



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/09689/2018

PA/09680/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 12 April 2019
Prepared on 15 April 2019**

**Determination Promulgated
On 23 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**D. S.
K. S.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mendoza, Counsel, for Legal Justice
Solicitors

For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, citizens of Afghanistan, who are father and adult son, entered the UK illegally by air from Munich,

and made protection claims on 24 January 2018. Those claims were refused on 24 July 2018, and their appeals against these decisions were then heard and dismissed by First Tier Tribunal Judge Fisher in a decision promulgated on 4 October 2018. The appeals were linked for hearing together at the Appellants' request.

2. The Appellants' applications for permission to appeal were granted by Upper Tribunal Judge Rintoul on 19 December 2018.
3. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenge

4. Ms Mendoza, who was not the author of the grounds, and did not appear below, advanced the third ground as the strongest challenge to the Judge's decision. This complained that the Judge had failed to properly apply the country guidance to be found in TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595. Specifically the Judge was said to have failed to give adequate consideration to the evidence concerning the inability of the Appellants to support themselves upon return, so that there was no adequate basis for the finding that they had family to whom they could turn for support. As drafted therefore this ground did not advance a reasons challenge, but a complaint that the Judge had failed to engage with relevant evidence upon the key issue of the Appellants' likely circumstances upon return.
5. Pausing there, the Judge was not required to consider the issue of internal relocation within Afghanistan on the basis of his findings of fact. The Judge had rejected the claim that the Appellants' grandfather had been murdered, and, the claim that the family had experienced persecution when they lived in Kabul in the past. As I understand the Appellants' fallback case, it was that their inability to support themselves adequately upon return to Kabul following the sale of the business that had previously supported them, would either lead to a real risk of a breach of their Article 3 rights, or, increase their vulnerability as members of a religious minority to persecution. Moreover any attempt to build a business from which they could support themselves once again would in practice be impossible both because of a lack of financial resources, and, the discrimination that they would face, even if that would not of itself amount to persecution.
6. Neither the Appellants' evidence, nor the grounds, engaged with the financial support packages available to

those prepared to return voluntarily. Absent the argument that discrimination and lack of capital would make it impossible to do so it was not at all clear why the Appellants could not be expected to successfully return to pursuing a business in Kabul that would allow them to support themselves once again.

7. As drafted by Counsel who represented the Appellants at the hearing, the grounds asserted that the only family members referred to in evidence were the deceased grandfather, and a brother to the Second Appellant from whom they had become separated upon departing Afghanistan and of whom they had subsequently had no news.
8. The difficulty with that drafting is that it does not offer a fair and accurate representation of the evidence, as recorded by the Judge [12]. There is no suggestion in the grounds that the Judge mis-recorded the evidence that he was given, and there is no witness statement from Counsel who appeared below to support such a suggestion. In the course of his evidence the Judge noted that the First Appellant accepted that there were other family members in Afghanistan, although he had claimed that he had not seen them for some time. The Appellants made no attempt to identify who these family members were, where they lived, their financial circumstances, or when precisely they had last been in contact and the circumstances (if any) in which they had parted. The written evidence offered by the Appellants simply ignored their existence. As the Judge particularly noted, Counsel expressly declined to pursue any re-examination. Thus, for whatever reason, it was the Appellants who declined to offer relevant evidence upon their inability to access support from family networks.
9. Although the Appellants evidence appears now to be presented as the basis for an argument that it was not reasonable for the Tribunal to expect the Appellants to seek the support of these family members upon return, or, for the Tribunal to expect such support to be forthcoming from them, that argument must fail. The Appellants actually sought to pursue a quite different case, namely that they had no family in Afghanistan at all. Once that was exposed, and properly rejected, they failed to provide the Judge with any reliable evidence to explain why they could not be expected to obtain support from their own family networks, whether within, or without Afghanistan.
10. In my judgement it is quite clear when the decision is read as a whole that the Judge quite properly concluded that they had failed to establish that they had no access to family support networks, and, that the Judge was referring to the family members the First Appellant had referred to

in oral evidence when he concluded that the Appellants could turn to them for support [12]. Nor was it irrelevant that the Judge was able to find, upon the Appellants' own evidence, that they must have been able to enjoy a comfortable lifestyle in Kabul prior to their decision to depart Afghanistan if they were able to sell their business for US\$70,000.

11. The burden of proof lay upon the Appellants to establish that they were entitled to international protection. It is in my judgement quite clear from the Judge's decision that they failed to discharge it, and why they failed to do so. To put it bluntly the Judge was not satisfied that they had told him the truth, and thus they had failed to establish that they lacked support mechanisms, whether from within, or from outside Afghanistan. He was plainly entitled to that conclusion on the evidence that was before him. There is therefore no merit in the third ground.
12. The reality is that the second ground is, as Ms Mendoza accepts, a simple complaint that the Judge declined to depart from the country guidance to be found in TG. The assertions made by the draftsman as to arbitrary outcomes in protection claims by Afghan Sikhs are not supported by evidence, and as such must be discounted. TG remains country guidance, and it was therefore for the Appellants to persuade the Judge with cogent and reliable evidence that the situation within Afghanistan had deteriorated to such an extent that he should depart from that guidance. As Ms Mendoza accepts, it was open to the Judge on the evidence before him to reject that argument. He did so, and he gave adequate reasons for that conclusion. Thus there is no merit in the second ground either.
13. The final ground to be argued was the first. This asserts that the Judge failed to properly apply the guidance to be found in TG concerning the position that would be faced upon return to Afghanistan by the First Appellant's wife. The draftsman argued that any Sikh woman in Afghanistan is a prisoner in her home because she must refuse to cover her face on religious grounds.
14. The difficulty with this approach is that rather than being a complaint that the guidance to be found in TG was not properly applied by the Judge, it is in reality a complaint that TG was wrongly decided. The evidence concerning Sikh women was reviewed in TG #91-93, and a sharp distinction was drawn between women with family protection from male family members, as the Appellant's wife enjoys, and those who do not. The latter might be entitled to international protection as a result of their increased vulnerability as members of a minority religious

group without protection from abduction and forced religious conversion, but the former were not.

15. As to the position of an Afghan woman who left her house uncovered, the reaction from the male population would be the same whatever her religion might be [#92]. Thus all women would ordinarily behave in such a way as to travel outside their home, covered. The Sikh and Hindu religions do not require a woman to cover themselves outside the home; but equally the evidence singularly failed to establish that on religious grounds they are required to refuse to do so. Wearing a covering to avoid male harassment is not therefore a denial of a fundamental element of religious belief taken to avoid persecution.

Conclusion

16. Accordingly, notwithstanding the terms in which permission to appeal was granted, I confirm the Judge's decision to dismiss the asylum, Article 3, and humanitarian protection appeals. There is no material error of law in the approach taken by the Judge to the appeals that requires his decision to be set aside and remade.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 4 October 2018 contained no material error of law in the decision to dismiss the Appellants' appeals which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 15 April 2019