



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00581/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 10th November 2017

Decision and Reasons Promulgated
30th November 2017

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

MR.K.S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Cleghorn, Counsel, instructed by Legal Justice Solicitors.

For the Respondent: Mrs Pettersen, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Afghanistan from Kabul. He is of the Sikh religion. He made a claim for protection which was refused. Dependent upon the claim are the appellant's wife and their three children: aged 16, 13 and 11. The appellant's eldest son here has special educational needs.

2. He said his family ran a successful wholesale pharmacy business in Kabul and because of this they were targeted by Muslim, Mr Ghulam Haidar. He demanded money by menaces. He came back a week later with a number of men and assaulted the appellant and his brother and father. He said he would return in two days and wanted a substantial amount of money, \$100,000US. Shortly after this his father did not return home and his body was found with his throat slit. The appellant believes that Mr Ghulam Haidar was responsible. As happened before, the police offered no assistance. The appellant and his family then decided to leave.
3. The respondent did not find the account credible and did not accept he had a successful business given the difficulties in the country and the position of Sikhs. The claim that the appellant's father had been murdered was not accepted.
4. The appeal was heard by First-tier Judge Hussain and was dismissed. It was accepted the appellant was from Kabul and was of the Sikh religion.
5. The judge relied upon the country guidance decision of TG and others (Afghan Sikhs persecuted) Afghanistan CG 2015 UKUT 00595 to support the proposition that the appellant not at risk solely on the basis of his religion. The judge also referred to the decision of AK (article 15(c)) Afghanistan CG [2012] UKUT 00163 which concluded there was no article 15 (c) risk. The judge acknowledged the undoubted difficulties the appellant faced because of his religion that each case was fact sensitive as to whether the treatment amounted to persecution.
6. Unlike the respondent, the judge accepted that the appellant and his father had been running a successful wholesale business. The judge pointed out that on his own evidence they were able to raise \$80,000 to leave the country. However, the judge did not find the account of extortion and murder credible. The judge stated that there was no evidence about his father's death and queried why he would be killed before any money was handed over. At paragraph 26 the judge suggested the appellant could have gathered evidence before the family left Afghanistan, for instance, by taking photographs of his father's body or obtaining a death certificate or some other record.
7. The judge concluded that as a person of means he could resume the family business in Kabul and that he could obtain at least basic accommodation until he re-established himself. The appellant had said that he had sold everything and given the money to the agent who brought him to the United Kingdom. The judge did not accept he had no money left and found this further damaged his credibility.
8. The appellant said in transit he had been separated from his mother, younger brother and eldest son which the judge also did not accept, believing they were still in Afghanistan. Regarding his children here, said found their best interests were to be with their parents in Kabul.

After primary level education they could either go to government schools albeit they would have to learn the Koran or else they could be educated privately. The judge said the appellant had the means to pay for their private education. Regarding the eldest child's special educational needs, the judge took the view that additional support would not be necessary for the future. This was because there was nothing to indicate he would go into higher education and in any event, the family could make private arrangements.

9. Permission to appeal was granted on the basis it was arguable the judge failed to have adequate regard to the background information about Sikhs in Afghanistan when considering the plausibility of the claim. Furthermore, that evidence indicated the police would not provide adequate protection for Sikhs. The reference to the absence of evidence as to his father's death amounted to the judge requiring corroboration.
10. At the hearing, Mrs Cleghorn adopted the grounds on which permission was granted. She submitted that as the owner of a successful business, as the judge accepted, it was very likely that he would be targeted for extortion. She submitted it was insensitive to suggest that the appellant could have taken a photograph of his dead father. She referred to the difficulty Sikhs experience in organising cremation of their dead and the problems over obtaining any documentation.
11. She submitted that the agent who brought the family to the United Kingdom would have assumed control of all of their money and controlled their movements. It was contended that the judge's view the appellant still had funds was perverse. In her oral submission she said that the appellant had sold his business in order to fund the trip. He was on NASS support and his belongings would have been searched. It was also submitted that given the treatment of Sikhs in Afghanistan the suggestion the family could return and re-establish themselves was not sustainable. On the same basis it was submitted that the judge erred in concluding the children could attend a fee paid school on return. In the public schools they would face harassment and ill-treatment. Reference was made to the special needs of the elder child.
12. The respondent lodged a rule 24 response and submitted that the grounds amounted to a disagreement with findings made that were open to the judge. Mrs Pettersen submitted it made no sense on the claim for the appellant's father to be killed before the deadline for the monies to be paid over. Ms Cleghorn in response suggested it was not possible to know what was in the mind of the murderers and why they killed the appellant's father before monies had been paid over. If the claim were fabricated he could have given the account that his father was killed later.
13. Mrs Pettersen did acknowledge if the appellant's father had been murdered it was inappropriate to suggest the appellant might have taken a photograph of his body to confirm this for his later claim.

However, she did maintain he could have sought confirmation from other sources.

Consideration

14. The situation in Afghanistan continues to change with conflict between various groups and there are ongoing issues regarding the security situation in the country. Civilians remain vulnerable and the difficulties that Sikhs in particular face is well documented. The decision of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 emphasises the need for a fact sensitive evaluation as to whether individual members are at real risk of persecution. The judge accepted the appellant and his father ran a successful wholesale business. Given their minority position; the hostility shown towards them because of their religion; the attitude of members of the police there is force in Ms Cleghorn's point they would be natural targets for extortion. There is also merit in the challenge to the judge's conclusion the family would be in a position to resume life again in Afghanistan because of family members there and undisclosed financial assets.
15. The judge did not accept the account of the appellant's father being murdered and at paragraph 26 refers to the absence of corroborative evidence. This formed part of the judge's rejection of the account of extortion and consequent flight. The judge materially erred in law in requiring corroboration and this appears to have infected the overall assessment of the claim. Essentially, the judge rejected the account given and believed the family remained people of means who could return to their life in Kabul because of this. This in turn, influenced consideration of the best interests of the children.
16. My conclusion is that the decision dismissing the appellant's appeal cannot stand. The decision will have to be remade. I had considered this being dealt with in the Upper Tribunal. However it seems likely that the factual issues would require exploration in such detail that on balance the First tier remains more appropriate. I had considered retaining the finding that the family had been engaged in a wholesale pharmacy business and had been doing well financially. However, on balance I would not preserve this finding. It is tied up with the underlying index event claimed: it may unduly tie the hands of the judge hearing the appeal again. There is no dispute as to the appellant's nationality and religion. These findings can be preserved.

Decision.

The decision of First tier Judge Hussain dismissing the appeal materially errors in law and set aside. The appeal is to be reheard de novo in the First tier Tribunal.

Deputy Judge Farrelly of the Upper Tribunal
10th November 2017