



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

Appeal Number: AA/09340/2013

THE IMMIGRATION ACTS

**Heard at Newport
On 5 January 2016**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**KSG
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes instructed by Migrant Legal Project

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Afghanistan who was born on 1 January 1966. On 15 August 2013 the appellant claimed asylum with his wife and two sons as dependents.
3. The appellant's claim was that he, and his family, are Sikhs from Jalalabad in Afghanistan. Until they left Afghanistan, the appellant had owned a grocery store. He claimed that he had suffered discrimination and harassment whilst in Afghanistan including a violent attack by two men who came to his shop. He also claimed that his daughter, then aged 11, had been kidnapped by the Taliban and had been raped before being released 4 or 5 days later after which she committed suicide.
4. On 9 September 2013, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and for leave on the basis of Article 8 of the ECHR. The Secretary of State did not accept that the appellant's account was genuine.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 9 December 2013, the First-tier Tribunal (Judge McLachlan) dismissed the appellant's appeal. First, she found the appellant not to be credible and rejected his account of what he had claimed had happened to him and his family in Afghanistan and that it was a "fabrication". Secondly, the Judge found that the appellant (and his family) would not be at risk as returning Sikhs to Afghanistan. Finally, she dismissed the appellant's appeal under Article 8 of the ECHR.
6. The appellant sought permission to appeal to the Upper Tribunal. The grounds do not challenge the Judge's adverse credibility finding or the Art 8 decision. However, the grounds argue that the Judge erred in finding that the appellant and his family would not be at risk as returning Sikhs. The Judge failed properly to take into account an expert report from Dr Giustozzi which should have led the Judge to depart from the (then) country guidance decision in SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 00137.
7. On 8 January 2014, the First-tier Tribunal (Judge Kamara) granted the appellant permission to appeal on that ground.
8. On 16 January 2014, the Secretary of State filed a Rule 24 response seeking to uphold the Judge's decision on the basis that the Judge had taken into account Dr Giustozzi's report and had not erred in dismissing the appellant's appeal on the basis that he had not established that he (and his family) would be at risk as returning Sikhs.
9. The appeal was initially listed for hearing before the Upper Tribunal on 28 February 2014. However, the appeal was adjourned in the light of the fact that the Upper Tribunal was about to hear a new country guidance case

dealing with the issue of the risk (if any) to Afghan Sikhs on return. The appeal was again listed on 23 May 2014 but was again adjourned on the same basis as the new CG case had not been promulgated.

10. The new country guidance decision in TG and Others (Afghan Sikhs Persecution) Afghanistan CG [2015] UKUT 595 (IAC) was subsequently promulgated on 3 November 2015.
11. As a consequence, the appeal was listed for hearing before me on 5 January 2016.

The Submissions

12. Mr Vokes, who represented the appellant, submitted that the Judge had erred in law by failing properly to consider the evidence of Dr Giustozzi and, in particular, by stating inconsistently in paragraph 29 that there was an: “extremely difficult situation experienced by Sikhs in Afghanistan” and then in paragraph 31 stating that: “it would appear from the background evidence, that there is slow progress being made to address some of the Sikh grievances.”
13. However, Mr Vokes candidly accepted that he was in some difficulties as a result of the new country guidance case in TG and Others. He acknowledged that the Judge’s findings in paragraph 30 concerning the appellant’s and his family’s circumstances in Jalalabad put him on the “back foot” in establishing a real risk of persecution or serious ill-treatment simply on the basis that the appellant and his family were returning Sikhs.
14. On behalf of the respondent, Mr Richards submitted that the Judge had not erred in law and that the Judge’s adverse finding on risk on return was sustainable.
15. In any event, Mr Richards submitted that given the Judge’s findings of fact that the family had prospered in Afghanistan and had not been subject to any mistreatment as they claimed then, following TG and Others, the appellant could not succeed in establishing a real risk of persecution or serious ill-treatment in Afghanistan as a returning Sikh.

Discussion

16. The basis of the grounds of appeal to the Upper Tribunal were, in effect, that the evidence before Judge McLachlan required her to depart from the country guidance case of SL and Others as had the First-tier Tribunal, in a decision upheld by the Upper Tribunal, in DSG and Others (Afghan Sikhs: Departure from CG) Afghanistan [2013] UKUT 148 (IAC). The strength of that argument is said to lie in Dr Giustozzi’s report which was before Judge McLachlan in which he identified problems suffered by the Sikh community in Afghanistan. The Judge summarised parts of Dr Giustozzi’s report at paragraph 15 of her determination.

17. Dr Giustozzi gave expert evidence before the Upper Tribunal in the more recent country guidance case of TG and Others. In that case, the Upper Tribunal reached the conclusion that the evidence before it did not establish that, as a generality, members of the Sikh (or Hindu) communities in Afghanistan faced a real risk of persecution or ill-treatment because of their religion although they were subject to discrimination.
18. The Upper Tribunal's finding in this regard is summarised in paragraphs (i)-(ii) of the headnote as follows:
- “(i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.
 - (ii) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.”
19. However, the Upper Tribunal went on to conclude that whether any particular individual member of the Sikh or Hindu community was at real risk of persecution was “fact-sensitive” having regard to all the circumstances including five factors in particular, identified by the Upper Tribunal which they summarised in paragraph (iii) of the headnote as follows:
- “(iii) 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.”

20. These findings were made taking into account Dr Giustozzi’s evidence about the situation of Sikhs in Afghanistan.

21. It is clear to me that Judge McLachlan did consider the evidence of Dr Giustozzi which she summarised in paragraph 15 and to which she made further reference in paragraph 29. In those paragraphs the Judge said this:

“15. ... In his report filed on behalf of the Appellant, Dr. Giustozzi referred to the significant reduction in the population of Sikhs and Hindus in Afghanistan, a population declining to the extent of over 90% from what it had been prior to the war. Hindus and Sikhs have been targeted across Afghanistan being perceived to be valuable victims for kidnapping or for looting, given their traditional business activities and modest prosperity in trade. The police and judiciary are ineffective to act to protect Sikhs. Their community leader has raised at the highest level the question of the illegal occupation of 250 houses belonging to Sikhs in Kabul alone. Although approaches have been made by leading Sikh community members to President Hamid Karzai to provide restitution and effective protection to the Sikh community, despite statements by President Karzai that action will be taken to restore the rights of Sikhs, little has been done. The Sikhs are easy targets for abuse given their minority status. It is difficult to resist the Muslim majority. Mistreatment and societal discrimination against Sikhs continues to be reported. Harassment of adult Sikhs and Hindus occurs, particularly at the bazaar, and Sikh children commonly are caught up in fights between themselves and Muslims. Attempts are made to forcibly convert Sikhs from their religion to become Muslims. The community’s tradition of cremation is particularly targeted and obstructed by aggressive Afghan Muslims. Dr. Giustozzi refers to potential problems the appellant would have if he were to return to Afghanistan without the capital required to re-start a business. He would find it difficult to earn his livelihood. He would continue to face discrimination and abuse, as would his dependants. Costs of living are comparatively high and housing is difficult to secure.

...

29. ... I have considered the background evidence provided by both the Appellant and the Respondent as to the extremely difficult situation experienced by Sikhs in Afghanistan. I acknowledge the concern evident in the relentless decline in the Sikh and Hindu populations over a relatively short period of time, the societal discrimination and the violent incidents that, from time to time, have affected the Sikh community. Particular reference is made to problems suffered by the community in Kabul in Dr. Giustozzi’s report. Gurdwaras have closed and Sikh cremations face particular risks of acrimonious attacks by Muslims.

22. Having taken this evidence into account the Judge reached the following conclusion in paragraphs 30-31: that the evidence did not warrant a departure from the country guidance case of SL that had held, in effect, that there was no general risk of persecution to Sikhs on return to Afghanistan. The Judge said this:

“30. However, while the Appellant and his family may face discrimination and harassment, the Appellant did not demonstrate that he suffered worse than that. He ran a prosperous business in Jalalabad within the bazaar. According to him, he gave his friend, Haji, the stock in the shop in exchange for help to enable his family to travel to the UK. The stock was worth \$40,000 to \$45,000, a relatively large amount when one considers the salary and living costs referred to in Dr Giustozzi’s report. He had operated his business without apparent incident with the possible exception of a robbery in 2011, for some ten years. He was able to employ an assistant. His family were able to attend the Gurdwara where his children were sent to school. The family was involved in the Sikh community in Jalalabad. The Appellant, in oral evidence, referred to cremations taking place each time a member of the Sikh community dies; he thought these happened up to between two and five times a year. He did not indicate any difficulties or interference with such ceremonies. The Appellant referred to Muslim customers who patronised his shop his Muslim doctor and his Muslim friend, Haji. He differentiated between Taliban and other Muslims, claiming his problems were with the former only.

31. I am not satisfied that there is any real risk to the Appellant and his family members upon return to Jalalabad, his business, the Sikh community and wider Muslim community there. I conclude that the family members will be able to practice their religion. Despite discrimination, lax and sometimes corrupt police procedures, and ineffective government measures, it would appear from the background evidence, that there is slow progress being made to address some of the Sikh grievances. I find that the Appellant does not qualify for refugee status and is not at real risk for breach of human rights under Articles 2 and 3. Likewise, I find that the Appellant does not qualify for humanitarian protection. Day to day life may be difficult for Sikhs in Afghanistan but I am satisfied that the Appellant and his family have not suffered violence and will not suffer serious harm. I do not find this to be a situation where I should depart from the country guidance afforded to **SL**.”

23. I do not accept Mr Vokes’ submission that the Judge erred in law by failing to consider Dr Giustozzi’s evidence or that she made, as I understood the submission, inconsistent statements in paragraphs 29 and 31 that the position of Sikhs was “extremely difficult” whilst, at the same time, stating that “slow progress” was being made to address the grievances of Sikhs. Nothing in the evidence of Dr Giustozzi given before the Judge, which was in substance also his evidence given for the Upper Tribunal in TG and Others, required the Judge to find that the appellant was at real risk of persecution as a returning Sikh to Afghanistan.

24. In any event, as Mr Vokes effectively acknowledged, applying TG and Others the Judge's findings in relation to the circumstances of the appellant and his family (in paras 30 and 31) provide no sound basis for a finding that the appellant (or his family) has established their claims for asylum, to humanitarian protection or under Article 3 of the ECHR.
25. Even if the Judge's decision was set aside, in my judgment the only proper finding that could be made in the light of TG and Others is that the appellant has failed to establish any risk of persecution or serious ill-treatment on return to Afghanistan. The appellant was, and no doubt could in the future become, a successful businessman in Jalalabad. He had experienced no ill-treatment at the hands of Muslim or others. He was able to practice his faith and his shop was patronised by Muslims, his doctor was a Muslim and he had at least one Muslim friend. His children were able to attend school and his family were able to attend the Gurdwara.
26. Taking into account all the relevant circumstances, in particular those set out by the Upper Tribunal in TG and Others in para (iii) of the headnote, the appellant has not established he and his family are at real risk of persecution or serious ill-treatment if returned to Afghanistan because of their religion.
27. Consequently, even if the decision of Judge McLachlan was set aside, in remaking the decision the appellant's appeal falls to be dismissed on all grounds.

Decision

28. For these reasons, the decision of the First-tier Tribunal stands to dismiss the appellant's appeal on all grounds.

Signed

A Grubb
Judge of the Upper Tribunal

Date: