



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09799/2010

THE IMMIGRATION ACTS

Heard at Field House
on 11 December 2015

Decision & Reasons Promulgated
on 11 February 2016

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MANAS CHHABRA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Jones instructed by Simman Solicitors

For the Respondent: Mr I Jarvis Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan and follower of the Hindu faith born in August 1990 in Kabul in Afghanistan.
2. An application for further leave to remain in the UK made on 16 July 2008 was considered and refused on the 22 June 2010. The appeal against the refusal was heard by Immigration Judge R.J.N.B Morris on the 29 September 2010 and the claims for leave under the Refugee Convention, Humanitarian Protection and human rights provisions dismissed.

3. Permission to appeal to the Upper Tribunal was refused by Upper Tribunal Judge Gill on 2 November 2010 but granted on a renewed application by Upper Tribunal Judge Latta on 25 November 2010. Directions were given and the case thereafter came before Immigration Judge Drabu CBE sitting as a Deputy Judge of the Upper Tribunal on 8 February 2011 who, despite noting in the record of proceedings that the parties agreed that the determination has material and fundamental flaws, does not appear to have made an order finding error of law and setting the determination aside although a separate handwritten note records that the second stage hearing was adjourned and asking for a date to be fixed.
4. On 10 May 2011 the matter came before Mr Justice Blake and Upper Tribunal Judge Gleeson for mention in which submissions were made that the Afghan Country Guidance case at that time was substantially out of date and querying whether an up-to-date decision was required. The matter was thereafter referred to the country convener, Upper Tribunal Judge Allen, and considered by him at a further 'for mention' hearing on 27 July 2011 and again on 26 July 2012. The case was identified as one of a number of possible cases suitable for consideration although did not form one of those finally selected. The country guidance case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) was promulgated on the 3 November 2015. The decision considered the position of both followers of the Hindu and Sikh faiths in Afghanistan.
5. At the commencement of the hearing an issue was raised regarding the stage the proceeding have reached in light of the lack of suitable orders. As the Upper Tribunal has no power to remake a decision unless a material error has been found and the original determination set aside the parties were invited to make further submissions on the nature of the error. Mr Jarvis in his submissions accepted there are some errors in the determination, some stronger than others, and that those identified in relation to paragraphs 21(iii) regarding the finding of sufficiency of protection and 22 as outlined in the grounds and submissions were material to the decision.
6. The determination shall therefore be set aside and the decision remade.

The appellants case

7. The appellant lived with his parents, siblings, and extended family members in Kabul in Afghanistan. His father made and sold herbal medicines. In his 2006 witness statement the appellant stated that at that time his father owned a shop in Kabul where he sold and repaired bicycles. His mother is a housewife.
8. The appellant claims to have received no formal education but to be able to read and write a little Hindi which he was taught by his father.
9. The appellant refers to incidents in Kabul during the time the Taliban were in power and thereafter including his father being approached by a group of men seeking to kidnap the appellant although they were left alone when his father pleaded for forgiveness and mercy. As a result of fears for his safety it was arranged that the appellant should leave Afghanistan which he did on 11 September 2006 when he was collected by an agent with whom he flew from

Kabul to a transit point from where they flew to the United Kingdom, arriving on the evening of 12 September 2006. He claimed asylum the following day.

10. The appellants' fear is that if returned to Afghanistan he will be killed.
11. In his oral evidence the appellant referred to his application to the Red Cross in 2009 claiming he has continued to try and locate his family. The appellant has been educated and is now employed in the United Kingdom initially on a part-time basis but since September 2015 full time. The appellant claim to have no savings and to own no property in Afghanistan. The appellant has a good command of English.
12. The First tier Tribunal determination of Judge Morris [21(d)] noted the appellant's evidence that arrangements were only made for him to leave Afghanistan as his sister's marriage had been arranged and it was intended they would join the appellant in the UK after the wedding in three months' time. In his oral evidence the appellant claimed not to have seen his sister's husband and not to have known his name as he was a child and was only told by his parents.
13. The appellant claimed that when he came to the UK he was not provided with a contact number by his parents. When it was put to him that it was strange that a 16 year old boy would be sent to the UK with no means of contact with home to say he had arrived, the appellant referred to a family friend in the UK who would find out where he was.
14. The appellant was asked about a named individual in the UK, Mr Gabba, who he stated he had not asked if could provide funds if he was returned. The appellant claimed that if he received remittances he would be more of a target in Afghanistan as it would be sent via Western Union.
15. The appellant claimed his father's shop had been burned down and that he did not know if he was still in business. The appellant was not sure if contact had been made with anyone in Kabul.
16. A witness Mr Gibbs was called. He had not been asked by the appellant if was able to provide funds to assist if returned to Afghanistan but claimed that if he was asked he has a girlfriend and they are to marry in 18 months and so it may be difficulty but that he would do his best to help with some things and provide about "a couple of hundred pounds a month"

Discussion

17. The situation for members of the Sikh and Hindu faiths was considered in detail in the country guidance case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC) the headnote of which reads:

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.

18. The appellant has not established that during his time in Afghanistan he was subject to persecution although his evidence of the experiences of his family are in accordance with the evidence referred to in IG.

19. The burden of proving entitlement to a grant of international protection rests upon the appellant with the standard of proof being that referred to as the 'lower standard'.
20. The appellants claim that if returned he will be killed is not substantiated by the evidence before the Upper Tribunal. It is accepted there may be a degree of harassment but members of this faith group are able to attend the temple and prey and in the street are not as easily identified as a follower of the Sikh religion who will wear a turban.
21. In his witness statement dated 9 December 2015, in there is reference to the decision in TG and others, the appellant claims he will be unable to relocate to Afghanistan given the precarious situation there. His claim not to be able to practise his faith is not substantiated and is not supported by the country information or country guidance case law which shows that followers of this faith group are able to attend the temple and follow their faith.
22. The appellant has been found to be generally a credible witness but risk has to be assessed at the date of the hearing in light of the prevailing country conditions and not those that existed in 2006 some ten years ago when the number of Sikhs and Hindis is likely to have been greater than it is now.
23. The appellant's family in Kabul at the time he left are said by him to be his father, mother, older brother and sister, younger sister, sister-in-law and his nephew. His sister married shortly after he left indicating other family members on his brother in law's side.
24. The appellant claims he has not had any contact with his family since he left Afghanistan. The significance of the question put in cross examination regarding the provision of a telephone number is that many agents are paid a proportion of the fee to bring an individual to the UK with the balance being paid on safe delivery at the intended destination which is confirmed in a telephone call. There is no evidence this was the arrangement in this case or that the appellant should be expected to know that the arrangements between his father and the agent were. This point is therefore neutral.
25. The appellant claims in his later witness statement to have no family and no home to return to in Afghanistan for support or protection of any kind.
26. The appellant claims to have attempted to trace his family through the Red Cross. A letter from the Red Cross dated 10 August 2009 [A's bundle. Subjective material. Page 3] is in the following terms:

"Dear Manas

Re: Red Cross Message for Ramesh Chhabra

We refer to your Red Cross Message of 31 August 2007. We very much regret that with the detail you have given us, the International Committee of the Red Cross (ICRC) has been unable to deliver the message to the above mentioned person and has returned it as 'Back to Sender'.

We would like to assure you that all appropriate sources of information have been tried and we are sorry our enquiries in this case have been unsuccessful.

Please bear in mind that even though the ICRC has been unable to find the sought persons, this does not mean that your relatives cannot be traced through other channels.

If you can obtain any new or additional information we will be pleased to review the case. You could also write another RCM to another relative at a difference address if you would like to do so.

Yours sincerely”

27. No copy of the details provided the Red Cross have been provided and nor has it been shown the appellant has contacted the Red Cross again to see if any other avenues are available such as via the Temple or Hindu community members in Kabul or family in the UK. The letter also only refer to one named individual. If this is his father there appears no reason why further messages could not be sent to his mother or older siblings whom the Red Cross can then attempt to trace. The claim his family are not in Kabul and cannot be found has not been substantiated on the facts as all attempts to trace them have not been undertaken.
28. The submission the respondent was attempting to go behind a preserved finding by reference to paragraph 13(x) of the determination of Judge Morris has no arguable merit as this is not a finding of fact but where the Judge records part of the appellant’s case put to him.
29. There is also a possible contradiction in the appellant’s evidence. In his original witness statement at paragraph 5 he claims that his father’s shop was attacked during the time the Taliban were in power and set on fire, destroying the front of the shop. In his oral evidence he stated his father owned the shop but that it had been burned down indicating possible exaggeration in the more recent evidence.
30. The appellant is a healthy young adult male who has shown an ability to move to another country and make friends and form a life of his own by securing employment. It must be accepted that this is a country where there are no faith based barriers.
31. The applicant has not discharged the burden of proof upon him to show he has no family in Kabul. The reality is that the appellant has made no concerted effort to find his family. A letter dated 2009 is not proof of the facts claimed in 2016. If the family remain in Kabul the appellant has not substantiated his claim that there will be no family members willing and able to provide support or assistance in reintegration. The appellant lived in Kabul for the first 16 years of his life and will not be stranger to life there.
32. It is accepted that the appellants educational qualification in travel and tourism may not be in great demand in Kabul at this time but the fact he has a UK education and good command of English has not been shown not to be an asset in the job market, including within government where the discrimination referred to

in TG against those wishing to start their own business has not been shown to be prevalent.

33. The fact the appellant has failed to prove he has no family available means he has failed to show he has depleted support mechanisms. It is also the case that his friend confirmed that he is likely to be able to assist with £200 per month (\$288) which has not been shown to be insufficient to enable the appellant to meet his basic needs until established. It is also the fact that another close friend Mr Gabba has not been asked if he would assist, meaning the appellant has not discharged the burden of proof upon him to show sufficient financial support is not available. The claim by the appellant that if he was dependent upon remittances this would place him at greater risk is not made out. Families working abroad regularly remit income to Afghanistan if they have family remaining there and the country information fails to establish a greater risk for this reason per se. The World Bank estimates that 15% of rural households in Afghanistan receive remittances from abroad, covering around 20% of the family's daily expenditure. A 2007 report released by the International Fund for Agricultural Development estimated remittances to Afghanistan in 2006 at USD 2.5 billion, accounting for 29.6% of Afghanistan's total GDP at that time and according to the UN Afghanistan-bound remittances from Iran alone amounted to USD 500 million annually, equivalent to 6% of Afghanistan's GDP in December 2008. Over 31% of all Afghan households are estimated to receive remittances from Iran or Pakistan. The claim the remittances will have to be sent by Western Union is not made out. In Afghanistan the most prominent way to send remittances are hawala dealers, traditional financial service providers who enable remittance transfer through a trust-based network of agents. Money transfers sent via hawala are generally more affordable than those sent through other remittance channels.
34. The private life the appellant has in the UK has been considered. The Immigration Rules, 276ADE is not satisfied as the appellant has failed to show there are very significant obstacles to his reintegration into life in his home state. If considering the claim outside the Rules, section 117 has been considered when assessing the proportionality of the decision. The respondent has established the decision is proportionate to the legitimate aim on the facts. Article 8 does not give a person the ability to choose where they wish to live and was not relied upon outside the Rules by Ms Jones in any event.
35. Reference has also been made to the statement of Frankie West of the London Borough of Richmond upon Thames Asylum and Refugee team [A's bundle. List of Subjective material. Page 2]. This is dated 6 August 2010 and is somewhat dated. It describes the appellant as a person who was initially reluctant to discuss the emotional aspects of his life but who developed a trust and was able to open up to his support worker. It is written:

"I have observed Manas develop from a young boy with few independent living skills and anxiety about the whereabouts of his family and settling into the local community into a young man who is keen to succeed in this country and repay in kind for all that he has received from the UK. Manas is residing

in permanent accommodation in Hounslow which he has furnished and decorated himself. He still worries about his family which causes him to feel low and depressed. He has had no contact with them whatsoever since coming to the UK despite contacting the Red Cross to see if they could assist him in tracing any of his family.”

- 36. The appellant has clearly moved on further since 2010 and there is insufficient up to date evidence to show that there are any health issues at large in this case sufficient to warrant a different decision being made.
- 37. Having considered the evidence against the guidance provided by TG and others and the country information relied upon by the appellant, I find he has failed to discharge the burden of proof upon him to the required standard to prove he is entitled to a grant of international protection as a refugee or on any other protection or human rights grounds.

Decision

- 38. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity

- 39. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 8 February 2016