



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09837/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 9 October 2017

**Decision & Reasons
Promulgated
On 18 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SHESHIL KUMAR KAKAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter, Counsel, instructed by Malik & Malik Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal on the part of Mr Kakar, a national of Afghanistan born on 1 January 1984. He arrived in the United Kingdom and claimed asylum on 16 March 2016. The basis of his claim is that he and his family are Hindus, as a result of which they had difficulties in Afghanistan in that they were blackmailed on two or three occasions during the two years prior to coming to the United Kingdom and the Appellant then suffered abuse from Muslims who wished him to convert to Islam and he fled, fearing that he would be killed or forced to convert to Islam if he remained in Afghanistan.

2. The Appellant's asylum application was refused in a decision dated 6 September 2016. He appealed against this decision and his appeal came before Judge of the First-tier Tribunal Lucas for hearing on 28 April 2017. In a Decision and Reasons promulgated on 12 May 2017, the judge dismissed his appeal, finding that a number of aspects were inconceivable and that the Appellant would not be at risk on return to Afghanistan or Kabul in particular.
3. An application for permission to appeal was made in time to the Upper Tribunal. The grounds dated 9 July 2017 asserted firstly that the judge failed to make adequate findings of primary fact, secondly that he misdirected himself in law in relation to internal relocation and thirdly failed to consider material matters in respect of internal relocation, fourthly misdirected himself as to the ability of the Appellant to have travelled to and remained in India and fifthly, in materially failing to consider the background evidence in relation to the ability of the Afghan authorities to protect the Appellant as a Hindu in light of the decision in TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKIAT 119 (IAC).
4. Permission to appeal was granted by Upper Tribunal Judge Storey on 15 August 2017 in the following terms:

"I consider it arguable that the judge wrongly failed to treat the evidence that the Appellant's father had been the target of threats relating to extortion as relevant to the question of whether the Appellant would be the target of similar threats whether locally or in Kabul. Linked to this, it is arguable that the judge erred in appearing to treat the Appellant's ability to survive whilst travelling in Europe and living in the UK as probative that he could seek internal protection from the Afghanistan authorities against harassment/threat of extortion there. It is also arguable that the judge was wrong at 52 to state that the Appellant could go and live in another country if that was to be his wish, although whether that statement had any material link with the reasons the judge gave for concluding that the Appellant would not be at risk in Afghanistan will need further examination."

5. The Respondent submitted a Rule 24 response on 30 August 2017, opposing the Appellant's appeal.
6. However, at the hearing before me Mr Kotas on behalf of the Respondent accepted that there was merit in the Appellant's application and the grounds of appeal. He accepted that the First-tier Tribunal Judge did not make findings of fact as to the Appellant's credibility and therefore it was difficult to ascertain whether, taken at its highest, the Appellant's case should not succeed. He accepted that the judge did not engage with the country guidance decision of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKIAT 119 (IAC).

7. In light of Mr Kotas' acceptance that the First-tier Tribunal Judge made a material error of law and bearing in mind paragraph 43A of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, I find material errors of law in the decision of the FtTJ, with the effect that the appeal is remitted back to the First-tier Tribunal for a hearing *de novo* at Taylor House before a judge other than First-tier Tribunal Judge Lucas.

Notice of Decision

The appeal is allowed to the extent that it is remitted for a hearing *de novo* before the FtT.

No anonymity direction is made.

Signed Rebecca Chapman

Date 16 October 2017

Deputy Upper Tribunal Judge Chapman