



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

Appeal Number: PA/11971/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 June 2017**

**Decision & Reasons Promulgated  
On 6 July 2017**

**Before  
UPPER TRIBUNAL JUDGE SMITH**

**Between**

**G S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Gilbert, Counsel instructed by Sriharans solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was granted by the First-tier Tribunal. As the case involves protection issues, it is appropriate to continue that order. 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.

**DECISION AND REASONS**

## **Background**

1. The Appellant appeals against a decision of First-Tier Tribunal Judge M R Oliver promulgated on 18 January 2017 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 14 October 2016 refusing his protection and human rights claims.
2. The Appellant is an Afghan Sikh. His protection claim is based on ill treatment suffered by his family at the hands of Muslims in their home area of Jalalabad. His father was a shopkeeper. The Appellant says that a local commander named G M came to the shop and demanded that his father transfer the shop to G M. His father initially refused but G M gave him four days to reconsider and then returned to the shop and repeated his demands. In the course of a scuffle which ensued, the Appellant’s brother was killed. The demands and the Appellant’s brother’s killing were reported to the police but they did nothing.
3. The Appellant then left Jalalabad with his family and they relocated to Kabul but G M located them at which point the Appellant’s father agreed to transfer the shop to G M and did so by a legal transfer. The family then left Afghanistan and travelled to Pakistan. He lost contact with the rest of his family on the journey to the UK.
4. The Appellant claims to be at risk of being killed as was his brother. He also fears ill treatment by Muslims more generally having suffered harassment in the past. He also claims that he would be unable to support himself on return to Afghanistan. In the UK, he lives with his cousin. He also has three uncles in the UK. He says he has no family left in Afghanistan who could support him.
5. The Respondent accepted that the Appellant is an Afghan Sikh from Jalalabad. She did not however accept his claim concerning the forced transfer of the Appellant’s father’s shop and did not accept that he would suffer ill treatment by Muslims on return to Afghanistan. In any event, she decided that it would not be unreasonable for the Appellant to internally relocate to Kabul.
6. The Judge dismissed the appeal finding that, even if the history of the forced transfer of the shop were true, that did not give rise to a risk on return. The Appellant’s father had now transferred the shop to G M and G M would have no further reason to be looking for the Appellant or his family. He found that the ill treatment suffered by the Appellant in the past amounted to discrimination but fell short of being persecution. In terms of support on return, the Judge found that the Appellant’s family in the UK could financially assist him to some extent on return.
7. Permission to appeal was granted by First-tier Tribunal Judge Page in the following terms (so far as relevant):-

“The application for permission has disclosed arguable grounds in that Counsel for the appellant has argued that the judge has misapplied the country guidance case of **TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC)** in failing to properly consider the appellant’s prospective circumstances on return and to give careful attention to the considerations listed in the head note of **TG**. Counsel for the appellant argues that the judge’s error was material, given the judge’s acceptance of the appellant’s evidence that criminal elements had taken his family shop and killed his brother and that the appellant had no remaining family – support in Afghanistan. Permission to appeal is granted.”

8. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

### **The grounds and submissions**

9. The Appellant raises four grounds. The main focus of the oral submissions was the second and third grounds which are also the main focus of the grant of permission, namely that the Judge failed to have regard to what is said in **TG**. It is argued that the Judge failed properly to record the guidance when citing it in the Decision and has therefore arguably erred in failing to consider whether the ill treatment could amount to a breach of Article 3 ECHR based on the fact-specific circumstances. By the third ground, the Appellant also submits that the Judge considered the Appellant’s prospective financial circumstances only by reference to Article 8 ECHR rather than whether the conditions which the Appellant would face amount to a breach of Article 3. Linked to these submissions, the Appellant also claims by ground one that the Judge failed to consider whether paragraph 276ADE(1)(vi) of the Immigration Rules applies, namely whether there are “very significant obstacles” to integration in Afghanistan. In the alternative, it is argued that, insofar as the Judge found such obstacles did not exist, he failed to provide adequate reasons for that finding.
10. Mr Gilbert directed my attention to the headnote in **TG**. The relevant paragraphs are as follows:-

“...(ii) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.

(iii) A consideration of whether an individual member of the Sikh and Hindu communities is at real risk of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following:

a. ....

- b. Likely financial circumstances and ability to access basic accommodation bearing in mind
  - Muslims are generally unlikely to employ a member of the Sikh and Hindu communities
  - Such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and/or pursuing their remaining traditional pursuit, that of a shopkeeper/trader
  - The traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support.
- c. The level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;
- d. ....
  - (iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.
  - (v) 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 practicability 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....”

11. Mr Gilbert drew my attention to the passages in TG which support those conclusions. I do not need to set those out but I have them in mind when reaching my decision. In short, the Appellant’s main complaint concerns the Judge’s failure to make properly reasoned findings in relation to his prospective circumstances on return. As indicated by my recital of the claim above, what the Appellant says is that he has no means of support because the livelihood on which the family previously depended namely his father’s shop, has been forcibly transferred to G M. The Appellant’s evidence (as recorded at [18] of the Decision) is that the proceeds of that transfer were the most likely source of the funds for the journey to the UK. Furthermore, insofar as it might be suggested that the Appellant could have recourse to the authorities in Afghanistan to reclaim the shop, Mr Gilbert points out that the Appellant’s case is that the shop was legally transferred to G M, albeit not voluntarily. Accordingly, the Appellant could have no recourse to the shop as a means of support.
12. Mr Gilbert then drew my attention to the Judge’s finding that the Appellant’s family in the UK can provide support. As the Judge noted at [19] of the Decision, this was explored only with the Appellant’s cousin with whom he lives and who was the only witness to give oral evidence. He said in terms that he would not be able to support the Appellant if

he were returned as he has his own family to support. Mr Gilbert submitted that there is a big difference between giving shelter in this country in a house which a person occupies and feeding one extra mouth, and providing additional funds to support a person's accommodation and subsistence in a foreign country. Mr Gilbert drew my attention to the statements of the Appellant's three uncles who are apparently pensioners. He pointed out that none of those statements gives any indication as to their means and there was therefore insufficient evidence on which the Judge could base his finding that they would be able to support the Appellant on return.

13. Mr Gilbert made short submissions also in relation to ground four which concerns the Appellant's claim to be at personal risk on return. Mr Gilbert accepted in his submissions that the Judge had not expressly found that the incidents on which the Appellant relied in this regard were credible. That provoked an exchange with which I deal below when I consider the Judge's findings.
14. Mr Melvin relied on the Respondent's Rule 24 statement which seeks to uphold the Decision. He accepted that the Judge could have given greater consideration to the Appellant's prospective situation on return. He also submitted however that the Judge found that the Appellant is not at risk on return. That is the starting point. It was open to the Judge to find on the evidence that the Appellant's uncles could assist him. The fact that they are pensioners does not prevent them having sufficient means of support. He also pointed out that the Appellant would receive a lump sum on return to assist him to support himself at the outset.
15. In relation to whether there are "very significant obstacles" to integration, Mr Melvin pointed out that it was not clear whether the Appellant had argued his case in that way. In any event, there was a clear cross-over between that ground and the ground relating to the country guidance.
16. Mr Melvin noted that the Judge referred to TG and engaged with it. He noted that the guidance in that case dates back to 2014-15 although he accepted that the guidance has not been overtaken.
17. At the end of the hearing, I reserved my decision which I indicated that I would give in writing. Following discussions, both parties agreed that, if I found an error of law, it would be appropriate to remit the appeal as the challenge is to a lack of findings on a potentially significant issue.

### **Error of law decision and reasons**

18. The Judge dealt with the protection claim at [22] to [24] of the Decision in the following terms:-

[22] The evidence of the appellant is that his family had suffered ill-treatment at the hands of Muslims in the past. The example he gave was of low-level harassment. Such treatment is in accordance with the background evidence that Sikhs face discrimination in Afghanistan but that it is generally short of persecution. It is the particular campaign of harassment culminating in the forced take-over of the shop on which the appellant's claim rests. There is nothing which suggests that what was done involved more than a criminal enterprise. Once the shop was taken over the enterprise was complete. The killing of the appellant's brother has not been shown to be more than incidental to the criminal campaign when he tried to thwart the crime. The appellant claims that the family was followed to Kabul by [G M]. He has not explained why it was necessary for [G M] to have a lawful transfer rather than simply stepping into the abandoned shop. Following the transfer agreed by the appellant the criminal enterprise was over. He speculated that the agent was paid from the proceeds of the shop, implying an enforced sale, inconsistent with the claim of an unpaid takeover. Equally importantly, the appellant was not involved when the shop was forcibly taken over, being present on neither visit by [G M].

[23] I have considered the application of ***TG & others (Afghan Sikhs persecuted) CG [2015] UKUT 595*** and the respondent's more recent Current Guidance (2016). The position is unaltered that in general Sikhs, now few in number and largely to be found in Kabul, face discrimination not amounting to persecution or article 3 ill-treatment, but their individual circumstances have to be looked at. In this case the appellant is a young man who did not have any personal targeting. His evidence of the takeover of the shop I find internally inconsistent, because he has argued that his father was forced to transfer the property, but instead of simply taking it by force [G M] gave time for reflection. The appellant implied that his father received money for a sale. It is significant that the appellant played no part in these events. There is some background evidence that the police, at least in Kabul, are more willing to provide some support and the unsuccessful reporting of the crimes hitherto has been to the police outside the capital.

[24] In these circumstances, I find that the appellant has not shown, even to the lower standard, a real risk that [G M] and his people would pose any further threat to his family, let alone to the appellant. He has provided no evidence to suggest that beyond [G M] he would face more than discrimination and harassment on return to Kabul."

19. I deal first with the Appellant's claim to be at personal risk of being targeted. This is the subject of ground four. As I note at [13] above, Mr Gilbert did not press this ground as he did not read [22] to [24] of the Decision as accepting the claim that the family was targeted in the past. I have considered these paragraphs as a whole. I accept Mr Melvin's submission that, in particular, at [23] the Judge suggests that the claim is not accepted because it is internally inconsistent and implausible. Mr Gilbert made some submissions about the Judge's understanding of the evidence at [23] of the Decision. However, I do not need to deal with whether there is an error in that regard as I

accept that there are other errors of law disclosed, in particular, by grounds one and three.

20. Ground three takes issue with the Judge's failure to have regard to TG when considering the Appellant's prospective circumstances. It is argued that the Judge erred by considering that claim only through the lens of Article 8 ECHR rather than whether the circumstances would be such as to breach Article 3 ECHR. Ground one also challenges the Judge's findings on this aspect of the claim applying Article 8 ECHR. The Judge deals with Article 8 at [25] of the Decision as follows:-

"[25] He has no family life in the United Kingdom and cannot satisfy the requirements in this respect of appendix FM. Likewise he has no claim to satisfy the requirements of paragraph 276ADE of the rules in respect of his private life. His circumstances have all been considered in his asylum claim and there is no basis for finding that he has a separate claim for consideration of his article 8 rights outside the rules on the basis of anything exceptional. He is a fit young man and no satisfactory reason has been given why he could not be financially assisted at least to an extent by his four maternal uncles."

21. The Judge may well have been entitled to find that a claim of "very significant obstacles" on return is encompassed within the protection claim. However, that assumes that all aspects of the protection claim had already been dealt with. The Judge said that he had regard to TG at [23] of the Decision. However, what follows is only a consideration of the Appellant's claim to be at personal risk of being targeted. There is no consideration in that paragraph whether the Appellant could obtain financial support on return to Afghanistan.
22. Although the findings of the Judge in relation to the Appellant's claim to be at personal risk on return are not clear, it appears to be accepted at [22] and [23] of the Decision that the transfer of the shop did take place, the issue being whether that was a forced sale or a voluntary one. The Judge failed however to go on to consider the implications of that for the Appellant returning to Afghanistan with no source of livelihood and no family to support him. He failed also to have regard to what is said in TG about the reduced likelihood of community support from the Gurdwara and the implications of internal relocation on the availability of support.
23. I accept Mr Gilbert's submission about the evidence before the Judge. The statements of the uncles are silent on the question whether they could afford to support the Appellant from the UK. The Appellant's cousin expressly stated that he could not offer such support. The Judge has failed to take that evidence into account and has speculated as to what support might be forthcoming from the Appellant's uncles.
24. For those reasons, grounds one and three are made out. As I note at [13] above, Mr Gilbert's submission that the Judge did not accept

that the Appellant is at risk on an individual basis on return provoked some discussion. This was in the context of whether I should say something in my decision about whether the Judge accepted the claim as credible if I set aside the Decision.

25. Having considered this question and in light of what I say above about the lack of clarity in the findings, I have decided that this is a matter best determined expressly by the Judge hearing the remitted appeal. For the reasons given at [22] of the Decision, even if the Appellant's account of past events is entirely credible, this is unlikely to put him at risk of personal targeting. As I note at [22] above, though, the past events are an important backdrop to the claim about the Appellant's prospective circumstances as those relate to what potential support may be available to him on return. It is therefore important for there to be clear findings whether the Appellant's account about those events is credible.

26. For the foregoing reasons, I am satisfied that the Decision discloses errors of law and I therefore set aside the Decision in its entirety. In agreement with the parties' submissions and since initial findings have not been made on certain aspects of the Appellant's claim, I remit the appeal to the First-tier Tribunal for redetermination.

**DECISION**

**I am satisfied that the Decision contains material errors of law. The decision of First-tier Tribunal Judge M R Oliver promulgated on 18 January 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.**

Signed



Dated: 6 July 2017

Upper Tribunal Judge Smith