



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/07844/2017  
PA/07859/2017

**THE IMMIGRATION ACTS**

At: Field House, London  
On: 3<sup>rd</sup> July 2018

Decision & Reasons Promulgated  
On: 18<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

Jaggut Singh Gulati + 1  
Baljit Singh  
(no anonymity direction made)

Respondents

For the Appellant: Mr Clarke, Senior Home Office Presenting Officer  
For the Respondents: Mr Sidhu, Harbans Singh & Co

**DETERMINATION AND REASONS**

1. The Respondents are all nationals of Afghanistan. The first named Respondent is a male born in 1957. His dependent is his wife. The second named Respondent is their son, born in 1991. The appeals of all three were allowed on the 20<sup>th</sup> March 2018 by the First-tier Tribunal (Judge Bristow). The Secretary of State now has permission to appeal against those linked decisions.

2. Much of the factual matrix in these appeals was agreed. By her refusal letters dated the 4<sup>th</sup> August 2017 the Secretary of State accepted:

- i) That each Appellant is a national of Afghanistan who formerly lived in Karte Parwan district of Kabul [§19-20];
- ii) That each Appellant is Sikh [§22];
- iii) That the Second Appellant's claims of threats and violence at the hands of local Muslims in Karte Parwan, including having his teeth broken, his foot broken, his hair pulled, attempted kidnapping and being threatened with death, are accepted [§23-25 RFRL relating to Second Respondent]

3. Three matters of factual dispute arose from the Secretary of State's decisions. First, whether the family had been directly harassed by the Taliban [§28, RFRL relating to First Respondent]. Second, whether there was a real risk of future persecution [§33]. Third, whether there was a reasonable internal flight alternative [§34-49].

4. When the matter came before the First-tier Tribunal both men gave evidence. Having heard the evidence, and having had regard to the written material and the Secretary of State's position, the Tribunal found that the appellants (as they were at first instance) had discharged the burden of proof, not only in respect of the facts agreed by the Secretary of State, but also in respect of the following matters:

- i) The Taliban attended the family home and shop on a number of occasions to threaten and assault the family;
- ii) The First Respondent was threatened at gunpoint by members of the Taliban;
- iii) The Taliban extorted money from the family;
- iv) The First Respondent's wife was attacked and injured by the Taliban, resulting in an injury to her back for which she received treatment in Pakistan.

5. Having made those findings as to past persecution the Tribunal then says this:

"48. I have taken TG into account, in particular the guidance that some members of the Sikh community in Afghanistan suffer harassment at the hands of Muslim zealots but do not face a real risk of persecution or ill treatment. I have also reminded myself that in R (Iran) and others v Secretary of State for the Home Department [2005] EWCA Civ 982 it

was held that “any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for review or appeal on a point of law”.

49. I am satisfied that it does not apply in this case for the following reasons: (i) it is now over two years since the judgment was handed down; ii) the Appellants’ evidence is that the situation for Sikhs in Afghanistan has deteriorated; iii) the Appellants report serious incidents of violence which go beyond harassment; and iv) at least some of those incidents occurred after TG was handed down”

6. The Tribunal then directs itself to consider whether the removal of this family would place the United Kingdom in breach of its obligations under the Refugee Convention. At its paragraph 56 the Tribunal finds that there would be a real risk of persecution for reasons of religious belief. That finding is based on the fact that the family are practising Sikhs who have “suffered repeated incidents of serious violence at the hands of the Taliban and other Muslim zealots and those acts of violence have been accompanied by overt reference to their Sikh religion (or at least the fact that they are not Muslim)”.
7. At paragraph 57 the determination turns to deal with internal relocation. It finds, on the basis of the Secretary of State’s own policy guidance, that there is no sufficiency of protection in the country [at §58]. It concludes [at §59] that internal relocation would be unduly harsh for the following reasons i) the Sikh community have declined in number ii) Muslims are generally unlikely to employ non-Muslims or Sikhs, iii) the second Respondent does not speak Dari or Pushto which would act as a barrier to him supporting himself financially; the first Respondent and his wife are, respectively, aged 60 and 55.
8. The appeal was thereby allowed.
9. The Secretary of State for the Home Department was granted permission on two grounds. It is submitted that the reasons set out in the determination for departing from the country guidance were not good ones, and in the absence of such justification, departure from country guidance is an error of law. It is further submitted that in its consideration of internal flight the Tribunal failed to consider or address the detailed submissions made by the Secretary of State on this point, as set out at paragraphs 35-52 of the refusal letter.

### **Discussion and Findings**

10. It is clear from paragraphs 48 and 49 of the determination (set out above) that the First-tier Tribunal considered that it was departing from the country guidance given in TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC). Whether it actually was is less easy to see. I am unable to decipher

on what basis the present decision might be said to be incompatible with that country guidance.

11. I consider first the matter of past persecution. Mr Clarke was unable, despite his inclination to do so, to depart from the express concession in the refusal letter that the family had in Kabul been subjected to “threats and violence from the Muslim community”. Those threats included threats of kidnap and forced conversion of the women in the family, threats to kill, physical assault serious enough to cause injury such as broken bones, being robbed and held at gunpoint. By any measure these harms were serious enough to engage the Refugee Convention. Given that the Secretary of State had accepted that these harms occurred there can now be no complaint that the First-tier Tribunal also found those matters proven. Nor can there be any complaint that they were somehow incompatible with the guidance in TG. Although the Tribunal in TG found that the pervasive discrimination faced by Sikhs did not amount to persecution, and that Sikhs were not, by virtue of their faith alone, entitled to international protection, it did not rule out the possibility that individual Sikhs would be subject to persecution. On the contrary, it expressly accepts that to be the case and urges a fact-sensitive assessment in each appeal. The only point of departure between the Tribunal’s findings and the Respondent’s own was the issue of Taliban involvement in the persecution, again a matter that did not turn on any departure from the country guidance. There was credible country background evidence before the Tribunal to the effect that Taliban, or Taliban-like elements, were operating in Kabul, and there was no contradiction with the evidence in TG, which repeatedly linked the harassment of minority communities with extremist Islam.

12. I next consider the matter of current risk. The Tribunal’s reasoning is simply expressed. It accepts, at 56, that the family are Sikhs who have been subjected to repeated incidents of serious violence at the hands of the Taliban and other Muslim zealots. Mr Clarke objected to this reasoning on the grounds that it was not the holistic case-sensitive assessment required by TG. The Tribunal did not, for instance, ask itself whether there was a reasonable likelihood of the zealots in question continuing to operate in the family’s home area. The difficulty that the Secretary of State has in showing any material error here to be made out is the long-held principle of asylum law encapsulated in paragraph 339K of the Immigration Rules:

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

13. Asked to give an indication of a ‘good reason’ why the past persecution that the family have already been subjected to might not reoccur, Mr Clarke pointed to the recent evidence considered by the Tribunal in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) in respect of the risk posed by the Taliban in the city. This was not, of course a decision that was available to the First-tier Tribunal, since its publication post-dates the determination. Setting that aside, it is difficult to see how AS assists the Secretary of State in demonstrating that there has been a change in circumstances in Kabul. The Tribunal confirm that Taliban (or Taliban-like elements) continue to operate in the capital, and there are no findings to the effect that the position of minorities has improved. In these circumstances I do not accept that there can be any error in the Tribunal having accepted that there is a current risk to members of this family. Their recent experience of persecution was accepted, and absent a change in circumstances, applying the lower standard of proof, their claims were made out. Again, there was no need to depart from the country guidance: notwithstanding the Tribunal’s remarks at its §49 it is clear from the reasoning that it did not in fact do so.
14. The final issue is internal relocation. The Tribunal found it would not be reasonable, and gave reasons for doing so. The Secretary of State submits this justification was insufficient because it failed to conduct a comprehensive analysis of the relevant factors, in line with the guidance in TG. In fact, the reasoning given by the First-tier Tribunal very closely follows the guidance in TG:

*Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.*

And at (iii) those factors are:

*A 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. All the relevant circumstances must be considered but careful attention should be paid to the following:*

- a. women are particularly vulnerable in the absence of appropriate protection from a male member of the family;*
- b. likely financial circumstances and ability to access basic accommodation bearing in mind*

- *Muslims are generally unlikely to employ a member of the Sikh and Hindu communities*
  - *such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and / or 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;*
- c. *the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;*
- 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.*

15. Of the four matters identified, two - (a) and (d) - were not relevant, and the remaining two are expressly considered by the First-tier Tribunal, which noted that the family are practising Sikhs who are unlikely to find employment elsewhere. The impediment of being non-Muslim was exacerbated by the fact that the Respondent most likely to obtain employment - the young, male and able Second Respondent - has been hitherto closeted in the family home for fear of persecution and is therefore unable to speak Dari or Pushto to any degree of utility. It was the accepted evidence that their family business was lost, and that they had no living relatives remaining in Afghanistan to whom they could turn for support. There was therefore no departure from TG. On the contrary, the guidance was directly applied.

16. The Secretary of State's real complaint is that the First-tier Tribunal did not do enough to engage with the detailed submissions on this point in the refusal letter. The Secretary of State observes that there are Sikh communities remaining in Kandahar and Ghazni provinces and that there remain a number of Gurdwaras open (the information cited varies in estimating that there are either 11 or 7). The Gurdwara in Karte Parwan provides a monthly meal for worshippers and dozens of homeless Sikhs now occupy the rooms formerly used for storing food. Having recited this information the decision maker concludes "therefore based on the individual circumstances of your claim and the background information above, you have not shown that it would be unreasonable to expect you to return to Jalalabad, District 21 in Kabul and 1.5) (or another location) in Afghanistan" [I assume that sentence to contain a typing error and ignore the '1.5)']. With the greatest of respect to Mr Clarke's very well made submissions, I find it difficult to understand how the information cited led the decision-maker to the conclusion that there was a viable internal relocation alternative. At its highest the suggestion is that the family could take refuge in an unoccupied store-room of a

Gurdwara and hope to receive charity from the institution. Such speculation does not constitute evidence of a realistic or durable alternative to international protection. Nor does it accord with the guidance given in TG [at 117]:

“It is also important to bear in mind that partly because of their declining number, access to extended family / community / charity / religious support is generally very difficult for members of the Sikh and Hindu communities in Afghanistan. It is likely to be even more so upon relocation. As a consequence of this the practicability of settling elsewhere and the availability of meaningful support must be carefully considered. Those members of the Sikh or Hindu communities without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms. It follows that such individuals are unlikely to have a viable internal relocation alternative”.

17. For the reasons I have given I am not satisfied that the grounds of appeal are made out. The Secretary of State not unreasonably concluded from paragraphs 48 and 49 of the decision that the First-tier Tribunal had departed from the country guidance, but closer scrutiny reveals that this is not in fact the case. The Tribunal was perhaps under the misapprehension that the decision in TG precluded it from accepting that Sikhs such as these Respondents could face persecution in Afghanistan; as Mr Clarke accepts, that was not of course the case.

### **Decisions**

18. The decision of the First-tier Tribunal does not contain an error of law such that the decision must be set aside.
19. I was not asked to make an order for anonymity, and on the facts I see no reason to do so.



Upper Tribunal Judge Bruce  
5<sup>th</sup> July 2018