



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

Appeal Number: PA/12120/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 21st February 2018**

**Decision & Reasons Promulgated
On 16th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR JSK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs R Hussain, Solicitor

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born on [] 1964. The Appellant and his family arrived in the UK as set out in the Appellant's immigration history within the Appellant's asylum decision letter. I note that the Appellant's application is not just on his own behalf but on behalf of his wife and his two children born respectively on [] 2000 and [] 2002. The Appellant claims to have a well-founded fear of persecution in Afghanistan on the basis of his religion, namely that he is a Sikh and due to a family business debt issue. The Appellant's application was refused by Notice of Refusal dated 15th October 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Malik sitting at Manchester on 2nd May 2017. In a decision and reasons promulgated on 15th May 2017 the Appellant's appeal was dismissed on all grounds. The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and that order remains in place.
3. Grounds of Appeal were lodged to the Upper Tribunal. On 8th September 2017 First-tier Tribunal Judge Holmes refused permission to appeal. Renewed Grounds of Appeal were lodged on 13th September 2017. On 25th September 2017 Deputy Upper Tribunal Judge McGeachy granted permission to appeal. Judge McGeachy noted that the Grounds of Appeal asserted that the Judge of the First-tier Tribunal placed too much weight on what was said in the screening interview and did not properly apply the judgment in *Karanakaran v Secretary of State for the Home Department [2000] Imm AR 272*. The grounds assert that the judge did not make clear findings on all aspects of the Appellant's claim: in particular, they refer to the claim that the Appellants would suffer economic hardship because of their religion which would amount to persecution, attaching a determination of Upper Tribunal Judge Southern in the unreported determinations of *GS, SK, KK and KS*. They also assert that the judge erred in her consideration of the Article 8 rights of the Appellants. Judge McGeachy considered, notwithstanding the fact that the judge applied relevant country guidance and moreover her clear finding that the Appellant was not credible, that in the light of the determination of *GS, SK, KK and KS* it would be appropriate to grant permission to appeal.
4. On 18th October 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response contends that the Judge of the First-tier Tribunal directed herself appropriately, applied country guidance and made clear findings of fact. Further, the Secretary of State contends that it is clear from the decision in *GS* that it was a case determined on its own facts, nor had the Appellant provided a statement to explain what proposition is to be derived from *GS*.
5. On 29th October 2017 the Appellant's solicitors responded to the Rule 24 reply pursuant to Rule 25. They stated therein the reason this was quoted in the grounds was to summarise how some Upper Tribunal Judges were interpreting the authority of *TG (Afghanistan) [2015] UKUT 595*. In the Rule 25 response the Appellant does not seek to argue that *GS* was considered on its own facts. However, the Appellants seek to argue that the Tribunal could have considered granting the children refugee status and the Appellant and his wife discretionary leave under Article 8 and that this was not considered by the First-tier Judge.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by his instructed solicitor, Mrs Hussain. The Respondent appears by her Home Office Presenting Officer, Mr Bates.

Submissions/Discussions

7. Mrs Hussain starts by reiterating her Grounds of Appeal and the Rule 25 statement relying on the proposition that the guidance in *TG* has not properly been followed. She notes that the judge has found the Appellant not to be credible and thereafter dismissed the appeal and submits that credibility should not be determinative as *TG* sets out the criteria of future risks. She submits there are a number of omissions in Judge Malik's decision and that whilst the judge has accepted that the Appellant may have suffered discrimination/harassment, she has concluded that the Appellant has not been persecuted. However, she contends that there have been two children who have been denied an education that they would have suffered and that there had been sexual harassment towards the Appellant's wife. She submits it is wrong to say that there has been a level of persecution not reached on the facts.
8. Mrs Hussain notes that the decision at paragraph 22 gives a summary of the judge's findings and that she has addressed the issue of education and then the internal relocation to Kabul but she contends that there has been no assessment of the criteria in *TG*. She submits that there has been a material error of law by failing to apply the criteria in *TG* to the facts of this case and as to the Appellant's future risk of persecution.
9. Mr Bates in response says that he is having difficulty in understanding the grant of permission but starts by pointing out that the grant does not suggest that there has been an error by the First-tier Tribunal Judge in her analysis of country guidance and that the grant is based upon an unreported decision. He consequently fails to see how that is an error because it is accepted *GS* was decided on a different factual basis. He points out that the judge has rejected the claimed persecution and that paragraph 19 has recited the criteria within *TG*, that paragraph 20 of the decision sets out why the judge rejects the contentions of threats/extortion and paragraph 21 explicitly deals with the ability of the Appellant to practise his faith. He points out that the family would have a male guardian, namely the principal Appellant, and that a single male adult has been sufficient before so why would that not be sufficient now. He further goes on to consider the issue relating to the Appellant's children and the prospect of relocating and at paragraph 22 he distinguishes the decision from that of Immigration Judge Southern.
10. Turning to the issue of relocation to Kabul, Mr Bates points out that there is no reference made by the Appellant to the sale of his house in Jalalabad and that the Appellant has assets and financial resources which he could refer to. Therefore, he submits the situation is different from that considered by Immigration Judge Southern in *GS* and that effectively what the judge has said in her decision in working backwards from paragraphs 22 to 19 is that the Appellant could re-establish himself in Kabul with the assistance of his brother and that the women in his family would have appropriate protection. Consequently, he contends that all issues in *TG* have been addressed. So far as sexual harassment is concerned, he points out that harassment is not persecution and does not reach the threshold of persecution. For all the above reasons he contends that there

are no material errors of law in the decision of the First-tier Tribunal Judge and he asked me to dismiss the appeal.

11. In brief response Mrs Hussain points out that sexual harassment is covered by Article 9 of the Qualification Directive and contends that it does amount to persecution. She repeats her previous submission contending that although *TG* has been cited it has not been applied to the facts of this case and I have to look at the further risk that the Appellant would have by way of having wealth which would expose him to the threat of extortion and violence. Further, there is no evidence, she submits, that private education for the children would be available.

Case Law

12. The relevant head note of *TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC)* is as follows:

“(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;*
- 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. *access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them”.*

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every

factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

15. This is a very thorough decision, well reasoned and well set out. The judge has made adverse findings of credibility. The proper approach to credibility requires an assessment of the evidence and of the general claim. In an asylum claim, relevant factors will be the internal consistency of the claim, the inherent plausibility of the claim, and the consistency of the claim with external factors of the sort typically found in country guidance. It is, I accept, theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. Such factors were available before the First-tier Tribunal Judge and she has given them due consideration and made appropriate findings.
16. Grant of permission is based on the premise that the judge may have failed to give full and proper consideration to the unreported decision of Upper Tribunal Judge Southern. It is accepted that that case is fact-specific and I am satisfied that it can be distinguished from the present case. *GS and Others* postdates *TK* and indeed *TK* is referred to in the decision. The factual matrix is substantially different to the present case. A failure to address *GS* does not consequently constitute any material error of law.
17. Although it is not cited in Deputy Upper Tribunal Judge McGeachy's grant of permission it is the contention now of Mrs Hussain on the Appellant's behalf that the judge failed to properly apply *TG*. I do not agree with that submission. I accept that merely reciting a country guidance authority in a decision is insufficient. The basis upon which it is relied upon has to be explained. This is a judge who had done that very thoroughly and has made findings of fact which expressly relate to the specific subsections in paragraph (iii) of the head note to *TG*. The submissions made by Mrs Hussain are effectively no more than disagreement with the findings of the judge. The judge has analysed the issues, rejected a claim of persecution, analysed the criteria involved, rejected the position with regard to threats and extortion and given reasons for her findings. She has explained in some detail at paragraph 21 the ability of the Appellants to practise their

faith. Thereinafter she has gone on to give due consideration to the role of the principal Appellant as the male guardian and to consider the financial circumstances of the parties and the prospects of relocation.

18. Looking at this matter in the round, this is a judge who has made findings of fact on hearing the evidence. She has made adverse credibility findings. She has applied country guidance and she has looked at the criteria thereunder. She has made findings of fact that she was entitled to and the decision for all the above reasons discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction continues.

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 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.

Signed

Date 14 March 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 14 March 2018

Deputy Upper Tribunal