



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/02117/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast
On 23.07.2018

Decision and Reasons Promulgated
On 23.08.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

KANU LAL
(ANONYMITY DIRECTION NOT MADE)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Andrew Lungley* (counsel instructed by Times PBS Ltd, London)

For the respondent: Mr A Govan

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Stephen Gillespie), sitting at Belfast on 3 August 2017, to dismiss an asylum and human rights appeal by a Sikh citizen of Afghanistan, born 1968.

2. The appellant had the advantage of being represented before the judge by Mr Lungley, of the Northern Ireland Bar. It is a pity that his solicitors chose to have the grounds of appeal drafted by English counsel, with no previous connexion with the case. They were quite

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*
(2) *persons under 18 are referred to by initials, and must not be further identified.*

unnecessarily lengthy at 7 pages, and not surprisingly, resulted in a grant of permission which failed to highlight the real issue.

3. This was on the appellant's travel history. According to him, some Taleban had come to him on his way home from his shop in the city of Khost on 10 July 2016, and threatened him and his wife with death, and his two sons, now 19 and 17, with being turned into suicide bombers, if he would not store arms and ammunition for them. He refused, at which point his wife and sons came out, and told him to come home; but the Taleban gave him eight days to think about it.
4. After six days the appellant left with his wife and sons, overland for Iraq. A Hindu friend had the very next day found him an agent, whom he paid US\$60,000 in cash, \$45,000 of which he had managed to get by the sale of his business to the landlord, who had wanted to buy it for some time. That got him and his family first overland transport, by way of Kabul, Kandahar and Herat to Iran. From there they were taken to a port in Iraq, where they were all put into a shipping container and brought to the United Kingdom, where they arrived on 6 August 2016.
5. On 16 August the appellant and his family were all arrested at Belfast City airport, where they had produced what turned out to be false Belgian ID cards, which they said had been given them by their agent. The appellant told the arresting officer, through a Pushtu interpreter, that they had not been hidden in a container, but had travelled by road, train and ferry. The arrest was carried out as part of Operation Gull, which, as the judge says at paragraph 42, is an operation designed to block what he politely describes as an indirect route into the British mainland. On the 17th the appellant claimed asylum, which was refused on 10 February 2017.
6. This account of events, taking the appellant's case on the facts together with his travel history, may not have been beyond all conjecture; but it certainly raised a number of puzzling questions, on which the judge was fully entitled to look for some acceptable explanation. At 43 – 47 he gives his reasons for disbelieving the appellant's account: the others did not give evidence, which he discusses at 39.
7. First, there was the conflicting account of the journey the appellant had given on arrest (which would have left him with a number of opportunities to claim asylum *en route*). Then the judge declined to believe that the appellant and his family were forced to hide out in a forest in Northern Ireland, or had their pictures taken on a mobile phone for the ID cards while they were there, or were given the cards at a taxi rank, paying another \$4000 for those (see the appellant's statement at 12).
8. As the judge pointed out, the appellant had a cousin and a brother-in-law in London, while his wife had three sisters here. He concluded at 47

The Appellant is clearly a resourceful and intelligent man who according to his account ran a successful business in Khost and his claim to being unaware of where he was in the world relative to his UK relatives is beyond the threshold of belief.

9. The judge did not end his consideration of the case there, which would have been wrong in the light of *JT (Cameroon)* [2008] EWCA Civ 878, but went on to consider the other

evidence before him, especially the ‘country expert’ report by Dr Antonio Giustozzi (7 June 2017). He did so in the light of the country guidance at the time, in *TG and others* (Afghan Sikhs persecuted) (CG) [2015] UKUT 595 (IAC). This in general terms (see judicial head-note) was as follows:

- (i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.
- (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.

10. The effect of that was that Afghan Sikhs might have a valid asylum claim, but would have to establish it on the facts of their own case. That means this appellant’s travel history, being very closely bound up with the recent facts on which he relied, did not just raise a point on s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, but was essential to his case as a whole.
11. S. 8, so far as relevant to the points made in the refusal letter (paragraphs 25 and 27) and by the judge, says this
 - (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies. ...
 - (2) This section applies to any behaviour by the claimant that the deciding authority thinks—
 - (a) is designed or likely to conceal information,
 - (b) is designed or likely to mislead, or
 - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
 - (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.
12. I can now turn to the points made by Mr Lungley. First he referred to Dr Giustozzi’s report at paragraph 9. Dr Giustozzi refers to the appellant’s 2002 account of trouble with the Taleban in Khost: in fact that was in Kabul, as shown in paragraph 10 of his statement of 15 June 2017. He goes on

It is more plausible that in 2016 the Taliban could have asked [the appellant] to store military equipment in his shop, as they often do ask people to keep equipment in their homes and shops.
13. While it is true that the judge did not refer to this passage, in my view it does not take the appellant’s credibility significantly further, and it has nothing to do with the reasons for which the judge did disbelieve his account.
14. Turning to Dr Giustozzi’s evidence about the situation of Afghan Sikhs generally, at paragraph 10, without referring specifically to Khost, he says this

On top of the main gangs, which are well connected politically, there are also hundreds of small gangs who prey on small traders like Sikhs usually are: they use the threat of forced conversion as an intimidation tool, but their real aim is extortion.

15. Again the judge did not refer to this; but once again it does not add anything significant to the credibility of the appellant's account, or detract from the judge's reasons for disbelieving it.
16. Mr Lungley next referred to Dr Giustozzi's evidence about the possibility of internal relocation for the appellant and his family, citing paragraph 34 of his report. However, this deals with the safety for Sikhs of places outside Kabul, which is where the judge found they could go, in his alternative findings on internal relocation.
17. As the judge points out at 55, the appellant and his family have relations in Kabul who have been living there for a number of years, and could join them there. I drew Mr Lungley's attention to *AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC)*, where Dr Giustozzi's evidence was reviewed by the panel at some length, but where they reached the conclusion (see judicial head-note) that

(iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

There is however no need to dwell on this point, which has nothing to do with the appellant's credibility, but only to the judge's alternative findings on internal relocation.

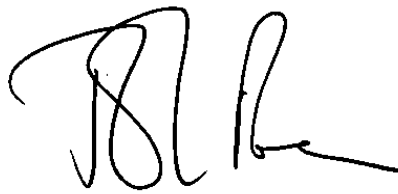
18. Finally, on the credibility issue, Mr Lungley referred to what the judge said at 39 about the appellant's wife and sons not giving evidence. His wife had explained it by having a headache, and her period. The second would of course have been an entirely acceptable cultural reason for not giving evidence on oath, sworn on a holy book; but, as Mr Lungley accepted, there was no question of the lady having to do that on an immigration appeal. As the judge pointed out, there was no medical evidence to show she was unfit to give her own; and there was no statement from her to suggest this was ever intended.
19. As the judge went on to say

If [the appellant] and his family had a conviction about their story, then, as a mark of their earnestness, they would all have given evidence, allowing their accounts to be tested as between each other. This is a significant issue, as I observed them present and attentive throughout the hearing. They are all apparently affected by events in Afghanistan and I can see no justification for them not giving evidence.
20. I asked Mr Lungley why the judge should not have made those comments, to which he replied that the question of the family members giving evidence had not been raised at the start of the hearing. As he accepted however, young men, then 16 and 18, might in general reasonably have been expected to give evidence about what he also accepted was a very unusual journey.
21. This was all the more true when the appellant's own evidence (see 3) had included the statement that his wife and sons had witnessed his encounter with the Taleban, and considering that he was represented throughout by solicitors, and by counsel at the hearing.

I see no reason why the judge should not have made the comments he did about the family members not giving evidence.

22. It follows that, for the reasons given at **13**, **15** and **21**, the challenges to the judge's credibility findings are not made out. This had been a most remarkable journey, whose details were very closely connected with the individual basis for the appellant's claim (as opposed to the question of any general risk for Sikhs in Khost or Afghanistan generally, on which the judge was fully entitled to rely on the country guidance in *TG*. The judge was once again entitled to note and act on any significant failure to support it by evidence which might reasonably have been called.

Appeal dismissed

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

(a judge of the Upper Tribunal)

Dated 30 July 2018