



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00657/2018

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 30 November 2018

Decision & Reasons Promulgated  
On 13 February 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PS

(ANONYMITY DIRECTED)

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)  
For the Respondent: Ms R Pickering (Counsel)

## **DECISION AND REASONS**

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal ("the tribunal") which it sent to the parties on 21 February 2018; whereupon it allowed the claimant's appeal against the Secretary of State's decision of 29 December 2017, to refuse to grant him international protection.
2. The claimant was granted anonymity by the tribunal. Nothing was said about that before me but, in those circumstances, I have decided to maintain the status quo and to continue the grant of anonymity.
3. The claimant, who was born on 29 December 1990, is a national of Afghanistan and a Sikh. He lived much of his life in Jalalabad in Afghanistan prior to coming to the United Kingdom (UK). He claims to have left Afghanistan in early July 2017 and he entered the UK, clandestinely, on 5 August 2017. It is recorded that he claimed asylum on 6 August 2017. His wife (whom I shall refer to as "GK" in order to preserve anonymity) is a dependant upon his claim and his appeal.
4. The account the claimant offered in seeking international protection may be summarised as follows: He previously resided in Jalalabad as did his brother and his parents. He used to work in a shop owned by his father. Local people of the Muslim faith would mock him. There have been occasions when he has been assaulted by members of Muslim population. Approximately one month prior to his leaving Afghanistan both he and his wife were assaulted. The two of them left Afghanistan with his father. His father had generated money for the journey through selling his shop to a trafficker and through selling some jewellery. The couple became separated from the claimant's father during the course of the journey. If the claimant is to be returned to Afghanistan with his wife, they will be subjected to what will amount to persecution on the basis of their being followers of the Sikh faith.
5. The Secretary of State acknowledged that life for Sikhs in Afghanistan is difficult. But whilst accepting that the claimant is a national of Afghanistan and a Sikh, he did not believe that he had been persecuted by Muslims in Afghanistan. He also thought that, even if the claimant was at risk in Jalalabad, he would be able to take advantage of an internal flight alternative. So, he refused the application.
6. The claimant appealed. His appeal was dealt with by way of an oral hearing which took place on 22 February 2018. Both the claimant and his wife gave evidence. Both parties were represented. The tribunal, like the Secretary of State, disbelieved the account the claimant had given of persecution and beatings at the hands of members of the Muslim population. But the tribunal, following what had been said in *TG (Afghan Sikhs persecuted)* (CG) [2015 UKUT 595 accepted that whilst Sikhs were not at risk on the basis of their faith per se, members of that community would be likely to face difficulties living in Afghanistan. As to what the claimant and his wife might face if returned there, the tribunal made a number of relevant findings. It found that neither of them had any family links in Kabul (paragraph 95 of the written reasons). It found that existing Sikhs still in Afghanistan (and the background material shows that there are few of them remaining) would be likely to prioritise their own relatives if they had any jobs to offer. It found that Muslims were unlikely to offer employment opportunities to Sikhs and that unless capital exists to purchase a property for business purposes (Sikhs traditionally being persons who have run their own businesses in Afghanistan), it would be difficult for Sikhs to set up in business because Muslims would come under pressure from religious zealots not to rent business premises to them. See (see paragraph 111 of the written reasons). It found that the claimant was accompanied by his

father when he left Afghanistan but that his father had become separated from him and his wife (see paragraphs 112, 113 and 115 of the written reasons). It found that the claimant did not have capital or premises which he could use to trade and it found (at least by implication) that the necessary payment to a people trafficker had left him short of resources (paragraph 115 of the written reasons). It found that any financial assistance which might be available to the claimant in the form of a package to assist with resettlement in Afghanistan would not enable him to set up a business (see paragraph 116 of the written reasons). Putting everything together, it found that the claimant would experience conditions which would amount to persecution if he were to be returned to Jalalabad. It also found that it would be unduly harsh to require him and his wife to internally relocate to Kabul. That was, essentially as I read it, because they would face the same sorts of problems in Kabul which they would face in Jalalabad with respect to what would amount to destitution (see paragraph 159 of the written reasons).

7. The tribunal's decision to allow the appeal was not the end of the matter because the Secretary of State applied for, and obtained, permission to appeal to the Upper Tribunal. The refreshingly succinct, clear and straightforward grounds of appeal contained these propositions: The tribunal had rejected the claimant's contention that he had been persecuted and had left as a result of that persecution. It had also found that with respect to humanitarian protection the claimant would not be at risk simply as a result of his presence in Afghanistan for the purposes of Article 15(c) of the Qualification Directive. Despite that the tribunal had allowed the appeal because it thought he would not be able to lead an economically viable life in Afghanistan and that any resettlement payment available to him would be insufficient for him to set himself up in business and to enable him to find accommodation. But the tribunal had simply asserted such a package would be insufficient without reasoning that out. That was an error of law. Further, the tribunal had erred in going on to consider whether the claimant could relocate to Kabul in circumstances where it had effectively concluded that he would not be at risk in his home area. The implication was that, on its findings, it should have concluded he was not at risk of persecution in Jalalabad so he was not a refugee.

8. The granting Judge relevantly said this:

"1. ... the judge found for many and varied reasons open to him on the evidence that the appellant had not been ill-treated by Muslims. The judge was seemingly influenced towards his decision that the appellant was a refugee by his finding that upon his return to Afghanistan he would not have capital and premises so as to be able to establish a business and that such a difficulty would be compounded by his illiteracy (paragraph 114 of the judge's decision). The judge's finding was arguably irrational. That prospect of economic vulnerability which the judge found arguably fell short of that level of malignance and persistence which is the essence of persecution. The judge was arguably influenced by irrelevant considerations when considering whether the appellant could settle in Kabul (paragraph 159 of the judge's decision). Given the judge's finding as to the appellant's lack of credibility it was arguably irresistibly to be inferred that the appellant could return to his home area of Jalalabad and the judge's assessment of the appellant's claim to be exposed to a well-founded fear of persecution should arguably have ended with the finding that the appellant could safely return to and settle in Jalalabad. The application for permission is granted."

9. Permission having been granted there was a hearing before the Upper Tribunal (before me) to facilitate a consideration as to whether or not the tribunal had erred in law. Representation was as stated above and I am grateful to each representative.

10. I have concluded that the tribunal did not err for any of the reasons it is argued it did in the grounds or for any of the reasons that it is suggested it might have done in the grant of permission.

The consequence of that is that the decision of the tribunal stands. I shall now explain my reasoning.

11. The implication in the grant of permission is to the effect that the tribunal's decision to allow the appeal on asylum grounds was prompted solely by considerations of an economic nature. I do not read the tribunal's decision in that way and I do not think that that implied proposition is correct. It is certainly true that the tribunal did think, though it did not use this word, that the claimant was likely to be destitute upon return. It effectively concluded he would not have available funds to support himself, and would not be able to set himself up in business so as to support himself, and would not be able to find employment such as to generate an income to support himself. Nor, indeed, to support his wife.

12. It was, in my judgment, and in light of what is said in *TG*, open to the tribunal to reach those conclusions for the reasons it gave. In particular, it was entitled to find that the claimant's family had effectively sold their assets in order to finance the journey outside of Afghanistan. It was entitled, in light of what was said in *TG*, to conclude that the claimant would not be employed by members of the Muslim population and that members of that population were unlikely to rent any potential business premises to him. As to the contention in the grounds that a relocation package of up to £1,500.00 per person would be sufficient to enable the claimant to set up in business, I have not been able to detect any evidence to indicate precisely what amount of money would have been paid in this case by way of such a package nor, more importantly, how much might be needed to enable an otherwise destitute couple to set themselves up in Jalalabad or Kabul in a way which would obviate destitution. Of course, if a person were to return with insufficient funds to set up a business and was otherwise unable to generate an income or benefit from family support, then in due course those funds would become dissipated and destitution would, in all probability, result.

13. Without any specific evidence as to how much might be reasonably needed, it was open to the tribunal to reach its own view as to whether a relocation package was likely to be sufficient or not. That is what it did. But importantly, it was not, on my reading of its decision, the simple matter of economic difficulty which caused it to recognise the claimant as being a refugee. It is true that the tribunal rejected the specific allegations of persecution or harassment which the claimant had put to it. It was certainly entitled to do that for the reasons it gave. But, following what was said in *TG*, it accepted that Muslim zealots continue to harass some members of the Sikh community in Afghanistan. It effectively accepted, following what was said in *TG*, that Sikhs might be excluded from accessing accommodation or pursuing their traditional pursuits of a shopkeeper or trader (and *TG* suggests that for most Sikhs in Afghanistan there are no other available means of maintaining a livelihood). It found, in effect, that this claimant in his circumstances, would encounter treatment as a Sikh in Afghanistan which would involve the denial of an opportunity to financially maintain himself and his family against a backdrop of discrimination because he is a Sikh, and that that in its totality would amount to persecution. I would readily accept that differently constituted tribunal's might have reach a different view on the same facts. But it seems to me that that view was open to the tribunal and that, in finding as it did, it was not simply basing its decision on general economic vulnerability or difficulty. I do not accept, therefore, that its decision was irrational. Further, the tribunal was not finding, as the grant of permission seems to suggest, that the claimant could return to his home area of Jalalabad. What it was finding, as is apparent when the written reasons are read as a whole, is that he could not do that because of the treatment he would face as a Sikh which would lead to effective destitution.

14. Turning to the other points made in the grounds, since the tribunal had effectively found that the claimant could not return to Jalalabad it was required to consider whether or not he could internally relocate to Kabul. It did that. It is not right to say, as is suggested in the grounds, that the

tribunal found that the appellant and his father did not become separated whilst travelling from Afghanistan to the UK. In fact, insofar as that is a relevant consideration, the tribunal, although it did not word its reasoning perfectly, does seem to have accepted that, to the lower standard, there had been such a separation. I have in mind the closing sentence of paragraph 113 of its written reasons. Its consideration as to return to Kabul was brief. But, in view of the findings it had already made, it was entitled, when it came to assess that matter as it did at paragraph 159 of its written reasons, to take into account, with respect to reasonableness of relocation, the difficulties it accepted he would have in making a living. It is hard to see how internal flight could reasonably be expected given what the tribunal clearly found to be an inability on the part of the claimant to support himself and his wife. It was certainly open to the tribunal to conclude, with respect to internal flight, that it was not viable.

15. I did wonder whether the tribunal's assessment might have been incomplete because it did not make any specific findings as to whether, either in Jalalabad or Kabul, the claimant would be able to access support from a Gurdwara. However, it is recognised in *TG*, to which the tribunal clearly had careful regard, that the ability of Gurdwaras to provide support is diminishing because those institutions are dependent upon financial support from the Sikh community in Afghanistan which is itself a diminishing resource given that there are so few of that community remaining in Afghanistan. Against that background I have concluded that the tribunal's decision is not in error on that point which, in any event, was not made in the grounds of appeal, nor in the grant of permission nor in any oral submissions to me.

16. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

### **Decision**

The decision of the tribunal did not involve the making of an error law. Accordingly, that decision shall stand. The Secretary of State's appeal is, therefore, dismissed.

### **Anonymity**

The First-tier Tribunal granted the claimant anonymity. I have decided to continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall name or otherwise identify the claimant or any member of his family. Failure to comply may lead to Contempt of Court proceedings.

Signed:

Date: 10 January 2019

Upper Tribunal Judge Hemingway