



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/03218/2015
PA/03263/2015

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 19th November 2018

Decision & Reasons Promulgated
On: 7th January 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MSM + 3

AMS

(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G. Ó Ceallaigh, Counsel instructed by Samars Solicitors
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all members of the same family from Afghanistan. The First Appellant is the father; his dependents are his wife and two daughters who are now aged 20 and 16. The Second Appellant is the adult son of the First Appellant and his wife. I shall hereinafter refer to the Appellants as F (father), M (mother), D1 (daughter 1), D2 (daughter 2) and S (son).

2. The First-tier Tribunal dismissed all of the linked appeals. By my decision dated the 4th July 2018 I found the First-tier Tribunal's determination to be flawed for error of law and set it aside. I further found that the three female dependents to the claim had made out a well-founded fear of persecution in Afghanistan for reasons of their membership of a particular social group, religious belief and/or imputed political opinion. A copy of that 'error of law' decision is appended and should be read as an integral part of this decision.
3. The matter comes back before me for disposal in respect of the two male appellants, F and S.
4. Mr Ó Ceallaigh advances the Appellant's case as follows:
 - a. They face a risk of persecution and/or treatment contrary to Article 3 ECHR in Jalalabad because they have been targeted by a local businessman due to their religion;
 - b. They face a risk of persecution and/or treatment contrary to Article 3 ECHR in Jalalabad because of their religion, and particularly having regard to the risk factors set out in *TG and others (Afghan Sikhs persecuted) Afghanistan* CG [2015] UKUT 00595 (IAC);
 - c. They face persecution by reasons of persecution of their close family members;
 - d. They cannot safely internally relocate.
5. Before me he concentrated his submissions on point (c). As it happened he was right to do so because Mr Bates accepted on behalf of the Respondent that as a matter of law seeing serious harm visited upon a close relative could amount to persecution. He further accepted that in circumstances where the women of the family faced persecution, and the adult men of the family would be seen, and would see themselves, as their 'protectors', that very relationship would place them at risk.
6. Although one might think that proposition (c) needed no authority, Mr Ó Ceallaigh had some. In the case of Frantisek Katrinak v Secretary of State for the Home Department [2011] EWCA Civ 832 the Court of Appeal considered the case of a Czech Roma whose family had been subjected to racist abuse, threats and violence by skinheads but whose appeal had been dismissed by the Tribunal on the grounds that such events were not reasonably likely to occur again. The events narrated had included a single attack on the claimant, but also an assault on the claimant's pregnant wife. In its assessment of future risk

the Tribunal had based its calculations on the fact that the claimant himself had only been attacked once. Schiemann LJ, with whom Tuckey LJ agreed, identified three interrelated reasons why this was an error. It overlooked the fact that the past assault on the wife would raise the claimant's level of subjective fear, it suggested that the Tribunal had excluded from its calculus the second attack, and it failed to recognise that an attack on a family member could itself be persecution of the claimant:

"21.... the attacks also potentially evidence the appellants' vulnerability in the future. An activity which would not amount to persecution if done to some people may amount to persecution if done to others. It is easier to persecute a husband whose wife has been kicked in a racial attack whilst visibly pregnant than one whose family has not had this experience. What to others may be an unbelievable threat may induce terror in such a man.

22.the tribunal's concentration on the 29 years during which this appellant had only had one attack and on whether "he would be treated the same way again" gives rise to the suspicion that it did not bear in mind the possibility that a man may be persecuted by what is done or threatened to his wife.

23. Miss Laing submitted that the tribunal was under no obligation to take into account what had happened to her and might happen to her again in the future. She submitted that that would only be relevant if it could be shown that the notional future attacker intended by that attack to harm the husband. I would reject that submission. If I return with my wife to a country where there is a reasonable degree of likelihood that she will be subjected to further grave physical abuse for racial reasons, that puts me in a situation where there is a reasonable degree of risk that I will be persecuted. It is possible to persecute a husband or a member of a family by what you do to other members of his immediate family. The essential task for the decision taker in these sort of circumstances is to consider what is reasonably likely to happen to the wife and whether that is reasonably likely to affect the husband in such a way as to amount to persecution of him."

7. It follows that I need not make any findings on the historical events that the Appellants claim occurred in Jalalabad prior to their departure from Afghanistan, since they are not now relevant to their case on future risk: that is based, for the purpose of this decision, on the fact that the women of this family are confined to 'virtual house arrest' in order to avoid harms including kidnap, forced conversion and marriage. As the Respondent now accepts, persecution of the women would constitute persecution of the men.

8. The country guidance remains that given in TG where it was held that at local level there is not a sufficiency of protection for Sikhs. Given the particular facts of this case I am not satisfied that there is an internal flight alternative. The harm feared by the women – and so the men – would persist throughout Afghanistan. I further note the evidence of Dr Giustozzi who concludes [at his paragraphs]:
- (i) The family is unlikely to be able to secure accommodation in Kabul (§39);
 - (ii) The family is unlikely to be able to secure employment or start an economic activity in Kabul (§37);
 - (iii) Accessing the Temple for prayers in Afghanistan is difficult and dangerous (§34; 42);
 - (iv) Children and especially girls are at particular risk (§24; 26-28);
 - (v) Sikhs are perceived to be rich, whether they are or not, and so may be targeted;
 - (vi) Sikhs and Hindus continue to be harassed by militia commanders throughout Afghanistan (§10);
 - (vii) The police are hopelessly corrupt and incapable of protecting minorities and have been known to facilitate kidnappings (§18);
9. For those reasons, and the reasons set out in the ‘error of law’ decision, these appeals must be allowed on protection grounds.

Decisions

10. The determination of the First-tier Tribunal contains material errors of law and it is set aside.
11. The decision in the appeals is remade as follows: “the appeals are allowed on protection grounds”.
12. Having regard to the fact that this is a protection claim I am prepared to make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Upper Tribunal Judge Bruce
17th December 2018