Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01598/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decisions and Reasons Promulgated**
on 28 September 2017	**on 02 October 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

GAJINDER SINGH
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Blair, promulgated on 6 April 2017, dismissing his appeal against refusal of asylum on grounds of lack of credibility.

2. The grounds, put shortly, are these:

> (1). At ¶21 the judge discounted the appellant's evidence that he did not ask the head of the gurdwara in Kabul, Avatar Singh, to send him letters from the Taliban which led to his flight, due to the cost of $160.00, when he had been able to pay the costs of fleeing to the UK. This ignored the submission that the appellant, being in receipt of NASS support, had been accepted by the respondent as destitute.

(2) and (6). At ¶22 the judge held as adverse the lack of contact with Avatar Singh, who had assisted in the family's flight, to let him know they had reached safety. This overlooked the appellant's evidence that although he did not have the number of Avatar Singh he had the number of Mituh Singh and had communicated with him, with the effect that news must also have reached Avatar Singh.

(3). Also at ¶22, the judge mixed up the identities of Mituh and Avatar Singh.

(4). At ¶23, the judge found that the appellant could not have maintained to the Muslim partner of Monmohan Singh for 3 ½ years while working in their business a pretence that he, the appellant, was the brother of Monmohan Singh. The judge was wrong in thinking that the evidence was that the partners were friends. Fair notice was not given of the issue, and if it had been, the appellant would have explained that Monmohan Singh did have a brother, who left the area some years before.

(5) At ¶26, the judge made a negative finding about the Taliban sending a second threatening letter, but failed to consider the submission that it was well within judicial knowledge that the Taliban do send such "night letters".

(7). The judge found it adverse that they appellant's wife did not know how long it took her husband to get from the gurdwara [where they lived] to his shop, an error in absence of evidence that she ever travelled from the gurdwara to the shop.

(8). At ¶ 24, 25 and 29 the judge made adverse findings based on the appellant's wife not being aware of his belief that his parents might have come to the UK the day after they and their daughter did, and not knowing whether the appellant had spoken to her about where his parents might be. She had not been asked whether the appellant spoke to her about that. His evidence was based on his understanding from an agent, and he did not know their actual whereabouts.

(9). At ¶30 the judge found the evidence of the appellant's wife about her mother, father and two brothers unsatisfactory, but gave no reasons.

(10). This ground overlaps with others, directs their criticisms also against ¶31, and says that the judge failed to outline what more the appellant could reasonably be expected to have done to find out the whereabouts of his parents.

(11). The judge's conclusions at ¶33 and 34 are affected by all the foregoing errors. The judge at ¶20 had upheld a submission that some of the respondent's points in the refusal letter were unreasonable.

3. As framed, the grounds are only a series of selective disagreements on the facts. They disclose no case that the decision, read fairly and as a whole, is wrong as a matter of law.

4. As developed in submissions by Mr Ruddy, however, the case for the appellant in the UT was that significant findings were made in the appellant's favour at ¶20 on

the essence of his case, but the judge then overlooked that, and made a handful of adverse findings, none of them said to be wholly irrational, but all of them said to be weak and peripheral, which even cumulatively did not add up to adequacy of reasoning.

5. The respondent's position was that the appellant's argument read more into ¶20 than was justified; it was in the appellant's favour on only two points; the judge's reasons were all valid; the adverse points did go to the essence of the appellant's account; and no more was disclosed than disagreement on the facts.

6. I reserved my decision.

7. The judge at ¶20 said:

> "On the adverse points in the refusal letter, in many respects the account of the appellant was consistent and I agree with Mr Ruddy that it was unreasonable of the respondent to criticise the appellant for example for not knowing the details of the fraud (to which he was not a party) and [for] assuming the Taliban would not take action within Kabul. It is well known that although at a general level the authorities have control in Kabul on a day-to-day basis the Taliban are still active and can still commit crimes."

8. There is in that passage a finding that the appellant's evidence was largely self-consistent, and the phrase "for example" is available to counter the respondent's argument that it is favourable only on the issues of (1) knowledge of the fraud and (2) the reach of the Taliban in Kabul. However, it is not a broad finding in the appellant's favour or a forgotten point of departure. It is a statement of points already in issue which are resolved in the appellant's favour, followed by negative findings at ¶21 – 31.

9. I do not find that any of those findings have individually been shown to be wrong in fact or in law.

10. The appellant's evidence was that the family had funds to enable his parents, himself, his wife and their daughter to flee from the Afghanistan to the UK, an expensive exercise. Receipt of NASS funds (based on self-declaration of destitution) does not undermine the judge's finding that the relatively low cost of transmission was not a good explanation for not obtaining potentially important written evidence.

11. It might be read into the evidence that news of the family's arrival in a place of safety might indirectly reach their benefactor, but that does not undermine the sense of the point that in a true account the appellant would surely have been anxious to communicate with him directly and certainly.

12. The confusion at one point over the identities of Mituh and Avatar Singh is immaterial (as Mr Ruddy acknowledged).

13. The judge was entitled to find it unlikely that a pretence of being brothers was unlikely to have been maintained successfully to a close associate over a long period.

14. A judge must evaluate the case which the appellant chooses to put before him. Every adverse view does not have to be intimated for further comment, a process which could become never-ending.

15. The judge did not overlook the Taliban's practice of sending threatening letters. He was entitled to find it unlikely that the Taleban would send a *second* letter, giving the give the family the opportunity to flee, rather than taking drastic action.

16. It is within reason to think that the appellant's wife, living with him, would likely know the length of his daily journey to work.

17. The evidence from the appellant and his wife about the whereabouts of their respective families was plainly self-contradictory, and the judge was entitled to find it unsatisfactory and unreliable. There is no absence of reasoning in that respect; the contradictions were set out, and spoke for themselves. These matters are not peripheral but bound to be of huge human importance, integral to the claim of enforced departure.

18. Mr Ruddy has pressed as far as possible to turn disagreements on the facts into error of law, but that was based on reading more into ¶20 than it properly bears. The decision has not been shown to be a less than legally adequate explanation to the appellant of why he has not been established his case.

19. The decision of the First-tier Tribunal shall stand.

20. No anonymity direction has been requested or made.

29 September 2017
Upper Tribunal Judge Macleman