



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

Appeal Number: AA/02986/2015

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-Trent  
On 3<sup>rd</sup> February 2016**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> February 2016**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**PUPINDER SINGH**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Samba instructed by Harbans Singh & Co  
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant was granted permission to appeal the decision of the First-tier Tribunal dismissing his appeal on the grounds that it was arguable that the judge had misdirected himself in failing to depart from the country guidance case of *SL and others (Returning Sikhs and Hindus) Afghanistan CG* [2005] UKIAT 00137 in the light of *DSG & others (Afghan Sikhs: departure from CG) Afghanistan* [2013] UKUT 00148 (IAC) and background material before him.
2. This appeal first came before me on 5<sup>th</sup> October 2015. I adjourned consideration of the appeal because the Upper Tribunal was expecting to

promulgate a Country Guidance case in the near future on the issue of Sikhs in Afghanistan. I made directions that both parties were, within 14 days of the promulgation of the Country Guidance case, to file and serve written submissions within 14 days failing which I would reach a decision on the basis of the materials presently before me, the findings of fact of First-tier Tribunal Judge Pooler being retained. Both parties made written submissions.

3. For some unexplained reason the appeal was then listed for hearing before me today. Both parties appeared and agreed that they had made written submissions as directed by me. Neither party wished to call additional evidence, and both stated there was nothing further they wished to say. I have therefore proceeded to make my decision on the basis of the retained findings of fact and the written submissions.

#### Retained findings of fact

4. Judge Pooler heard the appeal on 21<sup>st</sup> July 2015. He heard oral evidence from the appellant and his wife and heard submissions from both representatives. His decision sets out the evidence he heard and he made the following findings, none of which have been resiled from or contested:
  - a) The Tribunal was in no position to make a finding as to the nationality or nationalities of the appellant's wife; this did not matter because her nationality was largely irrelevant to the issues before the Tribunal. The appellant's nationality as Afghan was accepted and the respondent proposed to remove him to Afghanistan;
  - b) The appellant did not seek to mislead the respondent in relation to his wife's nationality;
  - c) The appellant's account of intimidation and harassment chimes with the background evidence;
  - d) There is at least a serious possibility that the events described by the appellant occurred namely that in September 2013 his family received threats from a small group of men who were believed by the appellant not to represent the authorities but to include Taliban members.
  - e) The appellant's wife's family returned to Afghanistan in 2009 having fled to India in 2002 Or 2003 which appears to be consistent with the evidence before *SL and others (returning Sikhs and Hindus) Afghanistan CG* [2005] UKIAT 00137 that there had been a small improvement in the treatment of the Sikhs community in Afghanistan.
  - f) The appellant was well connected and wealthy enough to have owned property and a business in Kabul.
  - g) The appellant has demonstrated connections to the Sikh community in Jalalabad and had hospitality offered to him by the Sikh community in Jalalabad.
5. The detail of the events described by the appellant are as follows (as described by Judge Pooler):

“6. ... he was a Sikh from Kabul where he worked with his father in their clothing shop. He had attended school for two years but left because there were episodes of bullying of Sikh children. He said that Sikhs were targeted under the Mujahedin and described insults, assaults and demands for bribes. When the Taliban came to power, Sikhs were required to wear orange “marks” and they came under pressure to change their religion.

7. ... The appellant married in 2009 ...

8. The appellant described an incident which occurred a few days before he and his wife left Afghanistan in September 2013. Four men came to his family home. They said that they were from the authorities and had some boxes they wanted to store in the house. The men would not tell the appellant or his father what was in the boxes. The appellant's father said that he could not store the boxes as he had no space. He said that if they were from the government, they should show their identification and a written request to store the boxes. The men left, warning the appellant's father that he had made a mistake.

9. The men returned the following night with two others and knocked at the door. From an upstairs window, the appellant saw that the men were armed and had covered their faces. The two new men were bearded and dressed in traditional clothing and appeared to be Taliban.

10. The family fled from the rear of the house to the Gurdwara where they stayed for two days. They were advised to flee the country and with the help of the people in the Gurdwara they travelled to Jalalabad and stayed for a few days in the Gurdwara there. With the help of the Sikh elders in Jalalabad they found an agent to whom they signed over their house and gave both cash and jewellery of the appellant's wife and mother.

11. The agent took the family to Peshawar in Pakistan where they were separated as the agent could not take them all together. The appellant was taken with his wife and daughter to Lahore from where they travelled.....

#### Error of law

6. The respondent submitted that, in accordance with *TG and others (Afghan Sikhs persecuted) Afghanistan CG* [2015] UKUT 00595 (IAC) and in the light of the findings of Judge Pooler that the appellant and his family were wealthy enough and well connected in Kabul and had demonstrated connections to and had hospitality from the Sikh community in Jalalabad, relocation was a reasonable option. Furthermore that the appellant would, on his return, have available help and assistance with a return package tailored to his needs “... for example help setting up a small business and/or provide educational or vocational training for the appellant and his family.”
7. The appellant, through his representatives, submitted that he would not be able, as a Sikh, to secure employment because Muslims are generally unlikely to employ a member of the Sikh community and the family would thus suffer financial difficulties; he has no remaining family in Afghanistan and would not be able to secure accommodation; he has a child aged 3 and the child would not be able to access education in the light of the discrimination against Sikh children and the shortage of adequate education facilities for them; his wife would face difficulties because she does not wear hijab and does not speak Dari or Pushto; the Gurdwara is much less able to provide adequate support for

him and his family; he has no property because this was given to the agent in exchange for the travel arrangements.

8. Both parties referred to the headnote of *TG* in support of their submissions. The assessment of risk in this case, as emphasised by *TG*, is fact sensitive.
9. The conclusions of Judge Pooler were predicated upon country guidance that has since been overturned. Although this does not adversely infect the findings of fact, the relevance of those findings is such that they have to be considered in the light of the current country guidance. Although at the date of the decision by Judge Pooler the current country guidance had not been promulgated and he cannot be faulted for failing to take account of matters that were not before him and were not argued to the same detail as before the Upper Tribunal hearing the Country Guidance case, in an asylum matter it is appropriate that changes are factored in to the decision. The judge did not properly consider the evidence before him, despite the existing country guidance, and this view is reinforced by the subsequent country guidance which is now promulgated. It is for this reason that I am satisfied that there is an error of law such that the decision is set aside to be remade, the findings of fact to be retained.

#### Remaking the decision

10. The respondent in her submissions relied upon the appellant and his family relocating. On the basis of the findings of fact by the First-tier Tribunal as to the serious harm sustained by the appellant and his family there does not, from the documents before me, appear to be a submission on the part of the respondent that the appellant and his family could return to Kabul. It appears to have been accepted that they would be at serious risk of being persecuted if they returned there and the issue is therefore one of relocation. The respondent submits that relocation would not be unduly harsh.
11. The appellant's wife would not be returning to Afghanistan as a lone woman without a male protector –she will be returning with her husband and although she would not be able to go out without covering herself, this has not been found to be sufficient to amount to persecution – this is the position faced by virtually all women in Afghanistan. The family, although they may have owned property in the past, will be returning with only the financial package provided by the Home Office; they do not and will not have family to turn to for assistance. It is not argued that they could return to Kabul but rather they could go to Jalalabad where they have received assistance from the Gurdwara in the past. The appellant had to leave school – not because his family sought to employ him in the family business but because of bullying. Jalalabad is one of the two areas in Afghanistan where the government has established a primary school for Sikh children. There was no evidence and no suggestion that the appellant would be able to access financial support on even a short term basis. He has no friends or other support that could provide that. His child, even if she were able to attend the Sikh school in Jalalabad for her primary school years, which is unlikely given the requirement to pay for that education and the lack of access to finance, would then have to cease attending school. She would be unable to attend secondary school as the level of bullying and harm she would come to is such that she would be prevented from attending. The appellant's ability to

access employment is unlikely and his ability to resume his previous self-employment difficult in a different city without personal contacts or financial support other than the UK Government package.

12. Although, as *TG* notes in [48] there is a continuing lack of evidence of specific incidents of targeted persecution suffered by individuals because of their religious identity, taking all the other factors into account in the light of the overall guidance proffered by *TG*, including that those without access to an independent income, relocation to Jalalabad (or elsewhere than Kabul) is unduly harsh and not a reasonable or appropriate option open to them.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and I set aside the decision to be remade.

I allow the appeal against the decision to refuse to recognise the appellant as a refugee

Date 9<sup>th</sup> February 2016

Upper Tribunal Judge Coker