



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07308/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> April 2018

Decision & Reasons Promulgated  
On 16<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

M S G  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Oyemike (Solicitor)

For the Respondent: Ms A Fijiwale (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Rowlands, promulgated on 2<sup>nd</sup> October 2017, following a hearing at Hatton Cross on 31<sup>st</sup> August 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## The Appellant

2. The Appellant is a male, a citizen of Afghanistan, who was born on [ ] 1965. He appealed against the decision of the Respondent Secretary of State dated 19<sup>th</sup> July 2017, refusing his application for asylum and for the grant of humanitarian protection under paragraph 339F of HC 395 on the basis that he had a well-founded fear of persecution and of ill-treatment in Afghanistan.

## The Appellant's Claim

3. The Appellant's claim arises on the fact that he left Afghanistan on 16<sup>th</sup> October 2016, travelling to Pakistan, with the help of an agent, and from there flew to Dubai and thereafter to Europe where he arrived in the UK on 13<sup>th</sup> February 2017 and later claimed asylum. He states that he was born in Khost Province in Afghanistan and lived in Kabul for most of his life, belonging to a Sikh family and practising the Sikh religion all his life. He fears persecution on account of his religious belief by the Shura-e-Nazir Group and claimed that a bomb was exploded in his area where he ran his pharmacy shop, killing his father, such that he was now at a very real risk of harm, together with his family, such that he could not return back to Afghanistan.

## The Judge's Findings

4. The judge set out the essence of the Appellant's claim in great detail (at paragraph 4). He then had regard to the country guidance case of **TG and Others (Afghan Sikhs persecuted) [2015] UKUT 595** (at paragraph 19 of the determination). The judge then made his findings of fact, observing that, "I am satisfied that the Appellant and his family have at some time suffered abuse at the hands of other members of the Afghan community" and that "this is something that is accepted by the Respondent" (paragraph 22). He went on to say that on this basis, "I am also satisfied that there was an explosion in Afghanistan and it took place in the area where the Appellant's pharmacy was situated" (paragraph 22). He did not, however, accept that the explosion killed the Appellant's father, or that the Appellant was at risk of persecution himself with his family because the Appellant had not shown "to the required standard that it was specifically directed at him or his family" (paragraph 23). Indeed, the judge went on to record that the Appellant subsequently "actually returned to the market area after completing the renovations to the property" and it could not be believed that this is what the Appellant would have done "if they were really being harassed by the group as claimed". It was concluded by the Judge that the truth of the matter lay in the fact that the Appellant's family had relocated to Russia and the Appellant himself decided that his family should also leave Afghanistan "and chose to come to the United Kingdom because there were problems in Russia" (paragraph 23).
5. Although the judge rejected the claim on the basis that the Appellant could not show an individualised risk of ill-treatment and persecution, the judge allowed it on the basis that there was indiscriminate violence in Afghanistan and that the Appellant could succeed on grounds of humanitarian protection. The reason for this was that the judge held that the Appellant and his family could not now reasonably be expected

to relocate in Afghanistan because “the Appellant has probably used up all the resources that they had available in bringing himself and the family to the United Kingdom”. He also held that they could not relocate “because they have” seemingly, not the resources to do so”. Furthermore, the Appellant’s two older children “both have severe learning disabilities and are seemingly confined to wheelchairs and epilepsy”. Finally, the judge accepted that, although these two elder children, “must have survived in Afghanistan it still makes it extremely difficult for them to go back to Afghanistan with nowhere to live and survive for any period of time” (paragraph 25).

6. In the circumstances, the judge held that,

“I am satisfied that it would not be reasonable to expect them to internally relocate and return to Afghanistan and for that reason their appeal against the refusal to grant them humanitarian protection should be allowed” (paragraph 29).

### Grounds of Application

7. The grounds of application state that the judge had dismissed the appeal on asylum grounds, but allowed it on humanitarian protection grounds, but that the sole reason for allowing this appeal was due to the fact that the judge presumed that the Appellant used up all his financial resources for travel to the UK, and that his eldest children have learning disabilities, are confined to wheelchairs and have epilepsy, and would not now be able to relocate to Afghanistan. These conclusions were unsafe and amounted to an unfair balancing of the relevant considerations.
8. Permission to appeal was granted by the Tribunal on 5<sup>th</sup> February 2018.
9. A Rule 24 response was thereafter provided by the Appellant’s solicitors on 19<sup>th</sup> February 2018.

### Submissions

10. At the hearing before me on 3<sup>rd</sup> April 2018, Ms Fijiwale, appearing as Senior Home Office Presenting Officer, on behalf of the Appellants, began by stating that there had curiously been no challenge to the refusal about the judge on refugee grounds, and so this must mean that that refusal is intact for the purposes of this appeal. The only question was that, having refused the claim on refugee grounds, the judge was entitled to then allow it on humanitarian protection grounds. This, submitted Ms Fijiwale, was not open to the judge to do. In support of the submission, she drew my attention to paragraphs 23 to 24 of the determination. These confirmed that the Appellant’s evidence had not been believed insofar as it was being asserted by him that he was at risk of persecution. Nor, was it accepted by the judge that there was any evidence to the effect that the Appellant had been forced to convert to Islam (paragraph 24). Ms Fijiwale submitted that the judge had come to these findings of fact after setting out the country guidance case of TG and Others (at paragraph 19).
11. That, she submitted, should have been the end of the matter. It was impermissible for the judge to have gone on any further. However, given that the judge did do so, it was

not open to him then to state that the Appellant could succeed because he could not be expected to relocate given that “it seems that the Appellant has probably used up all the resources that they had available” (at paragraph 25). This is because there was no evidence to this effect at all. In the same way, the fact that the Appellant’s two older children both had severe learning disabilities and were confined to wheelchairs and had epilepsy, was not a matter that could by itself have led to the allowing of the appeal given that these children had managed to survive and live in Afghanistan already.

12. For his part, Mr Oyemike submitted that he would have to accept that his law firm was remiss in not having made a cross-appeal to challenge the dismissal of the appeal on grounds that the requirements of the Refugee Convention had not been met. This is because it had already been accepted by the judge at the outset that the Appellant and his family “have at some time suffered abuse at the hands of the members of the Afghan community” and that this had been accepted by the Respondent (paragraph 22). It had also been accepted that there had been an explosion in Afghanistan and “that it took place in which the Appellant’s pharmacy was situated” (paragraph 22). However, given that there had been no cross-appeal it was proper for him to instead show that the appeal still fell to be allowed on humanitarian protection grounds given the strictures in **TG and Others**.
13. This country guidance case was attached to the solicitor’s letter of 24<sup>th</sup> August 2017, and appeared at the end of the Appellant’s bundle of documents. He submitted that at paragraph 115 of **TG and Others**, and under the heading “internal relocation”, the Tribunal there began its consideration by stating at the outset that, “if there is a real risk of persecution in the individual’s home area then consideration must be given to whether there is a viable internal relocation option”. Therefore, submitted Mr Oyemike, the judge had done precisely that.
14. It was not the case that with the rejection of the Refugee Convention claim, that there is nothing further to be said. It was incumbent upon the judge to consider the prospect of internal relocation, given what had been established in relation to minority faiths in **TG and Others**, with express reference to Hindus and Sikhs in that case. Mr Oyemike then drew my attention to paragraph 119 of the country guidance decision which refers to the fact that “some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots (see paragraph 119(i)). It is then stated that a consideration of whether the individual member of the Sikh and Hindu communities is at real risk of persecution upon return to Afghanistan is fact-sensitive, and in this regard particular attention is drawn to the position of women, those who are in strait and financial circumstances and lack the ability to access basic accommodation and whether they have the ability to access protection in the gurdwara (at paragraph 119(iii)).
15. Finally Mr Oyemike submitted that in much the same way as internal relocation was relevant, notwithstanding the rejection of appeal on refugee asylum grounds, so was also Article 8 relevant, and this was also made clear in **TG and Others**. He drew my attention to paragraph 128 to 136 of the country guidance case, where the evidence

was that the Appellant's family life was very much now situated in the UK and that his wife had a number of health issues and received ongoing medical treatment in this country, and the fact that his two eldest children were now safe in this country, was equally relevant in this respect.

16. In reply to these submissions, Ms Fijiwale stated that the only Ground of Appeal was on humanitarian protection grounds by the Secretary of State and that insofar as Mr Oyemike had referred to paragraph 115 on internal relocation and drawn attention to the statement that, "if there is a real risk of persecution in the individual's home area then consideration must be given to whether there is a viable internal relocation option", the judge had given consideration to this and come to the firm conclusion that there was no risk of ill-treatment specifically to the Appellant. That was the end of the matter. There was no need to consider internal relocation.

### **No Error of Law**

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
18. First, this is a case where the judge had accepted that "the Appellant and his family have at some time suffered abuse at the hands of other members of the Afghan community" and that this was something "that is accepted by the Respondent" as well (paragraph 22). Moreover, the judge also accepted that there "was an explosion in Afghanistan and that it took place in the area which the Appellant's pharmacy was situated" (paragraph 22). The fact that the Appellant's refugee asylum claim was rejected, however, meant that precisely for reasons that the judge had already given at paragraph 22, with respect to ongoing risk of harm to the Appellants, that it was necessary to give consideration to the alternative form of subsidiary protection in the form of humanitarian protection. It was clearly the case that with the Refugee Convention claim falling away, the judge had to consider whether the Appellant could be returned to Afghanistan with his family.
19. In this respect, **TG and Others** makes it quite clear that, "whether there is a viable relocation option will depend upon the safety in the place of relocation and though that option is reasonably based upon all the facts of the case" (paragraph 115). With respect to members of the Sikh and Hindu communities there had to be the exercise of "the required degree of anxious scrutiny in relation to the area in which it is proposed that the individual can move to" (paragraph 116).
20. Furthermore, any return or relocation had to be against the background of the fact that there was a declining number of remaining Sikhs and Hindus in Afghanistan so that access to extended family/community/charity/religious support is generally very difficult for members of the Sikh and Hindu communities in Afghanistan. It is likely to be even more so upon relocation" (paragraph 117). It is of the essence of the facts of this case that the Appellant's entire family, of a number of brothers and their family members, have moved abroad to Russia and relocated there, and the Appellant has no extended family members left in Afghanistan.

21. The evidence before the judge was that the Appellant had paid US\$66,000 to an agent to bring them to the UK, and his six brothers also ran businesses in Afghanistan, but had now left to go to Russia (paragraph 5). The Appellant could not return back to his shop because the evidence before the judge was that,

“... after 2012 he had returned to the shop and sold it to his neighbour who was a Muslim. It was a private shop, it wasn't a big issue. He didn't own any land or business in Afghanistan now and he didn't know if his brothers did” (paragraph 8).
22. Against the background of these facts, it was entirely proper for the judge to give consideration to whether the Appellant could return and relocate in any other part of Afghanistan, and with there being no evidence to the contrary, the judge concluded, on the basis of reasons given by him (at paragraph 25) that the Appellant would not now be able to do so in any reasonable manner.
23. Although it is the case that there was no formal evidence that the Appellant had used up all his financial resources to bring his family to the UK, it is not the case that the judge is definitively of the view that the Appellant has no funds whatsoever. What the judge states is that, “it seems that the Appellant has probably used up all the resources that they had available in bringing himself and the family to the United Kingdom” (paragraph 25). The same way, the judge concludes, on the basis of such evidence, that it was not likely that “they would be able to relocate because they have, seemingly, not the resources to do so” (paragraph 25). Couched in these terms, this was not an observation that the judge was not entitled to make.
24. More importantly, in terms of whether it was reasonably feasible to expect the Appellant to relocate, the judge was entirely correct in drawing attention to the fact that the Appellant's two older children “both have severe learning disabilities and are merely confined to wheelchairs and have epilepsy”. The judge was perfectly live to the fact that “this was nothing better has happened to them since they have been here and they must have survived in Afghanistan” but as he concluded, “it still makes it extremely difficult for them to go back to Afghanistan with nowhere to live and survive for any period of time” (paragraph 25). The question really is whether the judge was entitled to come to the conclusion that it would be extremely difficult for them to go back to Afghanistan and that there was nowhere for them to live and survive for any period of time.
25. I am satisfied that the judge was entitled perfectly well to come to this conclusion on the evidence that was before him. After all, the judge had to exercise “anxious scrutiny” in these respects as well. The question of internal relocation fell to be considered quite simply because the Appellant had sold his shop and had nowhere to live and had a family to go back with. It was not submitted by Ms Fijiwale that this assertion by the judge was incorrect. Accordingly, the judge was entitled to state that “it would not be reasonable to expect them to internally relocate and return to Afghanistan” and proceed to allow the appeal specifically on the basis of humanitarian protection (paragraph 29).

**Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

An anonymity order is made.

**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 their 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

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> May 2018