



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/00851/2017**

**Appeal Numbers:**

**PA/00854/2017**

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 16 January 2018**

**Decision & Reasons  
Promulgated  
On 1 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**SK  
VS**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms S Alban of Fountain Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellants. A failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellants, who are respectively mother and son, are citizens of Afghanistan and were born on 1 January 1960 and 1 January 1994. They are Sikhs. They arrived in the United Kingdom on 26 July 2016 and made asylum claims. Their applications were refused by the respondent on 13 January 2017 and 23 January 2017 respectively.
3. Both appellants appealed to the First-tier Tribunal. In individual determinations sent on 28 February 2017, Judge Suffield-Thompson dismissed each of the appellants' appeals on asylum grounds but allowed them on humanitarian protection grounds.
4. On 12 June 2017, the First-tier Tribunal (Judge Scott-Baker) granted the Secretary of State permission to appeal on the grounds that there was an inconsistency in allowing the appeals on humanitarian protection grounds having concluded that there was no real risk of persecution and that the judge had erred in finding that the appellants could safely and reasonably internally relocate and that state protection would not be available.
5. On 29 September 2017, the First-tier Tribunal (RJJFW Phillips) granted the appellants permission to appeal on the basis that it was arguable that the judge had failed properly to apply the country guidance decision in IG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) and had failed to give due weight to the past incidents of persecution as a serious indicator for a future risk of persecution.
6. At the hearing before me, Ms Alban, on behalf of the appellants, conceded that the Secretary of State's grounds were established and that the judge's decision to allow the appeals on humanitarian protection grounds could not stand.
7. Further, Mr Richards, who represented the Secretary of State, accepted that the appellants' grounds challenging the judge's decision to dismiss their appeals on asylum grounds were also established and that her decisions in that regard also could not stand.
8. Both representatives invited me to set aside the First-tier Tribunal's decision and remit the appeal to the First-tier Tribunal for a re-hearing.
9. Ms Alban invited me to preserve the judge's finding that the appellants were credible. As I pointed out, the difficulty with this is that the judge made no such finding. She proceeded on the basis that the factual background was established but made no finding as such. It is unclear whether there was an issue at the hearing in relation to the appellants' credibility. Mr Richards acknowledged that the issue of credibility had only been raised in the refusal decision relating to the second appellant. In these circumstances, I see no finding to preserve and the re-hearing must be *de novo* although it may well be that credibility will not, in fact, be in issue.

## **Decision**

10. Consequently, the First-tier Tribunal's decision to dismiss the appellants' appeals on asylum grounds and to allow their appeals on humanitarian protection grounds involved the making of a material error of law. The First-tier Tribunal's decisions are set aside.
11. The appeal is remitted to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Suffield-Thompson.

Signed



A Grubb  
Judge of the Upper Tribunal

31, January 2018