



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

Appeal Number: AA/10183/2014

THE IMMIGRATION ACTS

**Heard at Phoenix House
On 11 May 2015**

**Determination
Promulgated
On 3 June 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR HARPREET SINGH SARNAH
MRS JYOTI KAUR SARNAH
(Anonymity directions not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Hussain of Counsel

For the respondent: Mr A McVeety, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of Afghanistan born on 1 January 1984 and the second appellant who is his dependent and wife was born on 1 January 1992. As the second appellant's appeal rests or falls with that of the first appellant, I will consider the appeal of the first appellant and refer to him as "the appellant".
2. The appellant appeals to the Upper Tribunal against the determination of First-tier Judge Agnew, dismissing his appeal against the decision of the

respondent dated 9 November 2014 2014 refusing his claim for asylum and humanitarian protection in the United Kingdom.

3. Permission to appeal was granted by a First-tier Tribunal Judge RA Cox on 11 February 2015 who considered that it is arguable that the First-tier Judge erred in law by misdirecting herself as to the case of **DSG and others (Afghan Sikhs; departure form CG) Afghanistan [2013] UKUT 00148 (IAC)**, the expert and background evidence when assessing risk on return simply as a Afghanistan Sikh.

The appellant's claim

4. The appellant's claim is based on his fear of persecution because he is an Afghanistan Sikh. He relies on the report of Dr Ballard who asserts that it is common knowledge that members of this community have found themselves subjected to steadily rising levels of hostility during the course of the past four decades and they have consequently have even more reason to seek refuge overseas than their Muslim compatriots. The appellant further relied on Dr Ballard's conclusions that reliable observation can be made about the current characteristics of the community in question because "it is now a small fraction of its former size and that as its members shrink, its remaining members are finding themselves ever more vulnerable to aggressive exploitation, against which they have no meaningful defence. Hence their exodus can only be expected to continue"

The first-tier Tribunal's findings

5. The First-tier Judge dismissed the appellant's appeal for asylum and humanitarian protection in the United Kingdom and made the following findings.
 - I. The appellant has not been consistent with his personal details, specifically his date of birth. When he was found and fingerprinted in Paris on 19 April 2014, he stated his name was "Singh Harp" which given the way the British immigration authorities record names, it is taken to mean that he gave his surname as "Singh" and his forename as "Harp". He gave his date of birth as 1 January 1963. However, at his screening interview he gave his name as Harpreet Singh Sarnah and date of birth as 1 January 1984. The identity document he produced purporting to be issued on 21 September 2013 (at paragraph 21 of the appellant's bundle) stated that "according to the register he is registered as two years old in the year 1359 [corresponding to 1980] which would make his date of birth sometime in 1978. There are clearly significant discrepancies in the appellant's claimed date of birth.

- II. The appellant's wife gave her name to the authorities in Paris as Gurpreet Kaur and her date of birth as 3 March 1983. At her screening interview, however, she gave her name as Joyti Kaur Sarnah with her date of birth of 1 January 1992. In an identity card her date of birth is not shown but her religion is stated as Hindu rather than Sikh..... In any event whatever the religion of the appellant's wife, it is clear that she and the appellant have both given different dates of birth to the authorities in France and to those in the United Kingdom, presumably in order to mislead and to avoid being subsequently traced. Allowance was clearly not made by them for the process of international fingerprint exchange.
- III. The fact that the couple were in Paris and fingerprinted in April 2014 was not something apparently known to the interviewing officer when the appellant was interviewed substantively on 28 October 2014. It was not referred to in the interviews or in the refusal letter. However, Mr Keane for the hearing, produced documentary evidence to that effect and the appellant accepted that he and his wife had been in Paris.
- IV. Out of this arise certain credibility points. The first significant one is why the appellant did not mention this in either of his interviews with the immigration authorities in the United Kingdom. At the hearing after the evidence had been put to him, he acknowledged that he and his wife had been in France for some months in April 2014. He also acknowledged that one of the "unknown" countries in which he had spent time before Paris was Pakistan. This does not fit in with his claims made at the screening interview... Where the appellant claimed he had left Afghanistan only 15 days before he and his wife arrived in the United Kingdom and that they had spent three days in an "unknown country" then three days in another unknown country, then nine days in yet another unknown country before getting on the lorry and being brought to the United Kingdom. In that interview the appellant was also asked if he had been fingerprinted in the United Kingdom or any other country before and he confirmed he had been fingerprinted in the former but nowhere else. Later in the same interview he was asked again to confirm that he had not been fingerprinted anywhere else apart from the United Kingdom and his reply again was "not just here".
- V. At the hearing when the appellant was asked to clarify why he claims that he left Afghanistan in July and spent only a few days in unknown country before entering the United Kingdom, but now acknowledged that he had been in France for some months. The appellant seemed to have difficulty in answering the questions directly but eventually said

that when he and his wife had been fingerprinted in France, the agent told them that they had come in the wrong way and took them back to Afghanistan. He said that is why he claimed to have left Afghanistan only a few days before. This evidence of the appellant is implausible and seriously damages the credibility of the appellant and his claims generally.

- VI. The appellant had an opportunity at his substantive asylum interview to explain his journey from Afghanistan to two countries and back again but instead chose to mislead the respondent. He was asked when did he left Afghanistan after the purported attack on him in Afghanistan in April 2013. The appellant replied "2 July 2014". He was asked between April 2013 and July this year did anything else happen to him and his wife in Afghanistan. The appellant replied "nothing has happened because we did not leave our home but we became aware from other people about where we had gone". The appellant went on to say that they became aware that people were asking after him and his wife from families out shopping who told his father. The appellant said that even if he had to leave the house in Afghanistan even just to go to his in-laws, he would go in the car and not walk. He did not add that during this period he and his wife had in fact actually left the country, spent some months abroad before returning to Afghanistan with the agent and recommencing their journey out of Afghanistan again in July 2014.
- VII. From this, if it is true, one can take it that if the appellant choose to follow the advice of the agent to lie to the immigration authorities about when he left Afghanistan, he may well also be lying about what happened to him and his wife in Afghanistan and even now, when he actually left Afghanistan.
- VIII. The appellant did not claim asylum in France although they were fingerprinted. He claimed that they were being moved around and kept in one room and given only food and not allowed out. This does not accord with his evidence that they were fingerprinted in Paris if they were not be allowed out. It is also not plausible that an agent would keep two people in France and move them around regularly from place to place for four months as claimed.
- IX. The appellant's claim that he travelled from Pakistan to various unknown countries and entered the United Kingdom without knowing where he was is not credible and inconsistent. At his screening interview, he claimed he did not see the document which the agent used for him and his wife to enter the United Kingdom. He said they just followed the agent. At the hearing he claimed that he could not read or write English could not read signs when he was in Pakistan.

When the agent drove them to a city he did not know where he was. After leaving Pakistan they went to another city by plane but he did not know which airport they had left from. He said he could not read the signs. It was put to the appellant that signs would be in every language. The appellant replied that the signs were not written in Punjabi. It was put to him whether he generally means that signs in an airport in Pakistan are not written in Punjabi and which the appellant replied, "the truth is that there were no signs and we were both very scared we did not look left or right".

- X. The appellant did not satisfactorily explain why an agent would bring him and his wife to the United Kingdom in the most convoluted and most expensive way. He claims that they left Afghanistan and went to Pakistan. From there they went France where they lived for some months. They returned to Afghanistan and repeated the whole exercise again and this time only stayed for a few months in France. It was pointed out that the appellant and his wife had passports and they could both have just left Afghanistan in the normal manner. The appellant attributed this decision to his father who paid for all the expenses. This is not credible evidence.
- XI. The discrepancies and implausibility in the evidence which go to the crux of the appellant's claim have not been addressed in the appellant's witness statement, oral evidence and submissions. Having considered all the evidence and bearing in mind the low standard of proof, that the evidence of the appellant is not plausible and he is not a credible witness. The appellant has failed to establish by evidence worthy of credit that his wife was attacked in an attempt to abduct her in early 2013, that he was attacked in April 13 and that they remained in hiding (or travelled abroad and returned) until they could flee in April or July 2014.
- XII. The question therefore still remains open as to when the appellant actually left Afghanistan. There is no going behind the respondent's concession that the appellant is a Sikh from Afghanistan although it is noted that it is somewhat surprising that he gave the names of seven Gurdwaras in Kabul when asked at question 34, although according to the background evidence in the appellant's bundle there is only one Gurdwara. An article by Al Jazeera dated 23 February 2014 states, "Kabul was home to 8 Gurdwaras, but only one remains today". It is also surprising that the appellant claims that his wife was walking between two Gurdwaras, only 5 to 7 minutes' walk apart, when she was attacked in April 2014 which could not have been possible given that the ground everything states there is only one Gurdwara in Kabul.

- XIII. Mr Keane for the Secretary of State, in his submissions suggested there are three ways the appellant's narrative could be explained. First, to conceal the appellant's nationality which is normally behind strange travel stories that are sometimes given by asylum seekers. Secondly, for the appellant to conceal his identity. He noted in this regard that the appellant had attempted this by giving different dates of birth. Thirdly, to conceal when he actually arrived in the United Kingdom. Mr Keane submitted that the appellant and his wife could have been here for years having arrived on visitor's visa with totally different names and dates of birth and thereafter claiming asylum. The only evidence given that he came to the United Kingdom in July 2014 is the appellant's evidence.
- XIV. Mr Keane accepted he was surmising but submitted there had to be a reason for why the appellant had given such an incredibly discrepant account of his movements and had tried to hide who he is and when he arrived. It was also ludicrous to suggest that an agent could hand over the passport of other passengers to officials and it would not be questioned, not just by immigration authorities by airline staff, security, et cetera. All this suggest the appellant is trying to conceal who he is and when he arrived in the United Kingdom. The legal representative on behalf of the appellant did not address this point in her submissions save to acknowledge that there was tension in the evidence of the appellant regarding dates but submitted that the Tribunal could have confidence in the appellant's evidence.
- XV. It is not possible to have confidence in the appellant's evidence because there are serious doubts about when the appellant and his wife left of Afghanistan and arrived in the United Kingdom. It may be they have lived in another country for some years. That is not for the Judge to speculate. However it is found that the appellant has not established that he and his wife only recently left Afghanistan and arrived in the United Kingdom in July 2014.
- XVI. In respect of whether the appellant could return to Afghanistan, the background evidence on Afghanistan is noted. The report of Roger Ballard is somewhat dated, having been printed in 2011. There is no report or incident regarding Afghanistan later than 2010. The other information is mixed. In the article by Radio Free Europe at page 58, it is noted that the Ministry of education has opened two primary schools exclusively for Sikh children in Kabul and Jalalabad although it is stated that this was after complaints of harassment were made, bullying and targeting of minorities. At page 60 in the Guardian article about a Sikh man deported from Afghanistan (he had claimed to be an Afghan when he was not) a Sikh is quoted as saying that he had gone

to India with his family over a decade ago but he could not find work so returned to Kabul to support them. In the Radio Free Europe article dated 19 August 2014 at page 57, it is stated that Afghanistan allocated last year a Parliamentary seat for Sikhs which will be shared with the Hindu representative. President Hamid Karzai issued a decree guaranteeing a reserved seat in Wolesi Jirga for the next Parliamentary elections in 2015.

- XVII. In the case of **DSG** on which Miss Rosu relied, it was found that the appellant were credible in his claims of past persecution which is not the case for the appellant. The appellant himself claims that his father had been running a successful clothing business in Kabul for 25 years and whilst there may be discrimination, the appellant has not established that he or his family members have been subject to persecution in Afghanistan. I have not found he has been credible in when he actually left Afghanistan. Whenever he left, he has failed to establish in the absence of other factors that he and his wife will be subjected to persecution on return to Afghanistan because of their religion.

The grounds of appeal

6. The grounds of appeal state the following which I summarise. The Tribunal made a material legal error in rejecting Mr Roger Ballard's report simply because it was written in 2011. There is no substantive consideration of the contents of the report and no findings were made regarding the contents save for the date when it was written. The contents of the report supported the appellant's claim that he fears persecution in Afghanistan. Mr Roger Ballard's report indicates that there is a history of persecutory treatment of Sikhs in Afghanistan. An International Crisis Group report on Afghanistan talk about the threat to community networks that offer support. Hindus and Sikhs now find themselves in a position closely akin to that of the Jews in Nazi Germany and like them, find themselves forced to flee to the four corners of the globe in search of safety and security. There is no reliable data on religious demography as an official nationwide census has not been conducted in decades, however it is common knowledge that members of the community have found themselves subjected to steadily rising levels of hostility during the course of the past four decades and they have consequently had even more reason to seek refuge overseas than their Muslim patriots. It would appear that the only reliable observation that can be made about the current characteristics of the community in question is that it is now only a small fraction of its former size and that as numbers shrink, if remaining members are finding themselves even more vulnerable to aggressive exploitation, against which they have no meaningful defence. Hence it can only be expected to continue.

7. The authority of **DSG** is distinguished because it is based upon the claimants in the **DSG** having been found to be credible. While it was held that positive credibility findings are of clear relevance, it is submitted that aspects of the evidence referred to in the authority to support the contention that the appellant is at risk of persecution upon return.
8. In **DSG** the Tribunal referred to the following pertinent factors. Dr Bestows in his report which was referred to, relates to the prevalence of attacks against Sikhs and also the impunity with which the same are carried out. This goes to the appellant's credibility and the risk of persecution upon return. The population of Sikhs has dwindled to some 3700 as opposed to 20,000 which shows an exodus of Sikh families. The UNHCR report referred to paragraph 25 of the **DSG** shows that only about 1000 -2000 Sikhs and Hindus remain in Afghanistan.
9. The petition in question was written by family and friends in support and that weight is placed upon whether the events that occurred are recorded accurately as this document was not written by the appellant who had first-hand experience of the events.
10. Proper consideration was not given to the fact the appellant and his wife had to depend upon people smugglers in order to leave Afghanistan and hence were in their hands throughout their journey. The family were persecuted in Afghanistan as claimed. Afghan Sikhs are at risk of persecution on return.

The respondent's Rule 24 response

11. The respondent in her Rule 24 response to the grounds of appeal states as follows. The respondent opposes the appellant's appeal. The appellant was comprehensively disbelieved. The only facts were that the appellants were Afghans and Sikhs. There was no accepted history of past persecution in Afghanistan. In this event there was therefore no indication of future persecution. In **DSG**, the appellants were found to be credible. The Judge distinguished **DSG** on that basis.
12. Paragraph 24 of the **DSG** states "of clear relevance also was the positive credibility findings in the adoption of the earlier findings by the Judge in April 2004 that the appellant had experienced persecution in the past in Afghanistan." Therefore credibility of the appellant was central to their success in the case of **DSG**. **DSG** is not a country guidance case and has no binding authority. **DSG** is reported only to demonstrate how and when it was possible to depart from the country guidance case. In the appellant's case he was unable to establish a real risk on return. The Judge was entitled to conclude that the report of Dr Ballard was worthy of limited weight given that it was based on events in Afghanistan no later than 2010. Furthermore there was later background evidence noted at paragraph 42. The conclusion

of risk to the appellant at paragraph 42 of the determination is more than adequately reasoned. No material error of law is disclosed by the grounds.

The hearing

13. On behalf of the appellant, Mr Hussain submitted the following which I summarise. The Judge did not consider Dr Ballard's report which is very clear that Sikhs are at risk in Afghanistan. In the case of the **DSG**, it did not say the appellant's credibility is, the be all and the end all. Simply being a Sikh in Afghanistan it is enough to show future persecution. Dr Ballard says that there are extreme hostilities in Afghanistan and extreme discrimination. It may be that the very rich would be in a position to live in gated communities relatively safely but not an ordinary Sikh.
14. Mr McDevitt for the Secretary of State stated the following which I summarise. The grounds of appeal suggest **DSG** is a country guidance case when it is not one. The appeal is confined to the principle as to when it is possible to go behind the country guidance case. There was nothing credible about the appellant. Dr Ballard's report is out of date as the last incident reported was 2010. The Judge took into account more recent evidence. There is no perversity in the Judge's findings which are valid and cogent.

Decision on error of law

15. I have given anxious scrutiny to the determination of First-tier Judge and have taken into account the grounds of appeal, the submissions and the documents in the appeal.
16. One of the complaints against the Judge is that he did not place sufficient weight on the expert report of Mr Ballard. The Judge gave proper reasons in his determination for why he placed limited weight on Mr Ballard's report which was that the reports gave no incidents in Afghanistan beyond 2010 and therefore was outdated. In the case of **DSG**, the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No 2, at paragraph 11, it is stated:

“If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant.”.

17. It was argued by the respondent, which I accept, that the **DSG** is not a country guidance case which has to be followed. This case was primarily as to the circumstances under which a Judge can depart from a country guidance case. The Judge in this case relied on evidence post-dated the

country guidance case of **SL & Others (Afghanistan) CG (returning Sikhs and Hindus) [2005] UKIAT 00137**, where it was held that Afghan Sikhs were not at risk of either persecution for a Convention reason or treatment contrary to their protected human rights.

18. The Judge was entitled to take into account more recent evidence about risk on return to Afghanistan for Sikhs instead of relying on Mr Ballard's report which was dated 2011 but referred to no incident beyond 2010. The Judge took into account the article by Radio Free Europe which stated that the Ministry of Education and is open to primary schools exclusively for Sikh children in Kabul and Jalalabad and noted that this is after complaints of harassment and bullying targeting the minorities was made. He took into account a Guardian newspaper article about a Sikh man purporting to be from Afghanistan who stated that he went to India with his family over a decade ago but he could not find work so he returned to Kabul to support them. He noted that the Radio Free Europe article dated 19 August 2014 at page 57 stated that Afghanistan allocated last year a parliamentary seat for Sikhs which will be shared with the Hindu representative.
19. The Judge took into account an article in the appellant's bundle from Radio Free Europe where it is stated that in the 1970s there were estimated to have been more than 150,000 Hindus and Sikhs in Afghanistan. Many were engaged in successful businesses, owned shops and the children studied in universities. However thousands migrated in the 1980s and again in the 1990s. It is stated that there are only around 4000 Sikhs living in the country. The majority of Sikhs who have remained there are impoverished people who struggle to make ends meet. A Sikh is quoted as saying that "in our community only those who have no money have remained in Kabul and Jalalabad. Anyone who can afford to leave wouldn't stay here".
20. The Judge noted that it is clear that the appellant and his father have sufficient funds, if his claims are true, to pay an agent for his brother's family as well as the appellant and his wife to get to the United Kingdom using false documents and agents. The Judge stated that the appellant's claim of expending this amount of money to leave illegally when it was not needed for them to legitimately leave Afghanistan does not sit well with the background country information or if it were true that the appellant and his other family members were desperate to leave Afghanistan because they were in fear of abduction and losing their lives. They could have simply got on the plane and left for Pakistan or another nearby country. The claims of the large amount of money expended to get the appellant, his wife and his brother and family to the United Kingdom is far more redolent of obtaining an economic advantage in entering into and remaining in the United Kingdom rather than fleeing persecution. The Judge was entitled to find that the appellant did not need an agent to leave Afghanistan to go to nearby Pakistan or India, if he was indeed fleeing persecution. He was also entitled

to consider evidence which post-dated Dr Ballard's report and did not fall into material error.

21. The Judge did not find the appellant credible and proper and cogent reasons were given in the determination for this finding in some detail. The Judge found that there is no evidence as for when the appellant first entered the United Kingdom. The Judge was entitled to find that the appellants' narrative that he left Afghanistan, went to Pakistan and then to France. He then returned to Afghanistan, went back to Pakistan then to France before coming to the United Kingdom. The judge noted that in his substantive interview the appellant had an opportunity to explain that he had left Afghanistan but had returned to Afghanistan before leaving again but instead he misled the respondent. The Judge took into account the appellant's answer at his asylum interview when he was asked, after the claimed attack on him in April 2013 to when he left Afghanistan on 2 July 2014 did anything as happened to him what his wife in Afghanistan. The appellant answered "nothing's happened because we did not leave our home but we became aware from other people about where we had gone". The Judge noted that the appellant did not say that during this period he and his wife had left the country and spent some months abroad before returning with an agent to Afghanistan and recommencing their journey out of Afghanistan for the second time, in July 2014. The Judge was entitled to find that the appellant misled the respondent and that it is not credible that an agent would take the appellant on such a convoluted route to come to the United Kingdom. These findings were open to the Judge on the evidence before him.
22. The Judge found that that the appellant's evidence that he and his wife was attacked in Afghanistan walking from one Gurdwara one to another Gurdwara which was a short distance apart is not credible and does not accord with the background evidence. The Judge found that the appellant's evidence that there are eight good in Kabul, does not accord with the background evidence that they is only one Gurdwara left in Kabul. The Judge's findings that the wife therefore could not have been attacked in Kabul walking from one Gurdwara to another, is not perverse or irrational on the evidence.
23. The Judge also highlighted other credibility issues including the appellant's inconsistency as to how long he lived in France and Pakistan. He was entitled not find credible the appellant's evidence that he did not know that he was in Pakistan. He considered the appellant's explanation that he and his wife were so stressed that they did not look at the signs at the airport to know that they were in Pakistan. The Judge was also entitled to find that the appellant's evidence that he did not know that he was in Pakistan not to be credible. The Judge found that it is not possible to know when the appellant left Afghanistan and for how long he was living in France

and for how long he has been in the United Kingdom. It was open to the Judge to find that the appellant is not credible and has not given credible explanations too many issues raised by the respondent.

24. The Judge found with good reasons based on the evidence that the appellant lied about his name and date of birth was in France and the United Kingdom to mislead the respondent. The Judge properly found that it is clear that the appellant and his wife have both given different dates of birth to the authorities, in order to mislead and to avoid being subsequently traced. It was therefore open to the Judge to find that the appellant's did not make allowance for the process of international fingerprint exchange which is why the appellant felt confident to give different dates of birth. The Judge essentially found that the appellant resorts to deception to achieve his objectives.
25. I however accept the argument put forward on behalf of the appellant that lack of the appellant's credibility does not necessarily go to his risk on return but it must be borne in mind that the appellants failure to prove that he was persecuted in Afghanistan before he left the country is relevant to his risk on return.
26. There was no credible evidence before the Judge to suggest that every Sikh, no matter what his or her circumstances is at risk in Afghanistan. The Judge took into account the background evidence and recent events in Afghanistan to inform his decision.
27. The Judge noted at paragraph 43 that the appellant's father has been running a successful clothing business in Kabul for 25 years and whilst there may be discrimination against Sikhs, the appellant has not demonstrated that he and his members of his family were subjected to persecution when they were in Afghanistan. The fact that the appellant's father had resources and had a successful clothing business in Kabul correctly demonstrated to the Judge that the appellant was not amongst those who were at risk in Afghanistan. The appellant's father's business and resources in Kabul were circumstances that the Judge was entitled to take into account in assessing risk on return. The appellant's representative also pointed out in his submissions at the hearing that people with resources are able to live in gated communities in Kabul and it is the ordinary Sikh who would find it difficult to avoid discrimination and persecution. I accept this argument that Sikhs with resources and successful businesses are able to live in Kabul relatively safely to the **Howarth** standard.
28. The Judge's determination has been carefully written and he has taken into account all the evidence in reaching his decision which is sustainable. I uphold the decision of the First-tier Tribunal Judge and find there is more material error of law in the determination.

DECISION

Appeal dismissed

Dated this 1st day of June

2015
Signed by

Mrs S Chana
A Deputy Judge of the Upper Tribunal