



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02912/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 27 February 2018

Decision & Reasons Promulgated
On 23 March 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

S A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss V Adams, instructed by Legal Justice Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hands promulgated on 8 May 2017, dismissing his appeal against the decision of the respondent made on 10 March 2017 to refuse his asylum and protection claim.
2. The appellant is married and has two children under the age of 5. He and his wife are Sikhs from Afghanistan. The appellant's case is that he and his wife travelled to Russia when they were both aged 14, albeit the appellant in 2002 and his wife in 2008. The appellant claims that he was sent there by his father and he lived there in

hiding, later selling goods to generate income and whilst there he was joined by his wife. His case is that he was able to save US\$20,000 s using which he was able to arrange for him, his wife and their children to travel to the United Kingdom where they claimed asylum.

3. The judge concluded [26] that, for the reasons set out in paragraphs 22 to 25 of her decision, that the appellant was not a credible witness, that his account of events could not be relied upon and that he had fabricated the story in order to substantiate his erroneous claim for asylum and that he travelled to the United Kingdom for economic or other reasons known only to him. She found "I find that the claim has been concocted by him in order to create an asylum claim where none exists".
4. The judge did, however, [28] find that the appellant had amassed considerable wealth in the past from his entrepreneurial skills and that there was no reason why he could not do so again.
5. The judge found [29] that the appellant had not shown that he had severed all ties with Russia or could not return there. She concluded having considered **TG and Others (Afghan Sikhs persecuted) (CG) [2015] UKUT 595** that he was not at risk on return [32] and that [41] there were schools for the children to attend. It had not been established that the appellant's wife would be unable to live her life as a Sikh woman and that [42] the appellant was able to support himself and family for many years, it was equally likely that he could be resourceful in the same way on return to Afghanistan.
6. The appellant sought permission to appeal on three primary grounds:-
 - (i) the failure properly to consider the risk posed to the appellant's wife;
 - (ii) the failure properly to apply the country guidance in **TG** in particular reaching unsustainable conclusions about the appellant amassing considerable wealth in the past and in failing properly to assess the education available for the children and finding that the appellant would be able to find employment or set himself up in business given the difficulties **TG and Others** identified;
 - (iii) failure to consider paragraph 276ADE given that the family would effectively be confined to living in a gurdwara which would not be reasonable and that there would be significant obstacles to reintegration.
7. Upper Tribunal Judge Hanson granted permission on grounds (ii) and (iii).
8. The judicial headnote in **TG** provides as follows at paragraph (iii):

"A consideration of whether an individual member of the Sikh and Hindu communities is at risk real 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. women are particularly vulnerable in the absence of appropriate protection from a male member of the family;*
 - 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; ..."*

9. There is no proper indication that the judge identified or considered the factors set out at (iii) (b) properly in assessing in a structured way the risk to the appellant on return to Afghanistan. Further, there is no indication despite the indication that she found the appellant not to be credible what facts she did accept as being proved. It was accepted that he was a Sikh and that he is an Afghan national. It is not, however, clear whether the judge accepted he had left the country in 2002 nor why, given her clearly expressed doubts as to the appellant's account of how he had been operating and trading in Russia, she considered that he had amassed a considerable fortune over and above the 20,000 dollars he said he had used to bring his wife, himself and the children to the United Kingdom.
10. Further, although the judge appears to have found that the appellant had not shown he would have no accommodation, equally there is no proper analysis of how she believed he would be able to find employment or self-employment given the very clear difficulties in so doing identified in TG.
11. As Mr Diwnycz accepted, there are significant inconsistencies in the findings of fact made by the judge as set out above. These go to the core as to how the appellant and his family would be able to live on return. In particular, there are also difficulties with seizures of land (see TG at [96] to [101]). Of particular regard is also what was said in TG at paragraph [110]:

"A family without adequate resources is unlikely to be able to pay for private education which may be relevant when considering the situation of Sikh and Hindu children in Afghanistan whom it is proposed to return if receiving such education is demonstrated to be fundamental to that person's identity. There is also evidence that a Muslim is unlikely to employ a member of the Sikh or Hindu community in place of a Muslim, out of fear of potential reprisal or loss of business, indicating difficulties in securing an income with which to fund accommodation or essentials such as food, heating, clothing. The evidence we have been able to consider indicates that there is nothing in the law, the attitude of the Afghan government, or in theory preventing a member of either of these faith groups returned to Afghanistan from being able to set up their own businesses but whether they are able to do so will depend upon the availability of adequate funding, their ability to secure business premises in the light of possible hostility or opposition from Muslim traders who may see them as competition or not wish to rent premises out to them, making it difficult for them to pursue what has now become the remaining traditional trade of shopkeeper/trader. Whether an individual is in such a position is fact specific and they will have to satisfy the Tribunal that they are without economic means especially if they have paid a considerable sum of money to come to the United

Kingdom, that they will not be able to re-establish themselves economically, and the impact upon family members as a result. Such individuals may also be required to provide appropriate evidence to show that there are no alternatives such as being supported by NGOs or through the Gurdwara and that any impact upon them, if destitution is alleged, is such that the threshold of Article 3 ECHR will be breached.”

12. I considered that these failures are material in that they go to the circumstances in which the appellant and his family would be living on return to Afghanistan.
13. I considered whether it would in the circumstances be possible to remake the decision in the Upper Tribunal. As both parties conceded, however, there are significant inconsistencies in the fact-finding reached by the judge as outlined above which would make that task difficult if not impossible, the judge having failed to explain why she accepted some facts which the appellant had said but had rejected the core.
14. Accordingly, for these reasons, I set aside the decision of the First-tier Tribunal and I remit it to the First-tier Tribunal for fresh findings of fact on all issues.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remit the decision to the First-tier Tribunal for a fresh decision on all issues.
- (2) The appeal must not be heard by First-tier Tribunal Judge P Hands.

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 22 March 2018



Upper Tribunal Judge Rintoul