



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

Appeal Number: AA/07794/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th January and 20th April
2016**

**Decision & Reasons Promulgated
On 19th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MANDIP SINGH CHOPRA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Medley-Daley and Miss John-Rose

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

DECISION AND REASONS

1. This is an appeal by Mandip Singh Chopra, a citizen of Afghanistan born 1st January 1990. He appeals against the decision of the Respondent made on 16th September 2014 to refuse to grant asylum and to remove him from the United Kingdom.
2. The Appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Brookfield in February 2015. On 6th August 2015 having heard submissions I found that there was a material

error of law in the determination of First-tier Tribunal Judge Brookfield and I set her decision aside with no preserved findings of fact.

The Basis of the Appellant's Claim for Asylum

3. The Appellant claims that he would have a well-founded fear of persecution in Afghanistan because he is a Sikh. He claims to have been verbally abused, beaten and on one occasion cut with a razor because of his religion. He was told that he should convert to Islam or leave the country. His family suffered similar treatment and they have also left Afghanistan.
4. The Appellant is married and his wife and child are dependent on his claim. They entered the UK on 10th October 2014 and claimed asylum. The Appellant said that a lot of the attacks that he faced in Afghanistan were when he was on his way to the Gurdwara. Prior to the attacks becoming so bad and so frequent he would attend the Gurdwara every day. He had to reduce his attendance. In his interview the Appellant said that he had six sisters. He is the only son. Four of his sisters are married and he does not know where they are. The two younger ones are with his father but he does not know if his father is in Afghanistan or not. He does not know where he is. His father had all his jewellery stolen. Muslims had entered the house, beaten the Appellant and his father and tried and to take the Appellant's wife away. He said that whenever they went out they would be attacked. I note from the interview notes that he had shown the interviewing officer his arms and there are old marks from beatings. He said they cut him with razors and these marks were on his arms. He said he had been beaten in the street eight to ten times.

Decision of the Secretary of State

5. The decision of the Secretary of State is contained in a letter dated 16th September 2014.
6. The Secretary of State accepted that the Appellant is a Sikh but not that he is a national of Afghanistan. She accordingly did not accept that he would be at risk in Afghanistan or that he had suffered persecution there in the past.

Evidence at the hearing

7. This case first came before me on 13th January 2016. An error had been made in that an interpreter had not been booked for the hearing. The Appellant's representative told me that five witnesses had come at great expense from London all of whom would confirm that the Appellant is a national of Afghanistan, a fact which had been disputed by the Secretary of State in the refusal letter. The representative said that three of the witnesses spoke English and asked if I could hear evidence from them that day to avoid them having to come back to court at a later date. I agreed to do this. I heard evidence from Didar Singh, Ragmeet Singh Chopra and

Manmeet Singh Chopra. Manmeet Singh and Ragmeet Singh are paternal relatives of the Appellant and Didar Singh is his brother-in-law. All three had provided statements confirming that they knew the Appellant's family members and that they knew each other in Afghanistan and would visit each other. They adopted statements to this effect. The Appellant's wife was not in attendance that day. I agreed that I would adjourn the case part heard so that the Appellant's wife could attend and we could book an interpreter so that evidence could be properly taken.

8. I had accepted at the end of the hearing on 16th January that the Appellant is a national of Afghanistan. Miss John-Rose said therefore that she did not think it was necessary for anyone to give evidence and she would not be calling any witnesses. She wished to proceed on submissions only. Mr Harrison had no objection to that.
9. In his submissions Mr Harrison said he would rely on the Refusal Letter. He said that ideally a caseworker should have reconsidered the case in the light of my finding that the Appellant is a citizen of Afghanistan but that had not been possible.
10. Mrs John-Rose had provided a skeleton argument in which it is submitted that the number of Sikhs in Afghanistan has reduced significantly. She relied on the recent country guidance case **TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595**. In oral submissions she said it is clear from **TG** that each case has to be looked at on its own merits. Each case is fact-sensitive. The question is whether it would be unduly harsh for the Appellant and his family to relocate within Afghanistan given that the problems that they had were apparently localised. The Appellant has stated that he has no family support in Kabul. He has no means of securing employment and accommodation for him and his family. He is uneducated. He was unemployed in Afghanistan. He does not know where his parents and sisters are. He does have other family in the UK. He has a child and it would not be in her best interests to have to live in the atmosphere to which the family would be subjected in Afghanistan. She pointed out that no challenge had been made to the veracity of the Appellant's account and submitted that the Appellant falls squarely within the category of persons identified at paragraphs 117 and 118 of **TG** which read,

"It is also important to bear in mind that partly because of their declining number, access to extended family / community / charity / religious support is generally very difficult for members of the Sikh and Hindu communities in Afghanistan. It is likely to be even more so upon relocation. As a consequence of this the practicability of settling elsewhere and the availability of meaningful support must be carefully considered. Those members of the Sikh or Hindu communities without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms. It follows that such individuals are unlikely to have a viable internal relocation alternative.

As noted above, whether a person will be accepted on return may depend upon the availability of support, which is a fact sensitive assessment. We

have not been provided with any up to date guidance published by the Respondent regarding this, but note an article dated 6th February 2015 by European Council on Refugees and Exiles (ECRE), titled "Norway not to return families at risk in their home area to parts of Afghanistan with no support" in which it is reported that Norway will not return families with children who would face persecution in their home areas to areas of Afghanistan where they do not have sufficient networks or resources. This is in accordance with the 2013 UNHCR Guidelines calling for the internal flight alternative in Afghanistan to only apply where the individual can expect to benefit from meaningful support of their own family, community or tribe in the area of possible relocation, and consistent with our own assessment (although our own assessment has been restricted to members of the Sikh and Hindu communities)."

My findings

11. I have given careful consideration to all the evidence put before me in this case.
12. I shall set out the summary of the findings of the Upper Tribunal in **TG**.

"Risk to followers of the Sikh and Hindu faiths in Afghanistan:

(i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.

(ii) Members of the Sikh and Hindu communities in Afghanistan do 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 can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.

(iii) A consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following:

- a. women are particularly vulnerable in the absence of appropriate protection from a male member of the family;
- b. likely financial circumstances and ability to access basic accommodation bearing in mind
 - Muslims are generally unlikely to employ a member of the Sikh and Hindu communities
 - such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and / or pursuing their remaining traditional pursuit, that of a shopkeeper / trader
 - the traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support;
- c. the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;

- d. access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.

(iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.

(v) Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.

(vi) This replaces the county guidance provided in the cases of K (Risk - Sikh- Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137. “

13. It has been accepted that the Appellant is an Afghani Sikh and the question is whether he would face a real risk of persecution in his home area and if so whether it would be unduly harsh to expect him and his family to relocate within Afghanistan. As Mrs John-Rose said in her submissions no real challenge has been made to the account given by the Appellant since the Respondent simply relied on her belief that the Appellant was not from Afghanistan and went no further. The Appellant says that his family have all left Afghanistan because of the problems they suffered there. I accept that the Appellant and indeed his family have been subjected to serious discrimination and harassment in Afghanistan on account of their religion. There is a question of whether or not this amounts to persecution. It seems to me that the discrimination to which the Appellant was subjected was a pattern of discrimination rather than a one-off incident. The effect of this discrimination was to prevent the Appellant's access to work, to education and to the means to support his family. He also suffered restrictions on the right to practise his religion. I find that this amounts to persecution. I take into account too that there is evidence that the authorities at local level are neither willing nor able to provide effective protection. Having considered what was said in **TG** in the light of the Appellant's circumstances as a whole I find that it would be unduly harsh to expect the Appellant and his family to relocate within Afghanistan.

Notice of Decision

The appeal is allowed on asylum grounds.

No anonymity direction is made.

Signed

Date: 17th May 2016

N A Baird
Deputy Judge of the Upper Tribunal