



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

Appeal Numbers: HU/09112/2017
HU/09780/2017
HU/09781/2017
HU/09783/2017

THE IMMIGRATION ACTS

Heard at Field House

On 29th April 2019

**Decision & Reasons
Promulgated
On 15th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**PRITPAL [K]
HARCHARAN [K]
[K K]
[S K]**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Slatter of Counsel

For the Respondent: Ms K Pal, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department. The appellants are citizens of Afghanistan born on 15th May 1988, 14th August 1993 who is the appellant's wife and the children are born on 12th January 2012 and 16th April 2016. They are the dependants on the first appellant's

appeal. I shall however for ease of reference, continue to refer to them as they were in the proceedings before the First-tier Tribunal.

2. Judge P S Aujla of the First-tier Tribunal allowed the appellants' appeal in a decision dated 12th January 2019. First-tier Tribunal Judge Grimmett gave permission to appeal the decision on 13th March 2019 stating that it is arguable that the judge erred in treating the appeal as an asylum appeal when there was no asylum decision before him. The judge also found that it is arguable that the judge erred in failing to apply **Devaseelan UKIAT 00702** in failing to address the respondent's position on the expert report in full failing to consider the current country conditions when allowing the appeal.
3. The First-tier Tribunal Judge found that the appellants have established on the lower standard of proof that he has a well-founded fear of persecution for a 1951 Convention reason if he is returned to Afghanistan.
4. At the hearing ground 1 and 2 was not pursued by Ms Pal who represented the respondent. Ground 3 essentially talks about the **Devaseelan** point and the First-tier Tribunal Judge's decision at paragraph 39 where the Judge decided that he was not going to treat the decision of the First-tier Tribunal Judge Jones as a starting point given the guidance in **Devaseelan** where a previous decision in respect of the appellant by a Tribunal must be considered as the starting point for any subsequent decision. Ground 4 is that the judge did not follow the country guidance case of **PG Afghan (Sikhs persecution) Afghanistan [2015] UKUT 00539** and instead relied on the expert report of Professor Giustozzi. Ground 5 states that there was a misapprehension by the judge that the latest country evidence was limited to 2005 rather than 2015 which was a serious mistake of fact which further compounded the findings of the judge.

My Decision as to whether there is an error of law

5. Having considered the submissions made on behalf of both parties and the decision of Judge Aujla there is no question in my mind that there have been material errors of law. First in respect of the **Devaseelan** principle the way I understand **Devaseelan** is that the decision of a previous judge is the starting point for any subsequent judge. Although it was argued on behalf of the appellant that even though the judge said that he was not going to treat the decision as a starting point, he in fact did so.
6. I do not agree with that submission because the Judge categorically stated that he was not going to consider the previous decision as his starting point. The Judge is entitled to take evidence into account subsequent to that decision and that which was not before the First-tier Tribunal. Even though the first tier Tribunal do not find the appellant credible, it was open to the Judge to have found him credible but only after giving reasons but Judge Jones findings in his decision must be the starting point of the

appellant circumstances and status as at the date it was made. Not to do so is material error of law.

7. I also found that the Judge made a mistake of fact at paragraph 42 when he said the country guidance case was promulgated in 2005 because he states in his decision that it is clear that a lot has happened in Afghanistan since 2005. However the country guidance case of **TG** was promulgated in 2015 with updated evidence as of that date. This is a clear factual error amounting to an error of law which might explain why the Judge decided to rely on the subsequent evidence of Professor Giustozzi for departing from it.
8. I agree with the submissions made by Ms Pal that if the Judge is going to depart from a country guidance case, which of course he is entitled to do, but he can only do so if there are very strong and cogent reasons given for departing from it. There is nothing in this decision which demonstrates to me that the Judge has given cogent reasons for departing from the country guidance case. Uniformity of decision making is very important and that is why we have country guidance cases.
9. Dr Giustozzi's report cannot misplace the decision of the country guidance case. The decision is therefore not safe and I set it aside as finding that there are material errors of law therein. I find that material findings have to be made additional evidence might be required, country guidance case has to be considered and therefore I remit this appeal to the First-tier Tribunal to be placed before any judge other than First-tier Tribunal Judge Aujla.

No anonymity direction is made.

Signed

Date 10th day of May 2019

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT
FEE AWARD

I make no fee award.

Signed

Date 10th day of May 2019