



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

Appeal Number: AA/09076/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 April 2015**

**Decision & Reasons  
Promulgated  
On 20 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**JASWANT KAUR MALHOTRA  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Ell, Counsel, instructed by Middlesex Law Chambers  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, an Afghan Sikh widow, was refused asylum, and her appeal was dismissed by First-tier Tribunal Judge Abebrese, in a decision promulgated on 2 January 2015. Permission to appeal was granted by First-tier Tribunal Judge R A Cox, on 5 February 2015. In granting permission Judge Cox said the following.

“The grounds put forward five contentions, all of which I would regard as arguable. The central problem, however, in my estimation is that the judge appears completely to have missed the point that A’s claim was founded upon the acknowledged fact of her Sikh religion and consequently made no finding on the highly material issue of whether she would be at risk on return as a lone Sikh woman. All grounds may be argued.”

2. At the error of law hearing Mr Walker, for the respondent, made a sensible, and some would say inevitable, concession to the effect that there was a material error of law in the judge’s decision, and that the matter required remittal to the First-tier for a fresh hearing. In view of this sensible agreed position I will only set out in brief terms the basis for this agreement.
3. The judge dealt with credibility at paragraphs 9 and 10 of the decision. The difficulty with paragraph 9 is that there is no consideration of the relevance of the central fact, that the appellant was of the Sikh religion, in an environment where this was highly problematic, particularly in view of the hostile attitude to Sikhs expressed by the Taliban. The judge’s reasoning at paragraph 9 rejects the credibility of the appellant’s account as being improbable on the basis that there was no explanation for the persecution suffered by her and her family, but this assessment was conducted on the artificial basis that the obvious religious cause was excluded.
4. Similarly in the judge’s consideration of risk on return in paragraph 11 the judge approaches the appellant’s circumstances giving consideration only to her health and medical condition, the extent of her family connections in Afghanistan, but not giving consideration to the central aspect of the claim – her religion.
5. In view of the agreed position reached at the brief hearing, and in the light of the central problem correctly and succinctly identified by the judge who granted permission to appeal, I have therefore decided to set aside the judge’s decision dismissing the appeal, on the basis that there was a material error of law relevant to both the adverse credibility and the risk on return findings.
6. The representatives were both agreed that a remittal to the First-tier was required. Within the terms of the practice statement the extent of the fact-finding necessary made it an unsuitable case for a remaking in the Upper Tribunal.
7. It was not suggested that there was any need for anonymity in this appeal, and I make no such direction. No issue of any fee award arose, because the appeal was fee exempt.

## **Notice of Decision**

The First-tier Tribunal erred in law, and the decision dismissing the appeal is set aside.

The appeal to the Upper Tribunal is allowed, and the appeal is remitted to the First-tier Tribunal for a fresh hearing, with no findings preserved.

Signed

Date

Deputy Upper Tribunal Judge Gibb