant had until then lived his whole life in Kabul; was able to run a business there and had Muslim friends and was able to go about on a day-by-day basis. In particular, the judge questioned his ability to

loosen his bonds; the guard leaving the door unlocked and then being able to obtain a lift in a car to get away.

12. An assessment of credibility is difficult and fraught with dangers for a judge. KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC) set out some of the problems which can arise. At para 28 of the decision the Upper Tribunal states:

“... in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 case at [28]-[30] Neuberger LJ stated:

"28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability.'

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear

implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

13. The Upper Tribunal said plausibility is not a concept with clear edges. Not only may there be degrees of implausibility, but sometimes an aspect of an account that may be implausible in one respect may be plausible in another. The country evidence does confirm the difficulties a Sikh in Kabul would face.
14. At paragraph 31(f) the judge sets out why the account of kidnapping was considered implausible. The judge felt it was improbable he would not have been secured more carefully or that the guard would be absent or the door unlocked. His claim of being able to then get a lift in a car was seen as a further implausibility. The judge also in the preceding paragraph placed weighed upon the appellant in oral evidence saying he was going to work when he was kidnapped whereas in his statement and at interview he said it was whilst he was out shopping before going to work. These do not appear particularly strong points.
15. Whilst acknowledging the difficult task faced by the judge in deciding the truth of the claim I am influenced by the known difficult situation of Sikhs in Kabul. The assessment of credibility is specific to the case presented and no hard and fast rules apply. One relevant consideration is the country information. It is clear that Sikhs have been targeted. Traditionally they have been successful business people which can invoke envy in others. In Kabul they are particularly vulnerable. Intolerant bodies such as the Taleban would naturally target them. It does not follow that the fact the appellant lived in Kabul all his life and had a business that he was free from danger or that his failure to leave earlier is inconsistent with his claim.
16. The judge also refers to the fact the appellant did not claim protection in Pakistan or in other countries that he passed through. These are relevant factors in assessing credibility but in themselves are not determinative. The judge has accepted the appellant was generally consistent in his account but rejected his claim on plausibility grounds. The plausibility will be inevitably tied up with what is known about events in the country.
17. TG and others Afghan Sikhs persecuted CG [2015] UKUT 595 referred to relevant considerations in assessing the risk at section iii of the head note. This included consideration of the individual's financial circumstances and ability to obtain basic accommodation. This was in the context that Muslims were generally unlikely to employ a Sikh. A Sikh may face difficulties including threats, extortion, and acts of violence in pursuing their remaining traditional pursuit, that of a shopkeeper / trader. The

traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support. Regard was to be had to the level of religious devotion and the practical accessibility to places of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats whilst accessing the Gurdwara. It was also necessary to consider access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.

18. The judge has considered these factors at paragraph 34 onwards but has not set them out in any great detail. The judge also appears to be assuming at paragraph 33 that the appellant's partner will continue with the business in his absence and provide the appellant with an income.
19. I also find the judge has only given limited consideration to the situation of the appellant's children. At paragraph 35 the judge refers to insufficient evidence to show the appellant could not send his children to school in Kabul. However, the appellant's account was they stayed at home because of the danger in the country and the family's wish to keep a low profile.

Conclusion

20. Having looked at the decision as a whole and the country information about the treatment of Sikhs in Kabul I find the judge materially erred for the reasons given in rejecting the appellant's claim on all grounds. In particular, I have concerns about rejecting the claim on the grounds of plausibility. The judge appears to have placed too much weight upon the fact the appellant was able to live in Kabul all his life until he left. I also find there has been insufficient consideration of the best interests of his children. Finally, I am conscious that a new country guidance decision is pending which will clarify the risks for the general populace in terms of the 15 (c) risk in Kabul and the feasibility of the appellant's return. The assessment of the various risks is very much dependent upon the country information and this will provide up-to-date guidance.

Decision.

The decision of First-tier Tribunal Judge Hands dismissing the appeal on all grounds materially errs in law and cannot stand. I remit the matter back to the First-tier Tribunal for a de novo hearing before any judge except First-tier Tribunal Judge Hands.

F J Farrelly

Deputy Upper Tribunal Judge

19th March 2018