



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11186/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 18th August 2017**

**Decision & Reasons Promulgated
On 27th September 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

J S T

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sachdev, Solicitor, Bury Law Centre

For the Respondent: Chris Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan and a Sikh. He together with his wife and two children clandestinely entered the United Kingdom in April 2016 and thereafter claimed asylum.
2. In essence his claim was that he, his wife and children lived in Jalalabad where he took over his father's business of running a fabric shop. All was well until 2014 when a group of Muslims, whom he believed to be Taliban,

came into his shop and demanded money. He paid them some money and two or three months later they returned and demanded more money. He paid. A few months later again they demanded more money and once again he paid them. When the men returned a few months later he refused to pay. He was told that he either had to pay up or become a Muslim or face the consequences. He did not make any further payment.

3. However four or five months after that visit he and his oldest child were on the way home after closing up the shop. The appellant was beaten on the head and his eldest son was kidnapped. He reported the matter to the police who could not help him because they did not know who it had been that had undertaken the kidnap. The appellant remained in the area for some months trying to find his son but to no avail. After the event arrangements were made for them to leave the country, he signed over his shop and gave his wife's jewellery to the agent in return for transportation.
4. The respondent in the decision under challenge did not accept the credibility of the appellant nor of the difficulties which he presented. The matter came before First-tier Tribunal Alis on 4th January 2017. The appeal was dismissed in all respects. The Judge finding that the appellant lacked credibility as to the substance of his claim.
5. The first reason for finding the claim to lack credibility was the lack of reference made by the appellant to threats being issued to him, particularly that he should convert to Islam. Though the Judge accepted there had been mention of a general threat in the screening interview itself, it was the view of the Judge that the appellant had sought to exaggerate his evidence in this area and for that reason credibility was undermined.
6. Miss Sachdev, in her submissions, invites me to find that actually clear reference had been made throughout as to the threats and not just in question 38 of the interview. She indicates that such mention was made at questions 113 and 224 of the interview and specific mention made in the statements of the appellant of 28th September 2016 and 20th December 2016. Also, specific mention of such threats and the nature of the threats were also contained in the wife's statement of 20th December 2016. Mr Bates, who represents the respondent, readily agreed that the Judge was in error in the approach taken to those particular threats as it was clearly a significant part of the case as presented by the appellant throughout that threats were issued to him as a Sikh, suggesting that he was in danger if he refused to convert.
7. The second reason which was given by the Judge is that set out in paragraphs 75 and 76 of the determination, namely that it lacked credibility for those who obtained money from the appellant to wait for months at a time before demanding more money and also that it lacked credibility that, having kidnapped his son, they did not contact the

appellant further to make demands. It was expressed in the grounds of appeal that it was dangerous for the Judge to speculate upon how third parties would act or indeed that there should be any predictability as to their behaviour. Indeed the Tribunal decision in **TG and Others (Afghanistan) CG [2015] UKUT 00595 (IAC)** indicated that some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots. It is clear that some individuals may face difficulties including threats, extortions, seizure of land and acts of violence in the course of any discrimination that is afflicted against Sikh and Hindu families.

8. Miss Sachdev submits that if the Judge had concerns about the truthfulness of the account as to why no demands had been made, such should have been a matter put to the appellant during the course of the hearing. This is particularly so given the fact that in the second witness statement of the appellant he sets out a reason why they did not come back after the kidnap, namely that they knew that he did not have money and that they took his son for their own use instead. Mr Bates submits that the Judge was entitled to come to the conclusion that he did in relation to that matter.
9. The third matter affecting credibility was set out in paragraph 77, namely of inconsistent evidence about whether others were asked for money. At interview the appellant was unable to say whether other local businesses were asked for money, whereas in his oral evidence he said that people in the temple had told him that they had been targeted. It is clearly a matter that the Judge is entitled to rely upon, but should of course to be seen in the context of **TG and Others**, namely that it was a feature of life of the Sikh community in Afghanistan to be subjected to demands. The fact that the appellant sought to indicate that he could not say whether other local businesses were asked for money, perhaps is not the most significant feature in the case as a whole.
10. In paragraph 73 the Judge comments that the appellant failed to mention the threats being made in either his first statement at interview or second statement. For reasons as have already been set out, that is incorrect but it is a finding which the Judge makes as significantly undermining credibility. This was particularly so in the light of the comments at paragraph 74 of the determination which are as follows:-

“Whilst I take on board the article at pages 47-69 of the appellant’s bundle I do not find that the court venue contributed to his inability to answer that question or his decision to mention this demand as part of these visits for the first time. I find that the appellant had added this to his account to enhance his claim and that does raise questions about the reliability of the rest of his account about what happened.”

11. Thus it is submitted on behalf of the appellant that the incorrect findings as to the threats made has fundamentally tainted all consideration which

the Judge has given to the issue of credibility. I find further support for that concern in paragraph 78 where the Judge makes reference to the fact that the “appellant’s account is littered with significant inconsistency and I find that in this case the appellant has not been targeted or threatened as he claimed”. Even noting certain inconsistencies it is perhaps overstating the case to speak of the account being littered with significant inconsistencies.

12. For those reasons I am driven to the conclusion that the Judge was in error in drawing certain conclusions against the appellant and that the findings of credibility are fundamentally unsafe.
13. It seems to me that that is of considerable importance in the application of **TG and Others** and particularly in one respect as set out in paragraph 85(v) of the determination namely:

“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 practicality 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.”

14. This is linked with the finding at paragraph 87(ii):

“They claim to have funded by their trip by selling the lease to the shop and the appellant’s wife jewellery needing those funds to pay an agent to bring them from their home in Jalalabad to the United Kingdom. I have rejected the appellant’s account of what he claimed to have happened to him and his family. This undermines his claim to have both liquidated all his assets in his claim to have no family in Jalalabad either on his side of the family or his wife’s side of the family.”

It seems to me, therefore, fundamental to considering the issue of return for there to be a clear and safe finding as to the issue of credibility, such as particularly relevant to the issue of return to Jalalabad and also potentially relevant to the issue of whether a Sikh family can reasonably return to Kabul or elsewhere in Afghanistan.

15. In all the circumstances I set aside the decision of the First-tier Tribunal and in accordance with the senior president’s Practice Direction indicate that the matter should be remitted to the First-tier Tribunal for a de novo hearing to determine the issues of effect, in particular to carefully consider the safety or reasonableness of return.

Notice of Decision

16. The appeal is allowed to the extent the First-tier Tribunal decision is set aside to be remade.

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 their 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 25 September 2017

Upper Tribunal Judge King TD