



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/04917/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 12 April 2019
Prepared on 29 April 2019**

**Determination Promulgated
On 2nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**S. K.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, for Legal Justice
Solicitors

For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Afghanistan, entered the UK illegally in the company of his wife and younger brother. He made a protection claim on 14 November 2016, with them both as his dependents on that claim.

2. The protection claim was refused on 12 May 2017, and the appeal against this decision was heard and dismissed by First Tier Tribunal Judge Moran in a decision promulgated on 19 July 2017. Although it was accepted that the Appellant was an Afghan Hindu from Kabul, his account of his experiences in Afghanistan was rejected, in particular, as being materially different to that which had initially been advanced as the basis for his protection claim. His younger brother had not been kidnapped. There were no additional risk factors beyond the family's Hindu religion. He had not been separated from his parents en route, and they remained living in Afghanistan and able to provide support upon return.
3. Permission to appeal that decision was granted by Upper Tribunal Judge Bruce on 10 January 2018. She identified as arguable the failure of Judge Moran to consider separately the position of the Appellant's wife as a Hindu woman. Although she granted permission on all grounds, the other grounds were an unparticularised failure to give adequate reasons, and, a generalised assertion of a failure to properly consider the ability of the Appellant to relocate.
4. The appeal then came before Deputy Upper Tribunal Judge Farrelly on 23 May 2018. Although there was obviously no merit in the unparticularised reasons challenge to the adverse findings of fact (which were in reality fully and adequately reasoned), his decision records that the parties agreed that the appeal should be remitted for rehearing to the First-tier Tribunal for a de novo hearing, the complaint that Judge Moran had failed to consider the position of the Appellant's wife upon return to Kabul having been made out.
5. In the circumstances, when the remitted appeal came before First-tier Tribunal Judge Cary he, correctly, treated it as a de novo hearing. He too rejected as untrue the evidence of the Appellant, his wife, and his brother concerning the events that were said to have led them to leave Afghanistan [50]. He rejected the suggestion that the Appellant's wife had ever been threatened or assaulted, and rejected the claim that either she, or her young daughter faced a real risk of abduction and forced conversion to Islam [51-3]. He rejected the claim that the Appellant's parents had sold their shop in Kabul and concluded that the Appellant and his dependents could be supported by that business, and the local Gurdwara upon return [56].
6. The Appellant was granted permission to appeal on four grounds by Upper Tribunal Judge Rintoul on 15 January 2019 on the basis it was arguable that although the Judge

had correctly directed himself to follow the guidance to be found in TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595, he might have failed to apply it correctly, since it was not clear where and how the Judge had concluded the Appellant and his dependents would be able to live both in terms of generating income or accommodation.

7. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenges

8. Ms Cleghorn, although the author of the grounds, accepted that there was no merit in Ground 1; a complaint that the Judge had refused to depart from the country guidance to be found in TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595. She accepted that given the evidence that was before the Judge it was open to him to do so. The assertions made within the ground as to arbitrary outcomes in protection claims by Afghan Sikhs/Hindus are not supported by evidence, and as such must be discounted. I need say no more.
9. Ms Cleghorn accepted that Ground 2 and 3 should be taken together, as raising the same complaint, that the Judge had failed to properly apply the guidance to be found in TG.
10. Ms Cleghorn abandoned Ground 4, which had been a complaint that Judge Cary had failed to treat the appeal as a de novo hearing. He was entitled to look at the decisions of Judge Moran and Judge Farrelly, as he did. Given the basis for the remittal, he was also entitled to consider the evidence that was given to Judge Moran. There is no basis for the assertion in this ground that he improperly asked any question of any witness.
11. In the circumstances the surviving ground makes no challenge to the adverse findings of fact made by Judge Cary, or, his conclusion that the Appellant's parents remain living in Kabul and continue to trade the family business.

The application of TG

12. It is plain, as Upper Tribunal Judge Rintoul noted when granting permission to appeal that Judge Cary appropriately directed himself to consider the guidance to be found in TG. He made specific reference to that guidance throughout his decision [22, 35-7, and, 50-2]. He also considered the guidance to be found in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 and HN & SA

(Afghanistan) [2016] EWCA Civ 123 which confirmed that on the evidence available in March 2015 there was no basis for departing from the Article 15(c) guidance in AK [54-5].

13. Although Ms Cleghorn argued that the Judge had erred in failing to make any reference to AS (safety of Kabul) Afghanistan CG [2018] UKUT 118, she was unable to identify any part of that guidance that was relevant, in that its consideration ought to have led to a different overall conclusion, or would have been likely to do so. Whilst it is correct that AS is not referred to within the decision, that is not of itself enough to establish a material error of law. I note that the Upper Tribunal in AS specifically stated that the guidance to be found in AK in relation to Article 15(c) risk, and, the ability of certain categories of women to relocate to Kabul, were unaffected by their decision.
14. I also note that the Appellant's wife and two year old daughter (born in the UK) would not return to Kabul as unaccompanied females. The Judge's decision identifies three adult male members of the immediate family available to provide protection for them upon return; the Appellant, his brother, and, his father. In addition the Judge noted the Appellant's reference to a person at interview who he had described as a "friend or uncle" of his father, and, an "important person" [Q99-103] [52]. The clear inference from that evidence is that a wider family support network remains in Afghanistan, and accessible to the Appellant and his dependents.
15. I also note that the complaint that the Judge failed to give adequate consideration to the ability of the Appellant and his dependents to support themselves upon return to Kabul, fails to properly engage with the finding that they have his parents, the family home, and, the family business to return to [56]. Moreover neither the Appellant's evidence, nor the grounds, engaged with the financial support packages available to those prepared to return voluntarily. Absent the argument that discrimination would make it impossible to do so it is therefore far from clear in the context of the adverse findings of fact why the Appellant could not be expected to successfully return to pursuing with his father the business in Kabul that would allow all of the members of the family to support themselves once again from its trading profits.
16. I also note that the Judge did consider the question of education. He noted that the Appellant's wife was said to have received none, but that there was no suggestion she had been denied an education by factors outside the family. The guidance in TG #94-5, concerning access to education, notes that in Kabul schools have been set up

with Sikh teachers, and that education is available with the Gurdwara. Thus suitable education is currently available to both Sikh and Hindu children in Kabul, and there is no suggestion that it is denied, or unavailable, to female children. At the date of the hearing the Appellant's daughter was too young to enter full time education, and that point was some way off, but the country guidance did not offer a sound evidential basis for any finding that education for her would be unavailable should her parents wish her to be educated.

17. In my judgement it is quite clear when the decision is read as a whole that the Judge quite properly concluded that the Appellant had failed to establish that he and his family had no access to family support networks, housing, and employment sufficient to allow them to support themselves adequately upon return to Kabul. The burden of proof lay upon the Appellant to establish that he and his family was entitled to international protection. It is in my judgement quite clear from the Judge's decision that he failed to discharge it, and why he failed to do so. To put it bluntly the Judge was not satisfied that he had been told the truth.

Conclusion

18. Accordingly, notwithstanding the terms in which permission to appeal was granted, I confirm the Judge's decision to dismiss the asylum, Article 3, and humanitarian protection appeals. There is no material error of law in the approach taken by the Judge to the appeals that requires his decision to be set aside and remade.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 8 October 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 29 April 2019