



Upper Tribunal (Immigration and Asylum Chamber)

AppealNumber:  
PA/00960/2015  
PA/02759/2015

At North Shields  
on 11th July 2016

Decision & Reasons Promulgation  
on 15<sup>th</sup> July 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR J.S.K and MR G.S.K.  
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

Representation:

For the Appellant: Mrs. L.Brauas of Iris Law Firm.

For the Respondent: Mr Diwacz, Home Office Presenting Officer.

## Introduction

1. The appellants claimed asylum on 21 May 2015, stating that they had arrived in the United Kingdom that day. They are brothers, born respectively on 1 January 1987 and 1 January 1998. I will refer hereinafter to the elder brother as the first appellant. He was accompanied by his wife and their daughter, born on 1 July 2013.
2. They claimed they were Sikhs from Jalalabad, Afghanistan and faced religious persecution. They said they left Afghanistan with their parents on 27 March 2015. However, en route the agent separated them into two cars and they did not know the whereabouts of their parents.
3. Whilst both claims overlapped they were separate: a distinguishing feature was that the first appellant's child had significant health issues. She had been born prematurely and suffered oxygen deprivation resulting in cerebral palsy affecting all four limbs.
4. Their claims were refused on 1 November 2015. The respondent accepted they were Sikhs and nationals of Afghanistan. The appellants were not claiming a specific significant event affected them. The country guidance decision of TG and others( Afghan Sikhs persecuted) Afghanistan CG 2015 UKUT confirmed the difficulties Sikhs faced. The respondent concluded there was sufficiency of protection and any localised difficulties could reasonably be avoided by their relocation, for instance, to Kabul.

## The First-tier Tribunal

5. Their appeals were heard by First-tier Judge Holmes on 1 February 2016. In a decision promulgated on 8 February 2016 both appeals were dismissed.
6. The appellants were represented by Counsel. A presenting officer attended. Both appellants gave evidence and were cross-examined. First-tier Judge Holmes concluded that their evidence was extremely unreliable. He did not accept they were living in the parlous circumstances claimed. They said they lived all their lives in a single room provided by the Gurdwara. Within that room lived their parents and latterly the elder appellant's wife and child. They said they rarely ventured out because of how they were treated. They said they had no education; had never worked and spoke only Punjabi.
7. Immigration Judge Holmes was critical of their claim of not knowing the whereabouts of their parents. He found they had not been forthcoming about the presence in Afghanistan of the parents of the first appellant's wife. The judge referred to their father working as a pharmacist, indicating he must have been educated. He did not find it credible they

only spoke Punjabi. At paragraph 50 of the decision he said that either they were lying about this or else they had lived outside Afghanistan.

8. He dismissed their claims of penury: referring to the funding required for their travel and the medical treatment the first appellant's wife received; with her daughter being delivered by caesarean section. The country expert report obtained for the appellants referred to the lack of medical treatment in Afghanistan. The judge concluded at paragraph 72 that it was highly unlikely he had been told the truth about where the child was born.

### The Upper Tribunal

9. Leave to appeal was granted on the basis it was arguable the judge had engaged in speculation. It was also arguable the judge did not give adequate consideration to TG and others (Afghan Sikhs persecuted) Afghanistan CG 2015 UKUT .Finally, it was arguable internal relocation was flawed given the appellants only spoke Punjabi.

10. The respondent replied under rule 24, submitting that the judge had directed himself appropriately and made reasoned and sustainable credibility findings based on evidence. The judge dealt adequately with the expert report provided. It was submitted that the grounds amounted to no more than an attempt to re-argue the case.

11. At hearing Mrs Brauas pointed out her firm had not acted at first instance. However she submitted that the credibility findings were inadequate. For instance she challenged the evidential basis for the judge concluding the appellant's father was a pharmacist. She pointed out that at interview the first appellant at question 10 and 11 said that his father worked in a shop the equivalent to a chemist shop and referred to herbal medication. He did not say he was a pharmacist.

12. She also submitted that in drawing an adverse credibility inference from the claim the appellants were separated from their parents and had no contact the judge made assumptions about what they ought to have done. She said the first appellant set out at question 43 how they came to be separated. Regarding the appellants only speaking Punjabi she pointed out that the background information indicated many Sikhs did not have the opportunity of going to school and referred to the age of the second appellant. She said that in the United Kingdom within some communities little English is spoken. She said the first appellant had explained at question 38 to 39 how he believed his father raised the money for their travel.

13. Mrs Brauas argued that the judge was wrong at paragraphs 60 to 66 conclude that family life did not exist between the first and second appellant's in the circumstance.

14. She also submitted that the judge was wrong at paragraph 76 to suggest that first appellant's daughter would spend her life within the family home. She submitted that if the child remained here she could benefit from all the medical treatment available in the United Kingdom.
15. In response, Mr Diwacz relied upon the Rule 24 response. He pointed out what the first appellant had said about his father's employment.
16. Both parties were in agreement that if an error of law were found then the matter should be remitted for rehearing to the First-tier Tribunal.

### Discussion

17. Sikhs in Afghanistan are in a diminishing minority. The decision of TG and others (Afghan Sikhs persecuted) Afghanistan CG 2015 UKUT refers to them suffering harassment. They are not per se at risk and the cumulative effect does not in general reach the threshold for persecution. An assessment must be made on the individual circumstances. The person's financial circumstances would be very relevant. The country evidence indicated some Sikhs have viable businesses and are property owners. Historically Sikhs have been subjected to persecution by State and non-State actors but the number of such incidents has reduced, possibly due to the reduction in the Sikh population. The current evidence did not support official State-sponsored persecution. Instead, there is ongoing harassment and discrimination. The government of Afghanistan sought to provide protection but the problem was at local level.
18. The question of relocation is a fact sensitive assessment which includes consideration of an individual's financial circumstances. A Muslim is unlikely to employ a Sikh over a fellow Muslim. Accommodation and education require funding. The reduction in the Sikh population meant that there is less access to an extended community for support. Consequently, the need for an independent income is all the more important.
19. Judge Holmes astutely noted that the expert report of Dr Giusozzi failed to mention he gave evidence in TG and others (Afghan Sikhs persecuted) Afghanistan CG 2015 UKUT. The judge notes that the report's conclusions are at odds with the country guidance decision and refers to the absence of evidence of any change in country conditions since the guidance. However, the judge does not dismiss the expert report and acknowledges that it should be given some weight.

20. The first credibility point taken relates to the journey and the separation and lack of knowledge of the whereabouts of their parents. At paragraph 27 Judge Holmes expressed scepticism about the appellants claim they had little knowledge of the travel plans made by their father. The account given was that they were transferred into two cars because they all could not fit in one. The judge makes the observation that the sensible thing to do in such circumstance would be to have some arrangement for contact in an emergency. Furthermore, they could have asked the driver of the vehicle what country they were in at the point of separation. If they believed their parents had been detained en route they could have contacted the Red Cross or an NGO. If they believe their parents were still in transit they could contacted either the original agent or the various Gurdwaras. Their failure to do so was highlighted. These are all legitimate observations and do not amount to speculation.
21. At paragraph 34 the judge points out that the first appellant initially denied knowledge of the whereabouts of his wife's parents. He then indicated they were in Jalalabad but had made no attempt to contact them directly or indirectly since.
22. At paragraph 35 the judge points out there was no trigger incident for the departure. He does link their travel to the birth of the first appellant's daughter and the realisation she had medical issues. It is legitimate to consider factors which may have prompted the move. The family had been in the country all their lives and had not identified any past persecution.
23. The judge then considers the important issue of the appellant's only speaking Punjabi. The judge at para 37 expressed difficulties in accepting they did not have some exposure Dari and Pashtu. Their father could speak these languages and the Sikh community in interacting with the wider community must learn these languages. Their father was educated. The country information indicated there was a school in Jalalabad for Sikh children. The judge concluded that they must either be lying about only speaking Punjabi or alternatively, they grew up outside Afghanistan (para 50). The judge's observations are legitimate and are matters of common sense.
24. The judge did not find it credible that the appellants had never worked. Given the portrayal of dire financial circumstances this was a valid comment.
25. The judge sees a contradiction between the abject poverty described and their ability to borrow without security money to pay an agent to transport five people. Reference is also made to the report of Dr Giustozzi that the Gurdwara could not support them indefinitely. The judge commented on the prenatal hospital care; the caesarean section and after-care provided. Such medical care is not

available freely. At paragraphs 47 to 55 the judge and enunciates his findings in line with this. These are all legitimate factors in evaluating the truth of the claim and do not amount to speculation.

26. In light of his conclusion relocation did not arise. The possibility of relocation was raised as a choice. The viability of this, for instance to Kabul, must be viewed in the context of the judge's rejection of the claimed poverty and lack of support available.
27. The respondent accepted the appellants were from Afghanistan. They were not asked detailed questions about Afghanistan. Their nationality was apparently accepted based upon the identity books produced. Documentation is not always reliable. A simple explanation for their inability to speak Dari or Pashtu but speaking Punjabi is that they are in fact from India or Pakistan. This would also explain how the first appellant's wife was able to receive medical treatment. The judge is conscious of this. At paragraph 45 the judge indicates the expert evidence was that such treatment is not available in Jalalabad. If the expert was correct then the evidence points to the birth-taking place outside Afghanistan. At paragraph 50 the judge also commented that their inability to speak any language other than Punjabi was only consistent with their having grown up outside Afghanistan. The judge decided not to question the respondent's concession on nationality. This was a matter for him and he made it clear at paragraphs 21 and 47 that he was not going behind the concession.

The first appellant's daughter.

28. From birth the first appellant's daughter has been left with major disabilities. The judge had been provided with medical evidence as to her condition. There is a letter from the family GP who states that a recent MRI scan indicated she suffered irreversible brain damage at birth. The doctor refers to the input of a multidisciplinary team. The doctor refers to her complex needs and felt she would continue to have developmental delay for the rest of her life and would need ongoing care and support not only to her childhood but when she was older. The paediatric report states that while the brain-damaged is non-progressive it is not something which will heal and she is likely to have significant needs as she grows. However, this did not mean he could not make improvement and it was impossible to say how she would progress.
29. The judge considered her best interests and squarely addressed the fact that her quality of life and her ability to develop might be improved by access to the multidisciplinary specialist paediatric support available in the United Kingdom. He accepted the same level of support and intervention would probably not be available in Afghanistan whatever the financial means of her family. He makes

the point that the United Kingdom has not assumed responsibility for the child by granting any period of leave. His conclusion was that the family were not refugees but came here illegally for the purposes of obtaining free medical treatment for their daughter in the hope she might improve. At paragraph 93 the judge refers to the resources that would be engaged and the consequent knock on effect for other children who would be entitled to treatment as of right. Whilst his rather negative view of the benefit of treatment is debatable the outcome accords with the jurisprudence, as recently enunciated in GS (India); EO (Ghana); GM (India); PL (Jamaica); BA (Ghana) and KK (DRC) -v- SSHD [2015]EWCA Civ 40.

### Summary

30. It is clear from reading the decision of Judge Holmes that key issues have been identified and carefully analysed and determined. It is apparent that the judge concluded the appellants were not telling the truth on key aspects of the claim and that their credibility was fatally damaged. The judge gave various instances where this occurred. I find the judge's reasoning perfectly rational and justified. The judge had the benefit of hearing from the appellants and of evaluating their evidence, particularly in response to cross-examination. The decision clearly indicates the judge has had regard to the totality of the evidence including detailed consideration of their substantive asylum interview and the expert evidence. Whilst Sikhs faced a difficult situation generally in Afghanistan the risk of persecution is fact sensitive and the judge was entitled to find their circumstances were no as claimed.

### Decision

No material error of law has been established in the decision of First-tier judge Holmes. Consequently, his decision dismissing the appeals shall stand.

Deputy Upper Tribunal Judge Farrelly

14<sup>th</sup> July 2016