



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/05815/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

On 4 December 2020

Decision & Reasons Promulgated

On 14 December 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

GS (AKA PSG)

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr G Brown of counsel, instructed by Legal Justice Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing, I indicated that I found no error of law but reserved my full decision and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who claims to be a citizen of Afghanistan, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal

promulgated 28.8.19 (Judge Malik), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 29.5.19, to refuse his claim for international protection on the basis that he is in fact Indian and not Afghan.

2. His asylum claim was rejected and certified as clearly unfounded. In July 2017 he lodged further submissions, then producing new Afghan passports, issued in 2016 at a time when he was in the UK. It is the refusal of these further submissions that was the subject of the appeal to the First-tier Tribunal.
3. In dismissing the appeal, the First-tier Tribunal concluded that the appellant and his family are Indian and not Afghan as claimed.
4. In summary, the grounds argue that the judge erred in assessment of the appellant's nationality, in circumstances where the respondent accepted that he and his family held genuine Afghan passports and the background country information establishes that it is not legally possible to be a dual Indian national. It is further submitted that the judge erred in placing the burden on the appellant to establish that he is not Indian.
5. Permission to appeal was refused by the First-tier Tribunal on 1.10.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Owens granted permission on 27.1.20, considering it arguable that the judge failed to take into account the material fact that the respondent conceded that the appellant had a genuine Afghan passport and is an Afghan national. The judge's finding that the appellant is an Indian national is arguably irrational given this concession by the respondent and in light of background material that India does not accept dual nationals. These findings are arguably material to an assessment of the risk to the appellant on return to Afghanistan."
6. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. I have also taken into account the written submissions, including the respondent's Rule 24 response of 4.2.20; the respondent's written submissions of 23.7.20; and the appellant's reply of the same date.
7. Having read the impugned decision with care, I do not accept Mr Brown's submission that the judge placed the burden on the appellant to prove that he was not Indian. In support of this submission, Mr Brown relied on the judge's observation at [26(VI)] of the decision that, "It was open to the appellant to approach the Indian authorities and take reasonable steps to establish that he is not an Indian national – or at the very least obtain confirmation from them, that given he has obtained an Afghan passport, he is no longer a national of India."
8. However, the respondent relies on MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC), to the effect that an applicant who

denies that he is a national of a country where he could obtain protection can be expected to take reasonable steps to establish that he is not such a national. Although at [26(VI)] Judge Malik observed that the appellant had not taken such reasonable steps, the judge was very clear at [4] and [26] of the decision that she understood that as the respondent made the positive assertion that the appellant is Indian, it was for the respondent to discharge that burden, on the balance of probabilities. In the premises, I am satisfied that the judge applied the correct burden and standard of proof throughout.

9. With respect to the judge granting permission, the respondent did not concede that the appellant was an Afghan national. The concession made in the refusal decision was limited to the fact that the Afghan passports issued in 2016, a year after the family's arrival in the UK, were found on a verification check to be genuine. As the refusal decision made clear, "even though you have submitted genuine Afghan passports it is not accepted that you are Afghan as claimed."
10. The judge accepted that the Afghani passports were genuine, adding, "but this does not mean to say the appellant, if born an Afghan national, did not subsequently acquire Indian nationality." The judge rejected as not credible the claim that the agent had retained his Afghan passports used to leave Afghanistan in 2015.
11. It is an indisputable fact that the appellant and his family made applications in 2012 for entry clearance to the UK, in which he provided what were accepted to be genuine Indian passports, so that his nationality was accepted to be Indian, as then claimed. He also claimed to have lived in India for a number of years.
12. Evidently, when the appellant made his asylum claim in August 2015, he was unaware that by matching his fingerprints the respondent would be able to tie him to his 2012 visa applications, uncovering the inconsistency between his asylum claim and the information he provided in the visa applications. As Judge Malik found, the appellant has by his own admission engaged in deception and lied in his asylum interview, initially denying that he had ever been fingerprinted and asserting that he had never left Afghanistan before 2015. Further, the identities given in the Indian passports were under different names and dates of birth to those he now claims. At the time of his asylum claim he submitted Afghan identity documents issued in 2014, which gave inconsistent and/or false personal details, as detailed by Judge Malik. He claimed that his Afghan passports had been confiscated by the agent smuggling them to the UK, a claim disbelieved. It is clear from the impugned decision that Judge Malik found that the appellant undermined his own credibility so that in the light of his dishonesty and deception, little reliance could be placed on his assertion to be Afghan.

13. Whether the appellant ever was Afghan or held an Afghan passport prior to or on coming to the UK, it does not necessarily follow that he is now a citizen of Afghanistan. Neither does it necessarily follow that because the appellant and his family have now obtained genuine Afghan passports, issued in 2016, that the judge was obliged to accept that he is Afghan as claimed. Certainly, the fact of the genuine passports is evidence in support of the appellant's claim. The judge also accepted that the appellant may have been born and lived in Afghanistan at some stage. However, the judge provided cogent reasons open to her on the evidence to reject his claim and to find that he and his family are in fact Indian, as he had claimed in 2012. Whilst the appellant now asserts that the Indian passports were obtained by deception and the visa applications dishonest, it was open to the judge to reject that claim. There was evidence supporting the respondent's assertion that the appellant and his family are Indian, and the judge was entitled, for the reasons given, to find that assertion had been established on the balance of probabilities.
14. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 4 December 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 4 December 2020