



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03643/2015

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 November 2015

Decision Promulgated  
On 21 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MANJIT SINGH SIDANA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Patel of Lei Dat Baig Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Malik promulgated on 14 May 2015 which dismissed the Appellant's appeal against a refusal of asylum on all grounds .

### Background

3. The Appellant was born on 1 September 1980 and is a national of Afghanistan and a Sikh.
4. On 5 March 2014 the Appellant applied for asylum with his wife and child as his dependents.
5. On 17 February 2015 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
  - (a) The Appellant's nationality and religion were accepted.
  - (b) The Appellant had failed to demonstrate that the authorities in Afghanistan would be unable or unwilling to offer him protection as he had never sought their help.
  - (c) If the Appellant felt unable to return to Jalalabad he could relocate to Kabul.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Malik ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found ;
  - (a) The Judge relied on the SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137 summarising it that members of the Sikh and Hindu communities in Afghanistan did not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, *per se*. Neither could it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.
  - (b) The Judge then analysed in paragraph 25 onwards the Appellant's claim. She found that there was an inconsistency between his claimed fear for his family's safety and the fact that he waited a number of years after his relative's death/disappearance before leaving. She found that his fears of serious threats and harm were not borne out in reality or followed through.
  - (c) She found that no particular incident precipitated their flight but more a concern as to what might happen in the future.
  - (d) She considered the experts report at paragraph 26, 27 and 29.
  - (e) She found that if they were fearful of living in Jalalabad it would not be unreasonable or unduly harsh for them to relocate to Kabul as she found the Appellant to be a man who had previously worked and he was also a man of some means.
7. Grounds of appeal were lodged arguing that;
  - (a) The judge failed to make findings in respect of the Appellant's credibility.

- (b) It was perverse for the Judge to find that the Appellant had left Afghanistan in anticipation of persecution.
  - (c) The Judge failed to consider more up to date material in relation to relocation to Kabul and give sufficient weight to what was said in Dr Giustozzi's report.
8. On 8 June 2015 first-tier Tribunal Judge Levin gave permission to appeal.
9. There was a Rule 24 response which stated :
- (a) SL was still good law and therefore the correct starting point.
  - (b) The Judge was entitled to find that no specific incident precipitated the Appellant's flight from Afghanistan.
  - (c) The Judge adequately addressed the experts report.
10. At the hearing I heard submissions from Ms Patel on behalf of the Appellant that:
- (a) She relied on the grounds.
  - (b) The Judge had failed to make a clear credibility assessment in that she sets out the facts but not whether she believes them.
  - (c) There was a contradiction in relation to credibility between paragraph 25 and 28.
  - (d) She relied on SL which was old caselaw without considering the up to date country material submitted by the Appellant.
  - (e) Her assessment of relocation to Kabul was flawed in that she preferred the 2013 report to the more up to date material from Dr Guistozzi.
  - (f) The Judge criticizes the experts report for being generic without specifying the reasons for this given that the Appellant was referred to specifically in a number of places. Also failed to consider that the Appellant lacked expertise and would therefore be unlikely to be able to find employment.
  - (g) The Judge referred to the Appellant obtaining assistance from the Voluntary Returns Scheme but there was no evidential basis for this.
11. On behalf of the Respondent Mr Harrison submitted that :
- (a) He relied on the Rules 24 notice.
  - (b) SL was still good law and the Judge was entitled to consider whether sufficient evidence had been adduced for her to depart from it.
  - (c) Credibility was not put in issue in the refusal letter but the argument was that there was no real risk of persecution on the basis of the past treatment and therefore the Judges findings were sustainable.

- (d) The most recent CG case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 does not assist the Appellant as it reaffirms that Afghan Sikhs are not at risk *per se*.
- (e) The Judge considered Dr Guistozi's report and gave it the weight she felt was appropriate which was a matter for her.
- (f) She considered relocation and stated why in this Appellant's case it was not unduly harsh: these were findings open to her.

### **Finding on Material Error**

- 12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
- 13. The Appellant's claim for asylum was explicitly based on his fear of the Taliban: that he and his family were at risk of being killed by them unless he gave them money or converted. The refusal letter stated that in essence there was no reasonable degree of likelihood that he was at risk of persecution based on his previously described experiences.
- 14. In determining whether the Appellant's fear of persecution was well founded the Judge was obliged to consider his previous history. I am satisfied that she was entitled to consider that history against the background of the case of SL as that was still good law at the time of her decision unless there was persuasive evidence that allowed her to depart from its conclusions. That cases ratio that Sikhs are not at risk *per se* has been more recently confirmed in the case of TG, a case in which Dr Guistozi also gave evidence. So there can be no suggestion that the Judge was in error for taking as her starting point the fact that simply being an Afghan Sikh did not entitle an applicant to refugee status.
- 15. I am satisfied that when read as a whole that the Judge accepted that while the Appellant for himself and family feared harassment or kidnap and being killed for money she was obliged to assess whether these fears were well founded. I am satisfied that it is implicit in paragraph 25 that she accepted that his wife had her shawl pulled and threats had been made for money but his fears were unfounded as she found that he was able to attend Gurdawara each week and indeed was able to find work despite there being discrimination against Sikhs. She accepted that threats were made for money but they were not followed through. She also found that there was an inconsistency between his claimed fears and the fact that he waited so long to leave Afghanistan. I am satisfied therefore that the Judge was entitled to conclude against this background that in determining whether the Appellant had a well founded fear of persecution that his claim to face serious threats or to have been at serious risk of harm was not borne out in reality.
- 16. It was argued that the Judge placed insufficient weight on the report of Dr Guistozi. I am satisfied that the Judge clearly read and analysed Dr Guistozi's report as she referred to it at paragraphs 26, 27 and 29. She gave cogent reasons why she placed limited weight on it at paragraph 29 in that she found it was largely generic: this was a conclusion she was entitled to reach given that the report was at pages 22-51 of the bundle and contained only two very brief one line references to the Appellant at

page 36 and 44 before he was specifically referred to in the rather succinct conclusion at page 51. She also noted that that *some* of the information he provided was based on old data. Having read the report I am satisfied that she was entitled to state this as a matter of fact there was reliance on old information: the Judge does not say 'all' the information he provided, just some . These are factors however which the Judge was entitled to weigh in the balance in assessing the weight she attached to the report.

17. In assessing the Judge's assessment of relocation to Kabul I take into account that the Judge found that the Appellant's fear of persecution was not well founded in Jalalabad and therefore she was implicitly finding it was open to him to return there and therefore any error in relation to relocation cannot be material as relocation was a choice not a requirement of return. I am nevertheless satisfied that the Judge gave cogent reasons at paragraph 28 and 29 as to why moving to Kabul was 'open' to the Appellant. She took into account country information, her findings that the Appellant was a man of means who had previously found employment.
18. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

19. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

20. **The appeal is dismissed.**

Signed

Date 5.12.2015

Deputy Upper Tribunal Judge Birrell