



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10643/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4th April 2017

Decision & Reasons Promulgated
On 12th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SSV
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Lemer, Counsel, instructed by Middlesex Law Chambers
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Farmer dismissing the Appellant's appeal against the Respondent's decision refusing to grant asylum and to remove him by way of directions pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002.

2. The Appellant appealed against the decision of Judge Farmer and was granted permission to appeal by Upper Tribunal Judge Plimmer. The grounds upon which permission was granted may be summarised as follows:
 - (a) It is arguable that the First-tier Tribunal has unlawfully failed to consider the plausibility of the Appellant's claims in light of the detailed background evidence available in *TG and others (Afghan Sikhs)* CG UKUT 595 (IAC), when making its credibility assessment. The First-tier Tribunal has referred to *TG* at §38, but only after having completed the credibility assessment.
 - (b) It is also arguable that the First-tier Tribunal has applied an overly strict interpretation to the Appellant's claim to have been in hiding: §26.
 - (c) All grounds are arguable.
3. The Respondent provided a Rule 24 reply that was duly considered by all present before the hearing commenced.

Error of Law

4. At the close of submissions I indicated that I found there was an error of law in the decision such that it should be set aside, but indicated that my reasons would follow. My reasons for so finding a material error are as follows.
5. In relation to the First-tier Tribunal's assessment of the country guidance case of *TG* I find that it is correct that the First-tier Tribunal did not consider *TG* or its terms until it was mentioned at paragraph 38 and again at paragraph 42. In my view the guidance within *TG* is such that it would have arguably or feasibly tipped the balance in favour of the Appellant given that the adverse credibility findings made against him, although several in number, were in truth minor ones in the context of the claim and the centrepiece of the Appellant's account. Indeed, the First-tier Tribunal noted at paragraph 38 that it had "already found that the Appellant's account was not credible" before going on to consider the country guidance case.
6. It is also an error of law that the Tribunal failed to have regard to the objective position summarised in *TG* regarding the risk of harassment and ill-treatment against Afghan Sikhs before reaching the credibility finding at paragraph 37 of the determination. Mr Lemer for the Appellant took me to several passages within *TG* which fortify my decision. In summary those passages are the assessment by the Upper Tribunal of the expert evidence received from the country experts, namely Dr Ballard, whose evidence may be seen at paragraph 32 in particular and in respect of Dr Giustozzi, whose evidence may be seen at paragraphs 35 to 37. The evidence of both experts was found to be of great assistance to the Upper Tribunal, as affirmed at paragraphs 76 to 77 and at paragraph 87 of that decision. Whilst the Upper Tribunal accepted that not all Afghan Sikhs or Hindus were at risk, the evidence from the experts is nonetheless relevant, particularly in the context of this claim given that the experts confirm in the aforementioned paragraphs that Afghan Sikhs are being targeted for kidnapping and are also at risk of killing amongst other mistreatment

from extremists in Afghanistan. In that regard it was a material error for the First-tier Tribunal to not give consideration to the country guidance case which demonstrates a prevalence of abductions and killings of Afghan Sikhs before rejecting the Appellant's account in that specific regard as incredible.

7. I also find there is error in the First-tier Tribunal's assessment of the Appellant's credibility at paragraphs 24, 26 and 27 to the extent that the First-tier Tribunal has in my view applied an overly strict interpretation of the Appellant's claim. In respect of paragraph 25 and the Appellant's account that he was in hiding, there is said to be a discrepancy between the Appellant's account in his interview and that in his witness statement and oral evidence at the hearing. However, the Appellant cannot be responsible for the shortcomings in that evidence as a result of difficulties with the quality of interpretation at the substantive asylum interview, which criticism does not appear to have been challenged by the Respondent. I note the Appellant requested a copy of the interview tape to substantiate his complaint, but that recording was, as far as I am aware, not provided to him or his representatives to allow him to verify the quality and accuracy of the interpretation at his interview.
8. I note that the clarification of the answers given in interview additionally took place approximately one month after the interview itself by way of the Appellant's witness statement and thus the Appellant did clarify his evidence in an appropriate way before attending his hearing before the First-tier Tribunal. In respect of the discrepancy at paragraph 25 that the Appellant claimed to have gone into hiding, but may not have been, in my view the judge has not given reasons for discounting the evidence given by the Appellant in his witness statement which more reliable as a starting point given that it did not suffer from difficulties in interpretation discussed above. Thus in my view it would have been necessary for the First-tier Tribunal to reach a view upon whether the Appellant's evidence in his witness statement was credible or not, as opposed to comparing and contrasting that evidence with the less accurate interpretation given in his asylum interview.
9. Next, in respect of the finding at paragraph 26 that the Appellant was not in hiding because his son would go to the pharmacy to collect medication every one to two weeks, in my view that assessment again takes an overly strict interpretation of the Appellant's claim and the practicalities of his day-to-day life which did not reveal that he was living openly in Afghan society but, on his own account, was in hiding and did not go out personally, but sent his son to collect medication, which is tantamount to living in hiding than living openly and being seen out and about, conducting one's normal daily affairs, such as collecting medication.
10. In respect of paragraph 27 and the timing of the abduction of the Appellant's family, the criticism that the timing of his discovery of their absence after three to four hours, and his discussion with a pharmacist that the family were abducted half an hour before he spoke to that pharmacist, is confusing and is of little assistance in gauging the Appellant's credibility. It is feasible that the Appellant waited for several hours for his family to return, ventured out reluctantly, spoke to a pharmacist only to be told that they were taken half an hour earlier and that account would still arguably

fit within the timeframe of three to four hours having passed since the family left his company. As such there is no clear internal inconsistency. Unless precise timings were known of the Appellant's and his family's whereabouts that day, which they are not, this assessment is of limited utility in the context of an assessment of the risk on return illustrated by his family's abduction and not knowing their whereabouts till date.

11. In summary, I find that the First-tier Tribunal materially erred in its consideration of the Appellant's credibility; and in those circumstances, I find that there were errors of law in the decision such that it should be set aside.

Notice of Decision

The appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal, to be heard by a differently constituted bench.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11th May 2017

Deputy Upper Tribunal Judge Saini