



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04483/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 3<sup>rd</sup> September 2018

Decision & Reasons Promulgated  
On 13<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AL  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss G Patel of Counsel, instructed by Legal Justice Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Malik (the judge) of the First-tier Tribunal (the FtT) promulgated on 14<sup>th</sup> May 2018.
2. The Appellant is a male citizen of Afghanistan born in 1997. He claimed asylum on the basis of his religion, that being a Sikh in Afghanistan. The Appellant's wife and son were dependants in his application for international protection.

3. The Appellant's claim was refused by the Respondent on 22<sup>nd</sup> March 2018 and his appeal was heard by the FtT on 3<sup>rd</sup> May 2018.
4. The judge heard evidence from the Appellant and his wife. The Appellant's claim was that he was born in Khost but moved to Kabul in October 2016. He moved from Kabul to Jalalabad. He claimed that his sister was kidnapped by persons with whom the Appellant's father had a land dispute. The Appellant claimed that his father was killed by a man known as Jahangir on 9<sup>th</sup> or 10<sup>th</sup> August 2017 because he refused to hand over documents that related to family land.
5. The judge found that the Appellant's sister had not been kidnapped, and his father had not been killed. The judge therefore found that these matters had not been reported to the police in Afghanistan. The judge found that the Appellant and his family would not be at risk from Jahangir if returned to Afghanistan.
6. The judge did not accept that there would be no educational provision for the Appellant's son simply because he is a Sikh, if the family returned to Afghanistan. The Appellant's son was one year of age at the date of the FtT hearing.
7. The judge found that the Appellant did not have close family members remaining in Afghanistan. It was accepted that his mother and two younger siblings were in the UK. The judge found that he would therefore be returning to Afghanistan with no family support, without any independent financial means, and the judge concluded that he would encounter serious difficulties and hardship in seeking accommodation and employment in Afghanistan. The judge considered the guidance in TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) and concluded that there was no reasonable internal relocation option, and that returning to Khost, Kabul or Jalalabad would be unduly harsh, given the Appellant's particular circumstances.
8. Therefore the judge found, that although the Appellant was not entitled to asylum, he and his dependants were entitled to humanitarian protection, as they would be at risk of suffering serious harm if returned to Afghanistan.
9. The Appellant applied for permission to appeal to the Upper Tribunal against the refusal of the FtT to allow his appeal on asylum grounds.
10. Permission to appeal was granted by Judge Andrew of the FtT in the following terms;
  - "2. I am satisfied that there is an arguable error of law in this decision in that when considering credibility, the judge made no findings in relation to the evidence of the Appellant's wife and further, appears to have disregarded country evidence in relation to kidnapping. It is also an arguable error of law that given the findings the judge has made finding the Appellant is entitled to humanitarian protection and not asylum is perverse.
  3. However, I do not find an arguable error of law in relation to the education of the child. It is apparent from paragraph 31 that the judge has considered this."

11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the judge had directed herself appropriately and given adequate reasons for rejecting the core of the asylum claim, and had specifically considered the evidence of the Appellant's wife. It was submitted that the grounds seeking permission to appeal amounted to a disagreement with findings properly made by the judge and then did not disclose a material error of law. The Respondent informed the Tribunal that the Appellant and his family had been granted humanitarian protection following the decision of the FtT.
12. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

### **The Upper Tribunal Hearing**

13. Miss Patel submitted that the judge had erred in law at paragraphs 26–27 by failing to consider and make any findings on the evidence given by the Appellant's wife. The judge had based her conclusions wholly upon how she believed the Appellant's father, Jahangir, and the individuals who kidnapped the Appellant's sister would behave. The judge had erred by disregarding country evidence that such kidnappings take place in Afghanistan.
14. The judge erred by failing to consider that the Appellant's evidence was corroborated by his wife, and this confirmed that the kidnapping of the Appellant's sister was reported to the police, as was the killing of the Appellant's father, but no action was taken.
15. It was submitted that the judge had failed to properly consider TG and Others in that there is not a sufficiency of protection at local level for Sikhs in Afghanistan.
16. It was submitted that the judge had erred by failing to consider the impact of removal on the Appellant's wife. In the UK she has freedom of movement to go out on her own, she is able to dress how she wishes, and practise her religion freely, whereas in Afghanistan she would be confined to the house because of persecutory and discriminatory treatment.
17. The judge found at paragraphs 33–36 that the Appellant would be returning to Afghanistan as a young man with his 19-year-old pregnant wife and one year-old child without any family support, and that he would be unable to secure employment from the Muslim majority community, and he had no independent financial means to re-establish himself in Afghanistan. The judge found that he would encounter serious difficulties and hardship in seeking employment and accommodation in Afghanistan, and in accordance with TG and Others, the option of internal relocation returning to Kabul or Jalalabad would be unduly harsh. It was therefore submitted that the finding by the judge that the Appellant and his family were entitled to humanitarian protection not asylum was perverse. It was submitted that the decision of the FtT should be set aside, and the Appellant granted asylum on the basis of his religion as an Afghan Sikh.

18. Mr Tan relied upon the rule 24 response. He submitted that the judge did not need to refer to background country evidence in relation to kidnapping, as the judge had made a sustainable finding that in this case, the Appellant's sister had not been kidnapped. The fact that the Appellant's wife had claimed in her witness statement that she would not be able to go out freely in Afghanistan as she does in the UK, did not indicate that she would be at risk on that basis in Afghanistan.
19. It was submitted that the judge had properly considered TG and Others. Mr Tan confirmed that the Respondent had granted the Appellant and his family humanitarian protection as a result of the FtT decision.

### **My Conclusions and Reasons**

20. I find that the judge gave adequate reasons for rejecting the core of the Appellant's account, which was that his father had been killed as a result of a land dispute. I do not accept the contention that the judge failed to consider and make findings on the evidence given by the Appellant's wife. The judge at paragraph 6 makes specific reference to being provided with a copy of the Appellant's wife's witness statement. At paragraph 7 it is confirmed that the wife gave oral evidence via an interpreter. At paragraph 20 the judge summarises the witness statement of the Appellant's wife, and at paragraph 21 summarises her oral evidence.
21. At paragraph 22 the judge summarises the re-examination of the Appellant's wife, and at paragraph 23 refers to answers given by the Appellant's wife when asked a clarification question by the judge. At paragraph 26 the judge specifically records that she considered the Appellant's evidence and that of his wife, in the round, to the lower standard. The judge makes a finding that the Appellant's father was not killed by Jahangir and sets out the reasons for that conclusion at paragraph 26(i) and (ii).
22. At paragraph 27 the judge concludes that the Appellant's father was not killed in a land dispute as claimed, and I find that the reasons given for that conclusion are sustainable and adequate. It is evident that in considering the claim that the Appellant's father was killed, the judge took into account the evidence given both by the Appellant and his wife.
23. The judge at paragraph 30 records her conclusion that the Appellant's sister was not kidnapped. I do not find that the judge erred by neglecting to consider relevant background country information in Afghanistan. Simply because some kidnappings do occur in Afghanistan, does not mean that the judge must accept that the Appellant's sister was kidnapped in this case.
24. In relation to the impact of removal upon the Appellant's wife, Miss Patel referred me to paragraphs 91-93 of TG and Others. At paragraph 92 the Upper Tribunal accepted that a Sikh or Hindu woman who went out of her home "not properly attired" may be subjected to abuse and harassment in Afghanistan, but pointed out that the evidence clearly indicates that this is the same for all women, whatever their religious persuasion, and this includes Muslim women. I do not find that the judge has materially erred on this point.

25. I have considered paragraphs 33–36 which relate to findings made by the judge, following which the judge concludes that it would be appropriate for the Appellant to be awarded humanitarian protection. I find this to be an unusual decision, but do not find that it reaches the high threshold so that it could be called perverse.
26. The judge has rejected the Appellant’s core claim which relates to the death of his father and kidnapping of his sister. The judge does not accept that the Appellant would be at risk of persecution because of his Sikh faith, and therefore (and I note that the Respondent has not challenged the findings in paragraphs 33–36) must have concluded that the Appellant and his family would be at risk of serious harm if returned to Afghanistan, but this was not because of their Sikh faith.
27. In my view the judge has given sustainable reasons at paragraphs 26–32, concluding that the Appellant would not be at risk due to his Sikh faith and I find no error of law in those conclusions. The conclusions at paragraphs 33–36, do at first sight seem to conflict with the earlier findings, but may be explained by the judge concluding that the Appellant’s faith was not the cause of the risk of serious harm. As previously stated the Respondent has chosen not to challenge the findings in paragraphs 33–36 and has in fact granted the Appellant and his family humanitarian protection.
28. I conclude that although the decision of the FtT is somewhat unusual, it does not disclose a material error of law. The appeal is therefore dismissed.

### **Notice of Decision**

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 3<sup>rd</sup> September 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee was paid or is payable. There is no fee award.

Signed

Date 3<sup>rd</sup> September 2018

Deputy Upper Tribunal Judge M A Hall