



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

Appeal Number: PA/10308/2017
PA/10311/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 March 2019**

**Decision & Reasons Promulgated
On 1 April 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ISL and BSL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, instructed Legal Justice, solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants were born in 1974 and 1949 respectively and are male citizens of Afghanistan. Both appellants are Sikhs. By decisions dated 29 September 2017, the appellants' applications for international protection were refused by the Secretary of State. They appealed to the First-tier Tribunal which, in a decision promulgated on 27 November 2017, dismissed the appeals. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside. I notified this decision to the representatives at the hearing. My reasons are as follows. First, I find that the judge's analysis is vitiated by his failure to take account of the fact that the respondent had accepted that the second appellant's wife is receiving ongoing treatment for cancer. The judge's own note of evidence (which I read out to the representatives) makes clear that the presenting officer, Mr Spence, told the Tribunal that he accepted that the second appellant's wife was receiving chemotherapy. Notwithstanding that acknowledgement, the judge at [58-59] found that there was insufficient evidence to show that the second appellant's wife was receiving treatment. Judge comments that evidence from medical practitioners should have been obtained. I acknowledge that at [59] the judge finds that the appellants had failed to show that there would be no available treatment for cancer in Afghanistan; it is arguable that the judge has found, in the alternative, that even if the wife is suffering from cancer this would make no difference to the outcome of the appeal. However, I find that the wife's illness should have been a consideration in the judge's analysis of the appeal in respect of Article 15(c). That it was not constitutes an error of law.
3. Secondly, I agree with Mr Brown, who appeared for the appellants at the initial hearing, that the judge has not made any assessment of the difficulties which the second appellant's wife would encounter as regards the requirement to wear Islamic dress in Afghanistan, in particular the veil. Thirdly, I also agree with Mr Brown that the judge has not adequately considered whether the business which the appellants left behind in Afghanistan would still exist upon their return and, if it did exist, whether it would generate the same levels of income as previously. These were factors relevant to the Article 15 (c) analysis.
4. In the light of the problems identified in the judge's decision, I set aside the decision. There will need to be a new fact-finding exercise which is better conducted in the First-tier Tribunal to which this appeal is returned for that Tribunal to remake the decision. None of the findings of fact shall stand.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 27 November 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal (not Judge Moxon) to remake the decision.

Signed

Date 28 March 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.