



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

Appeal Number: PA/02014/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Decision & Reasons Promulgated
Centre
On 26 July 2019 On 05 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**MEET KAUR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, Counsel instructed by Legal Justice solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Boyes in which he dismissed the appeal of the Appellant, a citizen of Afghanistan, against the Secretary of State's decision to refuse asylum.
2. The application under appeal was refused on 14 February 2019. The Appellant exercised her right of appeal to the First-tier Tribunal. The appeal came before Judge Boyes on 1 April 2019 and was dismissed on asylum and humanitarian protection grounds but allowed by virtue of

Article 8 of the Human Rights Convention. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by Designated Judge Woodcraft on 8 May 2019 in the following terms

“... The judge dismissed the asylum claim but allowed the appeal under Article 8 on the grounds of insurmountable obstacles to reintegration. Those obstacles, as set out by the judge at [31] to [40], arguably cross the Article 3 threshold and amount to persecutory treatment, as argued at paragraph 13 of the grounds...”

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Afghanistan of the Sikh faith born on 1 January 1993. She arrived in the United Kingdom in 2013 with her husband and eldest child. The couple's second child was born in the United Kingdom. The Appellant's husband claimed asylum on arrival and the Appellant was dependent on his claim. Their application was refused, their appeal against refusal dismissed and permission to appeal to the Upper Tribunal was refused and the family became appeal rights exhausted on 10 June 2014. In 2018 a further claim for asylum was made by the Appellant with her husband and two children dependent on the claim. The basis of her claim was that, as a Sikh, her life and that of her family would be in danger in Afghanistan.
4. The Respondent refused the application based firstly on the decision made in the family's previous appeal and secondly the basis that there was a sufficiency of state protection for Sikhs in Afghanistan
5. In dismissing the protection appeal the Judge found that there was no significant difference between the facts put forward and those that had been rejected by the previous Judge. However, he also found, at paragraphs 31 to 40 of his decision that the obstacles faced by the Appellant and her family to integration into Afghanistan life should they be returned were surmountable. On this basis he allowed the appeal by virtue of Article 8 of the Human Rights Convention.

Submissions

6. At the hearing before me Mr Howells very helpfully conceded that there is merit in the grounds. He said that the factual findings, particularly at paragraphs 30 and 35, were relevant to the consideration of a protection claim. Applying TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) and referring to the head note subparagraph(ii) lists four areas for consideration. Amongst these are finances, accommodation and education. The factual findings made by the Judge demonstrate that the Appellants would face very serious issues in all of these areas. Mr Howells said that the Respondent accepted that the Judge made a material error of law and asked me to set aside the decision and

based upon the factual findings made by the First-tier Tribunal judge to remake the decision allowing the appeal. Mr Dieu concurred.

7. I agreed that the decision would be set aside and remade accordingly. My reasons are given below.

Decision

8. This is a straightforward decision to make because it is made with the agreement of both parties but because it will result in the grant of protection status it is nevertheless important that brief reasons are given.
9. As detailed above the First-tier Tribunal allowed this appeal on Article 8 grounds whilst dismissing the protection appeal. The reason that the appeal was allowed on Article 8 grounds was because the Judge found that there were insurmountable obstacles to the Appellant's reintegration into Afghanistan. This was because the Appellant had been away from Afghanistan for a lengthy period, she has no family or friends there and there are no means by which she or her husband, as Sikhs, could gain an employment which would give sufficient income to sustain themselves and their family. They have two young children who have only a slim chance of being able to achieve any education and who will be living at or only slightly above the breadline. The full factual findings are to be found at paragraphs 31 to 40 of the decision.
10. The error of law is that having made these findings the Judge failed to address them to the case law. The decision in TG and others holds at paragraph 119 (iii) that consideration of whether an individual member of the Sikh community in Afghanistan is at real risk of persecution is fact sensitive and that in assessing the facts 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.*

11. The error of law is material because given the factual findings referred to above there is every indication that the Appellant and her family, as Sikhs, will face persecution on a return to Afghanistan. On that basis and based on those factual findings I remake the decision of the First-tier Tribunal and I allow the appeal on asylum grounds.

Summary of Decision

12. The decision of the First-tier Tribunal discloses a material error of law and for that reason the decision of the First-tier Tribunal to dismiss the appeal on asylum grounds is set aside.
13. I remake the decision and I allow the appeal on asylum grounds.
14. The Appellant is a refugee and therefore she is not entitled to humanitarian protection.

Signed

Date: 26 July 2019



J F W Phillips
Deputy Judge of the Upper Tribunal