



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

Appeal Number:  
AA/09730/2014

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
On 27<sup>th</sup> January 2016**

**Determination  
Promulgated  
On 17<sup>th</sup> May 2016**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Jaspal Singh  
(no anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

For the Appellant: Ms Smith, Counsel instructed by Malik & Malik Solicitors  
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Afghanistan born on the 3<sup>rd</sup> March 1983. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge D Pickup) to dismiss his appeal, on asylum and human rights grounds, against the Respondent's decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.

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<sup>1</sup> Permission granted by First-tier Tribunal Judge Ford on the 16<sup>th</sup> February 2015.

## **Background and Reasons**

2. The Appellant claimed asylum in 2014 advancing an account of persecution on account of his religion and ethnicity. This was rejected on the 31<sup>st</sup> October 2014. The Respondent expressly accepted that the Appellant was from Afghanistan, and that he was Sikh, and that as a result there was a reasonable likelihood that he and his family had been “victims of mistreatment”. It was not however accepted that the Appellant’s family’s shop had been targeted, that in April 2013 his cousin had been murdered by people trying to extort money from his uncle or that the Appellant himself had latterly received threats from the Taliban.
  
3. When the matter came before the First-tier Tribunal Judge Pickup heard oral evidence from the Appellant and his wife. He did not find it to be credible and rejected their entire account, bar those matters which had already been accepted by the Respondent. He did not find it to be plausible that the Appellant’s father would run a shop for 26 years, and having been subject to threats and extortion for many of those years would suddenly abandon his business to leave. The Appellant’s wife had given inconsistent evidence about her family remaining in Afghanistan and the Appellant himself was not believed when he claimed that he did not know what countries he had passed through in order to get to the UK. If he had suffered instances of “bullying” this did not amount to persecution. The Appellant’s representative accepted that the extant country guidance of SL & Ors (Returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 000137 indicated that there was no general risk of persecution to the Sikh population; he relied however on the more recent case of DSG & Ors (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC). In that case the Tribunal had held that the First-tier Tribunal had been entitled, in view of the evidence before it, to depart from the 2005 guidance in SL. Judge Pickup declined to do the same. He found no evidence to suggest that Sikhs are subject to persecution in Afghanistan and given that he had already rejected the Appellant’s account he saw no reason to depart from that general principle, set down in SL.

## **Error of Law**

4. The grounds of appeal are that the Tribunal erred in declining to follow DSG. The Tribunal in that case had upheld the conclusions of the First-tier Tribunal that Sikhs were subject to persecution, and that there had been a material change in circumstances since SL had been heard, namely a dramatic fall in the number of Sikhs and Hindus living in Afghanistan. It is submitted that Judge Pickup has failed to assess this claim against the new country background material which shows Sikhs to be an embattled minority. Permission was granted on that

basis.

5. By the time that the appeal had come before me, the matters in dispute had been overtaken by promulgation of the new country guidance case on Afghan Sikhs: TG & Ors (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC). The headnote in that case sets out the new guidance:

- (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.*
- (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.*

- (iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.*
- (v) 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.*
- (vi) This replaces the county guidance provided in the cases of K (Risk - Sikh - Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137.*

6. As can be seen from that summary, the Tribunal have taken into account the declining numbers in the Sikh community, but that this increase in the vulnerability of those who are left does not undermine the central conclusion reached at (ii). The clear finding is that there is not a risk of persecution *per se*; this maintains the central finding of SL adopted by Judge Pickup. There can therefore be no arguable merit in the ground that he erred in failing to apply DSG. The point was that in that case the First-tier Tribunal had found the individual account of persecution to be made out, and this had obvious ramifications for the forward looking risk assessment. In contrast in this case Judge Pickup found the account to be inherently incoherent, the witnesses to be inconsistent and for that reason found the burden of proof not to be discharged.
7. It follows that there was no error of law in the approach to this appeal.

## **Decisions**

8. The decision of the First-tier Tribunal contains no error of law and it is

upheld.

9. I was not asked to make an order for anonymity and in the circumstances I see no reason to do so.

Upper Tribunal Judge Bruce

2016

1<sup>st</sup> February