



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

Appeal Number: PA/13184/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 23 November 2018**

**Decision &  
Promulgated**

**On 10 December 2018**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**HG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H. Samra (Solicitor)

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

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan, born in 1956 and is a Sikh. He has three daughters, born on 1 February 2010, 24 March 2001 and 15 September 1999. The respondent accepts the appellant's nationality and also that he is a Sikh.
2. He arrived in the UK with his family, including his wife, illegally on 6 May 2016 and claimed asylum on 10 May 2016. That application was refused in a decision (to refuse a protection claim) dated 17 November 2016. The appellant appealed and his appeal came before First-tier Tribunal Judge

A.J. Parker (“the Ftj”) at a hearing on 22 November 2017 following which the appeal was dismissed. Permission to appeal against that decision having been granted by a judge of the Upper Tribunal, the appeal came before me.

*The basis of claim*

3. The basis of the appellant’s protection claim is summarised in the respondent’s decision. That is that about five or six months before he left Afghanistan (thus in October or November 2015) he started to have problems with members of the Taliban in relation to some work being done on the road outside his house. They said that he would have to do the work because he is a Sikh. If he did not help them they would hit him.
4. One day, one of those men came to his home, saw one of his daughters and told him that he was going to take her or that he should give her to him because he was a Sikh and had to do so. The appellant refused. Two days later the man returned with two others and all were armed. They banged on the door and said that they were there to take his two daughters. They were able to leave the property through the back of the house and went to stay in a neighbour’s house in the basement.
5. The appellant contacted an agent who arranged for them to leave Afghanistan which they did in April 2016.
6. The appellant’s skeleton argument that was before the Ftj raises, amongst other things, the fact that the respondent accepted that the appellant owned a shop. It also asserts a general risk to Sikhs and specific risk to the appellant and his daughters.

*The Ftj’s decision*

7. The Ftj referred to the adverse credibility issues raised in the respondent’s decision but also recorded and considered the arguments advanced on behalf of the appellant in relation to those credibility issues, as well as those advanced at the hearing on behalf of the respondent. He made a number of adverse credibility findings.
8. He found inconsistency in the appellant’s account, including in relation to the asylum interview. He rejected the claim that there had been threats against him or his family. He also found incredible the claim that his shop, which had apparently been in the possession of the family for over 30 years, and his house, were given to an agent to fund their flight from Afghanistan. Thus, he rejected the credibility of the appellant’s account and also found that the appellant’s daughter who gave evidence was similarly not credible in her account.

*The grounds and submissions*

9. In the grounds it is contended that the Ftj did not adequately consider the matters that he was required to in the light of *TG and others (Afghan Sikhs*

*persecuted) Afghanistan* CG [2015] UKUT 00595 (IAC). It is argued that the FtJ failed to make findings in relation to, for example, whether the appellant would be able to secure employment and accommodation on return, that he had failed to take into account that Sikhs constitute less than 1% of the population and that they are harassed and discriminated against.

10. It is also argued that the FtJ had not considered the issue of access to education for the appellant's children, as required by *TG and others*. Sufficiency of protection was similarly not considered, it is said.
11. In his opening submissions Mr Samra relied on the grounds. It was confirmed that there was no challenge to the adverse credibility findings.
12. In his submissions, Mr Bates referred to various aspects of the FtJ's decision in support of the proposition that in fact the FtJ had made findings on material matters and there was no error of law in terms of the guidance in *TG and others*. It was submitted, for example, that at [37] the FtJ had found that the appellant would have a shop and house to return to. At [33] the FtJ had rejected the appellant's account of having given his shop and house to an agent for their departure from Afghanistan.
13. As to education, the FtJ referred to the appellant having said in the asylum interview that a teacher came to their home to teach the children and that when the appellant was confronted with this inconsistency with his evidence he retracted his earlier testimony that there was no home schooling.
14. Thus, the evidence suggests that the children do have access to education. Furthermore, when the children came to the UK and entered the education system there was no suggestion that they needed any special assistance and they just "slotted in". One of them went straight on to study for A' levels. That all indicated that they were well educated before they came to the UK. They could continue their education on return. In addition, the eldest children are now 17 and 19 years of age so they would be entering the realms of further education and it would be up to the family if they wanted to pursue that course. The children would be returning as part of the family unit.
15. In reply, Mr Samra submitted that the circumstances of the third daughter, born in 2010, were not considered. There was evidence before the FtJ that she was at primary school in the UK.
16. It was submitted that the FtJ had not made a clear finding in terms of whether the shop was still there and whether there would be education available for the children. Likewise in terms of whether their home was handed over to the agent. The appellant and his family have been in the UK since May 2016 and the question arises as to whether the shop would still be vacant after two and a half years.

17. I was referred to [94] of *TG and others* regarding the difficulties for Sikh girls attending school because of harassment and discrimination. Having regard to the evidence of the older children their education is fundamental to their identity.
18. A further matter that the FtJ did not consider is what was said by the appellant in his asylum interview in answer to question 1. There he said that his wife was diabetic and had high blood pressure. It was accepted however, that there was no medical evidence in that respect before the FtJ and also accepted that Article 3 in terms of health was not relied on. It was not argued that the medical evidence that was served post-hearing was capable of establishing an error of law on the part of the FtJ.
19. Mr Samra argued that the FtJ had not addressed the question of whether the appellant would have the funds to educate his children on return, whether there is a family to return to or whether they would be able to receive support from the Gurdwara.
20. Mr Bates objected that if it was being argued that the FtJ should have considered an alternative position in terms of what the appellant's circumstances would be in the event that he was found not credible, that was not a matter that was raised in the grounds of appeal in relation to the FtJ's decision.
21. Mr Samra suggested that this was a *Robinson* obvious point in that it concerned the need for the FtJ to consider all the factual circumstances, per *TG and others*.

#### *Assessment*

22. I start with quoting the guidance given in *TG and others* since that is the focus for the complaint about the FtJ's decision. That guidance is as follows:

***"Risk to followers of the Sikh and Hindu faiths in Afghanistan:***

- (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.*
- (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.*

(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.*

(vi) *This replaces the county guidance provided in the cases of K (Risk - Sikh - Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137."*

23. The FtJ referred to *TG and others* at [39] stating that the decision established that there would be no general risk of persecution for the appellant on return. At [40] he quoted paragraphs (i) and (ii). He neither quoted nor referred to paragraph (iii).

24. At [41] he referred to the guidance in *AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)* and *K (Risk - Sikh - Women) Afghanistan CG [2003] UKIAT 00057* in terms of the risk of harm for female returnees and single Sikh women with children, respectively.

25. The fundamental difficulty with the appellant's complaint in relation to the FtJ's decision is the fact of the unchallenged adverse credibility findings. It is not necessary for me to spell them out in detail. Selected aspects of the FtJ's decision in this respect are sufficient to illustrate the point.

26. At [32] the Ftj expressed doubt about the credibility of the appellant's claim that he did not take seriously the threats to his daughter from the man who forced him to work in circumstances where the appellant said that he regularly carried guns. At [33] he said that the appellant's and his daughter's evidence was vague in terms of the apparent lack of knowledge of basic facts about the neighbour who helped them despite the appellant saying in his witness statement that he knew the neighbour well and that they were close. He said that the account in this respect "simply does not ring true".
27. The Ftj then said this at [33]:
- "He hands over the shop which has been in his family's possession for over 30 years and his house without even enquiring as to the cost of the agent services which is not credible. He has no savings and these were his only assets and yet he hands them over without a second thought. [Counsel] argues the inconsistencies alleged above are in any event minor. I disagree."
28. At [37] he said as follows:
- "Mrs Millward [Presenting Officer] argues that he will have a shop and house to return to and given the lack of credibility in the appellant story this is true (sic)".
29. It is plain therefore, that the Ftj roundly rejected the credibility of the appellant's claim, in terms of threats from the Taliban (in relation to him or his daughter(s)), and in relation to the disposal of his shop and home. At [37] he expressly agreed with the proposition advanced on behalf of the respondent that the appellant would have a shop and house to return to.
30. In terms of the prospects for education for the appellant's children, the evidence before the Ftj was that a teacher came to the school to teach them. It appears that at the hearing the appellant initially sought to advance a case that there was no home schooling but retracted that evidence when confronted with what he said in the asylum interview in answer to question 17, where he said that a teacher would come to the house and teach the children.
31. I note that he also said in that answer that it was not safe for the children to go out because they would be harassed in the street. But the point is that they did have access to education, privately. The evidence before the Ftj did not reveal that there was any reason to think that his youngest daughter did not, or would not be able to, receive the same education on a private basis as the elder daughters.
32. Furthermore, it seems to me that there is merit in the respondent's argument that the indications are that the older children at least were well educated before they came to the UK.

33. I do not consider that there is any merit in the argument in relation to what the appellant said in the asylum interview about the health of his wife. In the first place, this is not a matter that was specifically raised in the grounds of appeal in relation to the Ftj's decision. It does not appear to have been a matter that was relied on before the Ftj and there was in any event no medical evidence before the Ftj to consider in this respect. It does not appear to have featured as an issue in terms of any reasons for the family having left Afghanistan.
34. In terms of the appellant's specific contention that the Ftj did not consider the factors set out at (iii) of the guidance in *TG and others*, it is important to bear in mind that the appellant has been found to be someone who did not suffer persecution in Afghanistan before he left. That is part of the context in which those factors would need to be considered. On the Ftj's findings there was no reason to believe that the appellant would be at real risk of harm amounting to persecution on return, just as he had not been at such risk before he left.
35. I do consider that it would have been better for the Ftj to have made explicit his consideration of the factors set out at (iii) of *TG and others* with reference to that decision, but his findings do not represent a failure to apply that country guidance decision. The essential elements of the guidance were considered.
36. I am not satisfied therefore, that there is any error of law in the Ftj's decision in any of the respects suggested.

*Decision*

37. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Because this is a protection claim and there are minors involved an anonymity direction is appropriate. Therefore, 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.

Upper Tribunal Judge Kopieczek

5/12/18