Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05032/2019 (V)
PA/05720/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams
On Thursday 27 May 2021

Decision & Reasons Promulgated
On Friday 25 June 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

(1) WC
(2) BC
[ANONYMITY DIRECTION MADE]

Appellants

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Khan, Counsel instructed by Legal Justice solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

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DECISION AND REASONS

BACKGROUND

1. The Appellants appeal against the decision of First-tier Tribunal Judge Chapman promulgated on 8 August 2019 ("the Decision"). By the Decision, the Judge dismissed the Appellants' appeals against the Respondent's decisions dated 16 May 2019 refusing their protection and human rights claims.

2. The Appellants are nationals of Afghanistan. They are a father and son. They are both Sikhs as are their family members who are dependent on their claims. They have made an individualised claim for asylum based on an attack which they said occurred on 25 January 2019. They say that the Taliban demanded money from the family and when they said they could not pay, the First Appellant's daughter, [K], was taken by force and later said to have been killed. The asylum claim is also based on the Appellants' position as Afghan Sikhs more generally.

3. The Judge did not accept as credible the individualised claim. The reasoning is based in large part on documents produced by the Respondent showing that, at the date when the attack is said to have taken place, the family was in fact in France. The Appellants now say that they were mistaken about the date and the mistake occurred when the date was recalculated from the Afghan to the English calendar. The Judge also did not accept that the family was at risk based only on their religion and ethnicity. In reaching that conclusion, the Judge had regard to the country guidance case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) ("TG and others"). The Judge also concluded that there were no very significant obstacles to the family's integration in Afghanistan.

4. The grounds of appeal can be summarised as follows:

   (1) A challenge to the credibility findings (paragraphs [1] to [5] of the grounds).

   (2) An assertion that the Judge erred by not having regard to the UNHCR report concerning internal relocation to Kabul (paragraph [6] of the grounds).

   (3) A challenge to the findings relating to the family's position as Afghan Sikhs (paragraphs [7] and [8] of the grounds).

   (4) A challenge for the same reasons to the rejection of the human rights claim based on there being very significant obstacles to integration in Afghanistan (paragraph [9] of the grounds).

5. Permission to appeal was granted by Designated First-tier Tribunal Judge Shaerf on 28 January 2020 in the following terms so far as relevant:

> "... The Judge had before him the recent judgment in *AS (Afghanistan) v SSHD [2019] EWCA Civ 873* which expressly dealt with risks to members of the Sikh and Hindu communities and which at paragraph 82 made reference to recent guidelines issued by UNHCR. The Judge made no reference to any of these.

> The grounds for appeal disclose arguable errors of law and permission is granted in respect of all of them."

6. By a Notice and Directions dated 20 January 2021, Upper Tribunal Judge Kebede directed that the error of law issue should be determined at a remote hearing absent objections from the parties. Neither party objected. So it was that the matter came before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was conducted via Microsoft Teams. There were no technical issues affecting the conduct of the proceedings. I had before me a core bundle of documents relating to the appeal including the Respondent's bundle (hereafter referred to as [RB/x]), the Appellant's bundle as before the First-tier Tribunal (referred to hereafter as [AB/xx]), and as loose documents the documents to which I refer at [3] above which consist of the biometrics of the family as taken by the authorities in France in January and February 2019. I refer to those documents hereafter as the "French Documents".

DISCUSSION AND CONCLUSIONS

7. I can dispose very shortly of the ground which I have summarised as (2) above. As Ms Khan pointed out, the family come from Kabul and there is therefore no issue of internal relocation. I observe however that this ground may have led Judge Shaerf to grant permission. As Mr Tufan pointed out, although there is no reference to risk to the Sikh community (or at least none I can find) in the Court of Appeal's judgment in AS (Afghanistan) as referenced in the permission grant, the UNHCR guidelines might have been relevant to the Appellants' position on return if internal relocation (with which AS (Afghanistan) was solely concerned) was at issue. However, as Ms Khan conceded before me, it was not. I observe that, in any event, the basis for the grant of permission on this point is overtaken by the Tribunal's later decision in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 where those guidelines were considered. That later decision has since been upheld by the Court of Appeal ([2021] EWCA Civ 195).

8. I turn then to the ground summarised as (1) above concerning the credibility findings. I begin with the findings made by the Judge which are challenged which read as follows:

> "48. The Appellants claimed asylum in this country with a clear and unambiguous account of what happened to them in Afghanistan and the dates on which it happened. The timelines they consistently gave in their screening and asylum interviews were that: [K] was kidnapped on 25 January 2019; two days later (27 January 2019), the Taliban rejected their offer of $10,000; two days later (29 January 2019) they received the letter and [K]'s belongings; the next day (30 January 2019) they arranged an agent to help them lave; they stayed with the agent for ten days in Kabul (until 10 February 2019); they travelled via an Arab country by plane and then spent fifteen days before arriving in the United Kingdom on 25 February 2019. In the asylum interview, they were asked several times about these dates, and they both confirmed the accuracy of these timelines on several occasions in answer to several questions during the interviews.

49. It was not only the Appellants who gave these timelines. When their wives were also screened and asked about their journeys to the United Kingdom, they gave similar timelines. Indeed, the words used by all four in the screening interviews were so remarkably similar as to suggest that they had discussed the days between them and had colluded in giving their answers.

50. Had it not been for the fact that they had been encountered by the French immigration authorities, these timelines could not have, and most likely would not have been, challenged, and the credibility of their accounts would have been assessed on the basis of a consistent, plausible timeline.

51. Yet, even without reliance on the undermining evidence from France, there are aspects of their accounts which create suspicion about their credibility.

52. Firstly, for example, there is the discrepancy (in both screening and asylum interviews) about the number of men who came to the property and kidnapped [K]. The First Appellant said three, and the Second Appellant said four. This inconsistency is not explained by them, or by the nature of the event in question. I would have thought this to be a detail about which they would both be consistent given that both claimed to be present when the event occurred, and it is not explained by their illiteracy which both referred to on several occasions when giving oral evidence.

53. Secondly, the letter from the Taliban has not been produced. Again, their illiteracy does not explain this because the importance of the letter was known to them when it was read to them and was the cause of them leaving the country due to the threats contained in it. I would have thought it reasonable that, having decided to claim asylum in another country, this letter would have been retained as evidence of what they said happened to them.

54. Thirdly, the Appellants claim that they decided to leave the country the day after receiving the letter and the bag containing [K]'s belongings, and they then went into hiding for ten days before doing so. Yet, they do not refer to any efforts to wait to see if [K] resurfaced either alive or dead, or any efforts to try to locate her or her body. In the light of their religion, illiteracy, and the objective evidence, I can just accept as plausible that they might not have thought it worthwhile to report the matter to the Afghan authorities, but I do not find it credible that they would not make any effort to try to find their daughter or seek to renegotiate her return with the Taliban. Further, I note that the Appellants have not provided any evidence to confirm that they even had a daughter/sister, and I am left in some doubt as to whether or not she actually existed.

55. However, even setting these matters aside, the evidence which significantly undermines the credibility of the Appellant's accounts is that they were photographed and fingerprinted by the French authorities on 24 January 2019, namely before the events they describe occurred, and that they denied that this had occurred when the asylum interviews took place.

56. With regard to their denials, the Appellants' explanations in oral evidence were that they did not know, given their levels of literacy, that they were in France, and they did not know they had been fingerprinted. I can accept that their literacy levels may be such that they did not recognise the French language or that they were in France. It may even be plausible that they did not understand what they were being asked to do in placing their hands on a glass

tablet was giving their fingerprints, although they were unable to explain in oral evidence what they did think was happening. I do not, however, find credible that they did not know they were being photographed as they were each directly facing the camera when the photographs were taken, and so I do not find it credible that they did not know they were being encountered by officials in a country to which they did not belong on 24 January 2019.

57. This meant that when they were asked about this in interview, their denials are not credible. They denied that anything had happened at all, when a credible answer might have been to accept that something had occurred even if they were not sure what. That they both denied in the same way an event which so clearly did occur, after both had given detailed accounts of their experiences in Afghanistan, suggests that they had colluded about what to say in the event that they were asked about it, and that their answers were designed to 'buy time' before deciding what to do about the undermining material. I find that the Appellants were attempting to conceal information from the Home Office. This damages their credibility by statute but also in fact.

58. I pause to consider the Appellants' level of literacy, which they offered as a reason on several occasions in oral evidence when they were challenged about some of their answers. I can accept that they may not have had significant educations, but I note that both Appellants have set up and managed businesses in Kabul which must have involved the ability to plan and organise their businesses as well as manage stocks and finances. The Second Appellant, for example, was able to find the money to leave the country, and both Appellants were literate enough to explain the Afghan calendar in oral evidence. They both showed knowledge of their country and religion when asked about these in interview. Overall, albeit they might not be able to read and write, I do not find their illiteracy to be a credible explanation for their failure to recall events or dates accurately. Instead, I considered it to be more of an attempted shield deployed by them when responding to questions that significantly challenged their versions of events.

59. With regards to the dates, the Appellants now say that the events occurred in Afghanistan earlier than they had previously claimed. They were forced to do this because they have had to accept that they were encountered in France after receiving the refusal letters. In their statements, they say that this was because the First Appellant wrongly converted the dates on which things actually occurred, and they tried to clarify what they meant in their oral evidence at the hearing. Yet, their explanations were confusing (as conceded by Mr Dixon in his submissions) and did not provide a coherent timeline especially when coupled with their oral evidence that they had spent six weeks at the house in France rather than the fifteen days claimed by them and their wives in the screening interviews. They were also inconsistent with the several questions and answers in interview about the dates and their repeated confirmation in interview that the original dates they had given were accurate.

60. I might have been helped by some expert or objective evidence about conversions from the Afghan calendar to the Gregorian calendar but this was not available to me. Instead, fearing that an otherwise credible account might be deemed incredible only because of the date issue, I spent a considerable amount of time during the hearing trying to understand why the confusion might have arisen, but I was unable to do so.

> 61. I find that I am left with confusing and incoherent accounts about dates, which has only arisen because the Appellants' original account has been found wanting by the intervention of the French authorities, and that the confusion arises only because of the Appellants' attempts to undo the damage to their credibility caused by that intervention when compared with the original accounts.
>
> 62. I find myself satisfied, notwithstanding my attempts to comprehend the Appellant's amended accounts, that what they, and their wives, all said contemporaneously when they first entered the country is more likely to be nearer the truth than their amended accounts. Those accounts included (what appeared then to be) a coherent timeline that the events which formed the basis of their claim started on 25 January 2019, that they left the country on 10 February 2019, and that they spent fifteen days at a house in France before arriving in the United Kingdom. I find therefore that the events which they claimed to have occurred on 25 January 2019 could not have occurred on that date because they were in France at the time.
>
> 63. In other words, for all the above reasons (which include my doubts about the events themselves as well as about the dates), I do not find the Appellant's accounts credible. I find it more likely than not that they have colluded between themselves and their wives to fabricate accounts of events in order to establish an asylum claim in this country. I find that they have not discharged the burden upon them of showing that they are at risk from the Taliban in Kabul."

9. The grounds as pleaded point to the explanation given for the discrepancy as to dates as being a mistaken conversion between calendars. They say also that the findings at [53] and [54] of the Decision are in error because it was plausible that the Appellants would not realise that they needed to bring the Taliban letter and that their account about the kidnap of [K] was consistent. In relation to the findings at [56] of the Decision, the Appellants say that no evidence has been produced about the way in which the photographs in the French Documents were taken. It is suggested that they might have been taken with a mobile phone without the Appellants' knowledge. It is also said that the Judge, at [57] of the Decision, wrongly found that the Appellants had denied the encounter during interview when they had not done so.

10. I deal with that last short point first. Question 143 of the Second Appellant's interview reads as follows:

> "Q: And you are telling me that you were not encountered, fingerprinted and photographed in France on 24 January 2019 is that correct:
>
> A: No."

11. Taken alone, I accept that the answer may be ambiguous. It is not clear whether the Second Appellant is denying the encounter or indicating that what is there said was not what the Second Appellant was saying. That answer however has to be read in the context of the questions and answers which precede it as follows:

> "Q140: The Home Office has a record of you, your wife and your daughter being fingerprinted in Coquilles in France on 24 January 2019, the day before you claim your sister had been kidnapped. Can you explain this to me?
>
> A140: No, we were not fingerprinted.
>
> Q141:We have a record of your fingerprints and your photographs being taken on this date the 24/01/2019, and you gave different dates of birth for each of you, along with giving your daughter's name as [P] and not [J].
>
> A141: We were not fingerprinted.
>
> Q142: Were you ever encountered by any authorities other than those at airports when you flew? [Rephrased] Apart from having to pass through airport security with passports given to you by the agent, did you encounter any authorities on your journey to the UK?
>
> A142: No."

12. Read in the context of those answers, the Judge was entitled to read the answer to question 143 as being a flat denial of the encounter. The corresponding part of the First Appellant's interview is similarly a clear denial. It reads as follows:

> "Q147: You said that your daughter was taken on 25 January 2019, however the Home Office has information which says that your fingerprints were taken by UK officials in Coquelles in France on 24 January 2019 can you please explain?
>
> A147: No that's wrong.
>
> Q148: Your photograph was taken and you gave a different name and DOB, it is you and it was in France.
>
> A148: We have not given anything.
>
> Q149: Are you saying the prints taken in France which match you and the photo taken which is yours, along with the other members of your family who were also photographed in France on 24 January 2019 are not your's?
>
> A149: No."

13. Dealing then with the points made about the photographs and how those were taken, Ms Khan had not seen the French Documents. I therefore held those up to the camera during the hearing to allow her to see them. She did not thereafter press a point that the Appellants could have been unaware of how those were being taken. As the Judge said, they are taken facing the camera and the Appellants could not have been unaware of the photograph being taken, whether it was taken on a mobile phone or a more official device. As the Judge also pointed out, even if the Appellants did not realise what the authorities were doing when their fingerprints were taken, they must have known that something official was occurring. The Judge was entitled to find as damaging to their credibility their initial stance regarding the French Documents that the encounter did not happen.

14. I turn then to the point about the conversion of the dates. I accept of course that, in Afghanistan, a calendar which is not that used in the UK is generally adopted. In the screening interview, a specific date was not given in either calendar. That interview

took place on 25 February 2019 and, when asked about the date, the Appellants said that it was "[o]ne month ago on a Friday". The Appellants were not then interviewed substantively until nearly three months later, on 8 May 2019. They had in the interim instructed their solicitors. Although I accept that their solicitors were not funded to attend the interview with them, those solicitors wrote a lengthy letter two days prior to the asylum interview setting out the general case on risk to Sikhs ([RB/D]). I accept that this letter does not include any information about the individual claim. However, the Appellants had the benefit of legal advice and the opportunity to explain the details of the claim to those solicitors. That would include the opportunity to explain the dates and work out the correct conversion if they were in any doubt.

15. It is also worthy of note that when challenged during the substantive interview about the timelines in light of the French Documents, they did not say that they might be mistaken about the dates due to a mistaken conversion. They simply denied what the French Documents showed.

16. It was not until the statements for the appeal that they raised a mistaken conversion as an explanation. The First Appellant said this ([AB/1-2]):

> "1. In response to Paragraphs 24-26 I wish to clarify that we are Afghans and we normally use the Afghan calendar. However, I was trying to convert this to the UK calendar. I told them in the interview that I arrived in the UK on the first month and 25th day of 2019. However, I got confused in converting the dates in my mind. If you listen to the recording I am sure that you will hear some confusion between me and the interpreter when I was trying to give him the date.
>
> 2. It may help if I give the dates in the Afghan calendar. We were attacked on the 4 Jaddi 1397 and my daughter was taken. On the 6 Jaddi 1937 we went to meet the Taliban to pay some of the ransom. We could not raise the whole amount but had 10000 US Dollars. On 8 Jaddi 1397, my son found the bloody cloths and jewellery outside in a black back [sic] with a note. They threatened to take his wife if we did not pay up. He had the note read by the shop keeper. The following day we left house with the agent and stayed there for 10 days. You will note the interpreter did not mention the months in the interview. He was trying to explain by saying this month and that month. He did not mention January to me. We left Afghanistan on 19/20 Jaddi 1397."

17. The Second Appellant's statement ([AB/5-6] says this:

> "1. In response to Paragraphs 24-26 I wish to clarify that we are Afghans and we normally use the Afghan calendar. However, I was trying to convert this to the UK calendar. I told them in the interview that I arrived in the UK on the first month and 25th day of 2019. However, I got confused in converting the dates in my mind. My father and I were informed we would be asked about the dates. So when we were at home we thought we would go through the dates in our mind. If listen to the recording of my father we are sure that you will hear some confusion between him and the interpreter when he was trying to give him the dates. I have not received a copy of my recording.
>
> …

3. We got to the UK on 06 Hout 1397 which is 25.02.2019. We claimed asylum on the same day …"

18. The supposed confusion regarding dates during the interview is not borne out when one reads the record of those interviews. When the First Appellant was asked the date of the incident at question 57, he answered that it occurred on "25 January 2019". He confirmed that this was the correct date at question 60. The record does not show that he had any doubts or tried to give the date according to the Afghan calendar as well in case he had made any mistake. The Second Appellant's interview is even starker. When asked when the incident happened at question 9, he replied "[i]t was Friday 25 January 2019. I remember it like today". There is no confusion reflected in the answer. Ms Khan suggested that not everything might have been written down and that there might have been some confusion not reflected in that answer. Whilst I accept that the written record might not be verbatim, it is difficult to read the answer as indicating any confusion given particularly in light of the second sentence. It is difficult to see how difficulties surrounding interpretation of dates could have infected two separate interviews.

19. Ms Khan sought to suggest that the Judge erred by suggesting that expert evidence might have been obtained. She submitted that it was not clear what an expert could have said. I disagree that there is any error in this regard. An interpreter for example might have explained the difference between the dates in the Afghan calendar as asserted in the statements and what the dates would have been if the original dates were adopted. That might have explained some of the confusion. The methodology of conversion might have been explained. As it was, the Appellants tried to give this explanation themselves. As appears at [59] of the Decision, the attempts to explain the mistaken conversion made matters worse.

20. The Judge was entitled to rely on the inconsistency in dates. As I have already pointed out, the Appellants had ample time and even the benefit of legal advice prior to the substantive interviews. When challenged about the dates at interview, they could have said (but did not) that they might have converted the dates wrongly. They could have given the dates in the Afghan calendar as well as the Gregorian calendar, but they did not do so. Their continued insistence that they had not been encountered by the authorities in France as they very evidently had been merely served to damage their credibility further.

21. The other points raised in the grounds concerning the failure to bring the Taliban letter or the implausibility that the Appellants would have left Afghanistan without knowing what had befallen [K] are merely disagreement with the findings made. The Judge was entitled to rely on these points having considered the evidence. In any event, once the credibility of the incident is undermined by the evidence concerning dates, the Judge did not need to give any further reasons.

22. For those reasons, I am satisfied that no error is disclosed by paragraphs [1] to [5] of the grounds which I have summarised above as ground (1).

23. I turn then to what I have summarised as ground (3) concerning the general risk to Sikhs in Afghanistan. Two points are made in the pleaded grounds. The first concerns the position of the Appellants' female family members and their ability to practise their religion openly. The second concerns the Judge's reasoning based on TG and Others. I start with the second part of the ground as that is concerned with the situation for Afghan Sikhs more generally.

24. The ground of challenge to the Decision in this regard is, on its face, broadly a disagreement with the Judge's finding that there is not a general risk to Afghan Sikhs on return. Paragraph [8] of the grounds repeats the point which Ms Khan accepted to be misconceived, that the Appellants should not be expected to relocate internally within Afghanistan and that internal relocation would be unduly harsh. However, Ms Khan sought to develop the point pleaded at [7] regarding the Judge's findings based on TG and Others. She submitted that the Judge should have considered whether to depart from TG and Others based on the background evidence of the current situation for Afghan Sikhs which he had before him. Mr Tufan did not object to the development of the ground in this way.

25. Ms Khan pointed out that the conclusion regarding general risk in TG and Others was based on an insufficiency of evidence regarding incidents of violence. That conclusion in turn was based in part on the historic nature of the incidents reported in those cases by Dr Giustozzi (see record of the incidents relied upon at [40] of the decision and what is said at [48] of the decision in that regard). The Tribunal in those cases also had the Respondent's Operational Guidance Note ("OGN") dated June 2013 which is cited at [50] of the decision.

26. Based on that material, the Tribunal made the following observations:

> "78. It is not disputed before us that historically members of the Sikh and Hindu community in Afghanistan have been subjected to what may be perceived as acts of persecution by both state and non-state actors. The material we have been asked to consider demonstrates that the number of such incidents has reduced (but this might be explained by the reduction in the Sikh and Hindu population) and there is currently little material to support a claim of official state sponsored persecution. The material does support a finding that there is ongoing harassment of and discrimination against some members of the Sikh and Hindu community in Afghanistan, as set out above, but the evidence includes very few examples of recent acts of harm or threats of harm sufficient to satisfy the necessary test. We bear in mind Dr Giustozzi's point that this is an area that has not been prioritised by the media for reporting but when we consider all the material available to us, we find it of note that there is little to suggest that there have been continuing recent incidents of harm toward Sikhs/Hindus. Although Dr Giustozzi has described a picture of 'intensive harassment' at page 12 of his report, he has not supported this by drawing attention to specific examples of individuals being repeatedly harassed. Expropriation has been said to have almost stopped because the most valuable properties have already been taken away. Under the heading 'post-2005 violence and harassment' Dr Giustozzi focuses on examples of violence up to 2010 and references to more recent years are vague and generalised . This is notwithstanding the fact that Dr Giustozzi's

researcher carried out three interviews in December 2013-January 2014 with senior members of Sikh and Hindu communities. We accept that whilst the subject group diminishes in size opportunities to inflict harm may also decrease and note that the small number of Sikhs and Hindus who remain in Afghanistan have been reported to be even more vulnerable to abuse (see UNHCR report 2013), but the lack of evidence of such ongoing issues is a relevant consideration. Perhaps the best evidence in support of the existence of a current real risk from the perspective of the appellants is to be found in the Respondents OGN of 2013 which we set out above."

27. Against that background, Judge Chapman in these appeals had before him the following evidence:

(a) A report of the murder of a Sikh shopkeeper in Kabul in May 2019 ([AB/25-26]). The Afghan police are reported to have arrested the alleged murderers.

(b) A letter from Dr Jasjit Singh, FHEA to the Minister of State for Immigration dated 6 January 2019 ([AB/27-30]). It appears that he is a researcher at the University of Leeds. His letter refers to his involvement in fourteen immigration cases which involved interviewing fourteen families about their lives in Afghanistan, journeys to the UK and religious beliefs. It appears that these cases concerned families who were not believed about their Sikh faith. Mr Singh says that all fourteen families reported a fear of persecution and threats. Some of the specific accounts given are not dissimilar to the account in this case which was disbelieved in these appeals. Mr Singh does not report any direct knowledge of the situation in Afghanistan. The letter makes reference to an attack in July 2018. It is said that there have since then been 17 other terror attacks, but it is not said that those targeted Sikhs specifically.

(c) A newspaper report about one individual returned to Afghanistan by the UK and who was brought back to the UK by the British Government. It is claimed that the individual concerned was forced to say that he had converted to Islam. The Guardian report at [AB/32-34] is largely concerned with the operation of the justice system in Afghanistan.

(d) A report of the shooting of the Head of the Sikh Community in Kunduz in December 2016 ([AB/35-36].

(e) A report of general abuses against Sikhs dated June 2016 ([AB/37-40]).

(f) Accounts of a suicide bombing in Jalalabad in July 2018 (being the attack referred to by Dr Singh above). This killed "at least 13 members of the [Sikh] community" although another of the accounts (and the UNHCR guidelines referred to below) report that "17 of the dead were Sikhs and Hindus" ([AB/41-47]) (the distinction perhaps explained by a difference between Sikhs and Sikhs and Hindus taken together).

(g) The Respondent's Country Policy and Information Note ("CPIN") dated May 2019 at [AB/50-55] provides details of the position of Afghan Sikhs generally including some incidents of harassment and threats and including the July 2018 attack.

(h) The UNHCR guidelines from August 2018 at [AB/56-105] report that non-Muslim minority groups suffer general discrimination, "societal harassment and in some cases violence".

(i) An OHCHR report at [AB/106-] dated 5 September 2018 also refers to the July 2018 attack and other discrimination and harassment based largely on historic events.

28. I turn then to the way in which Judge Chapman dealt with the general risk, beginning at [64] of the Decision. He summarised the Appellants' case in that regard at [64] and [65] of the Decision as follows:

> "64. Mr Dixon presented the appeal on the basis that even if the Appellants are found to be not credible with regard to their core claim and are not at risk from the Taliban, they are at risk of persecution because of their religion in Afghanistan. I now consider this aspect of the appeal.
>
> 65. In doing so, I disregard my adverse credibility findings regarding the events concerning the Taliban because the claim is that, even without these events occurring, the Appellants are at risk of persecution on the basis of their religion and ethnicity alone. My credibility findings are such that I find that I must treat with some caution the Appellants' evidence about their likely circumstances on return but I have been able to rely on the objective evidence presented in the appeal which has not been disputed. I take into account that, taking away their evidence about the Taliban, this leaves open the possibility that the sole reason for them leaving the country is that subjectively they feel that circumstances there are now so bad that they felt obliged to leave, and that they have felt obliged to fabricate a claim in order to do so."

29. As the Judge rightly recorded at [66] of the Decision (and as is recorded as being agreed), the starting point for his consideration was the guidance given in TG and Others. The Judge set out the factors which required assessment in accordance with that guidance. In order to assess the Appellants' evidence regarding the general risk, the Judge made the following findings about their profile at [69] to [70] of the Decision:

> "69. The Appellants, their wives, and the Second Appellant's daughter lived together in a family unit in a district of Kabul where there are eighty to ninety Sikh families living as well as people from other, mixed, religions. They have lived there for many years and have established themselves there. Objective evidence shows that most Sikh families in Afghanistan live in Kabul because intolerance towards them there is not as acute as in other parts of the country. The First Appellant used to own a business selling footwear but the family now maintains itself from income from the Second Appellant's business selling children's toys. He travels daily to Kabul city to run the business. He was able to put his hands at short notice on the considerable sum of $10,000 from the business to pay the Taliban and the agent to leave the country (he confirmed in evidence that this was one amount of $10,000 only because the Taliban did not take it when offered to him). They describe themselves as being above average in terms of wealth. The family attends the local Gurdwara, which is close to their home. The daughter has received an education in Kabul.

> 70. The Appellants confirm that they have been insulted and harassed as a result of their religion even though they are not from the part of the religion which wears Turbans and that they have suffered discrimination. This is consistent with the objective evidence, and not disputed by the Respondent. I note that, although I have left open the possibility that they have left the country because of conditions for Sikhs there, this is not what the Appellants have claimed. Their claim was originally based only on the events concerning the Taliban which I have not found credible."

30. The Judge then assessed the profile as he had found it to be against the factors appearing in the guidance in TG and Others and, at [71] of the Decision, expressed himself to be satisfied that the claims would, following that guidance, be refused as none of the factors applied. The factors were broadly the position of women if unprotected by a male family member, financial situation, access to religion and access to education for any minor children. The Judge summarised his conclusion as follows:

> "… Although I accept they are likely to suffer discrimination, they are of above average wealth, have shown that they can manage businesses, and there is nothing in their past to show that the discrimination they have suffered is over and above that suffered by the Sikh community in Kabul generally, which, according to **TG and others** does not pass the required threshold."

31. The Judge nonetheless went on to consider the other background material before him. He did so on the basis of the submission made by the Appellants' representative that he should consider whether to depart from TG and others. In other words, he addressed the self-same submission as Ms Khan made to me. At [72] to [74] of the Decision he summarised the other background evidence. I do not repeat what is there said as Ms Khan did not suggest that any of that was an inaccurate summary of the evidence he had.

32. Having summarised that material, he went on to reach his findings on that submission at [75] to [79] of the Decision as follows:

> "75. The CPIN concludes, as did the Upper Tribunal, that, in general, Sikhs and Hindus are not at risk of persecution or serious harm from the state, and that, in general, there are not very currently very strong grounds supported by cogent evidence to depart from the conclusions reached in TG and others.
>
> 76. I must follow the country guidance case unless there are very strong grounds, supported by cogent evidence, to justify departing from it, applying (**SG (Iraq) v SSHD [2012] EWCA Civ 940** (paragraph 47).
>
> 77. I have weighed all of the above evidence very carefully. It demonstrates that Sikhs continue to face significant problems in Afghanistan but that this was the case in 2015 when **TG and others** was decided. There have been some specific incidents of violence involving Sikhs since then but, in my judgement, they provide the same limited evidence that was described in **TG and others** (in the part of the judgement referred to me by Mr Dixon and which I have cited in noting his submissions above).

> 78. I find the most compelling feature of the updated evidence to be that the numbers of Sikhs continue to dwindle, but this was also a feature of the evidence before the Upper Tribunal in 2015. Although the evidence suggests that numbers have continued to reduce, the assessment of risk is not simply a matter of numbers, and, balanced against this, there is evidence of efforts being made by the authorities to provide protection and new facilities to those that remain. The declining numbers of Sikhs living [in] Afghanistan may be a reflection of more and more choosing to leave merely because they are fewer in number than because of greater persecution, and I am not sufficiently satisfied, on the evidence before me that the latter is the case.
>
> 79. For these reasons, I find that there is insufficient evidence to satisfy me that I should depart from the country guidance in **TG and others**. Having considered the Appellants profiles and that of their family members, I am not satisfied that they are at risk of persecution, harm or ill-treatment which crosses the threshold to entitle them to protection in the United Kingdom."

33. I asked Ms Khan what the Judge had got wrong in addressing what was in effect the submission she had made to me. She said only that due to the levels of violence, there was cogent evidence of durable change. That, as the pleaded ground in this regard, is merely a disagreement with the conclusions of the Judge reached on the evidence before him. It does not disclose any error of law.

34. I turn then to the first part of the ground which I summarised above as (3) dealing with the position of the Second Appellant's wife and what is said about the risk to her and modification of her behaviour.

35. The Second Appellant's wife in her statement at [AB/9-10] says that she is unable to live "a safe life where [she] can practice [her] religion safely". She says that as a woman in Afghanistan she is "confined to [her] home" and "a prisoner in [her] own home". She does not say why that is so or that she has individually suffered any attacks or threats on account of either her sex or religious beliefs.

36. Ms Khan directed my attention to [40] of the Decision which summarises the submission made by the Appellants' Counsel on this point as follows:

> "A further aspect of these considerations is the risk to women. Mr Dixon referred me to the Home Office Country Policy and Information Note ('CPIN'), dated May 2019, which refers to '*Sikh women don't have a good life here. They can't go outside they can't dress as their culture, and can't go outside for sightseeing with their families'*. Mr Dixon submitted that these were all factors to also take into account when considering the claim on human rights grounds because they amount to very significant obstacles to integration under paragraph 276ADE(1)(vi) of the immigration rules such that Article 8 is also engaged…"

37. The pleaded ground is to the effect that the Judge has failed to take into account why the Second Appellant's wife would modify her behaviour and whether that would be to avoid persecution. That is not the way in which the case was put to Judge Chapman (as set out above) and the Judge cannot be faulted for not considering it in that way. Nonetheless, I go on to consider it. The pleaded ground is based on the

Supreme Court's judgment in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 ("HJ (Iran)") and in particular the stages for consideration by a Tribunal or Court at [35] of the judgment as follows (so far as relevant with my emphasis added):

> "(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But **I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.**
>
> (b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future….. **The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he doe**s. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But **he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded,** he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.
>
> (c) On the other hand, **the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test.** As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.
>
> (d) The next stage, **if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.**
>
> (e) This is **the final and conclusive question: does he have a well-founded fear that he will be persecuted**? If he has, the causative condition that Lord Bingham referred to in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum."

38. Those stages are set out in HJ (Iran) in the context of an asylum claim based on sexual orientation, but the same stages may be applied by analogy to a situation where a person is required to modify the practice of his or her religion in order to

avoid persecution or, for example, to adopt conduct which he or she would otherwise not follow in order to avoid persecution on grounds of sex.

39. Ms Khan drew my attention to [91] to [93] of TG and Others which dealt with the position of Sikh women in Afghanistan (again with my emphasis added):

> *"Women*
>
> 91. In relation to the role of women it is noted in the Rawan News article dated 11th July 2013 and headed 'Tough Times for Afghan Hindus and Sikhs' that **it is alleged that Sikh women cannot go out of their houses**. **Dr Giustozzi in his evidence refers to the fact he has never seen a single Sikh woman, identifiable as such, on the streets in Afghanistan and would not expect to do so. The role of women within Hindu and Sikh families within Afghanistan appears to be based around the home and family life.**
>
> 92. **Dr Giustozzi also referred to Sikh and Hindu women not leaving the house unless properly covered, as with most if not all women in Afghanistan, in order to avoid an adverse reaction amongst some members of the Muslim community. We accept that a Sikh or Hindu woman not 'properly attired' may be subjected to abuse and harassment on the streets in Afghanistan but the evidence clearly indicates that this is the same for all women, whatever their religious persuasion, including Muslim women**. It was **submitted that such a requirement may give rise to an HJ (Iran) issue**. Whilst our attention was not drawn to Y&Z by the parties we can confirm that we have considered the application of the HJ (Iran) issue to the religious context although **this argument was not adequately developed before us and fails to distinguish between members of these religious groups who choose not to go out alone or covered as that is the way they ordinarily behave and those that may be forced to hide a fundamental element of their belief(s) to avoid persecution.**
>
> 93. Nevertheless **we do consider that a Sikh or Hindu single woman without family protection from a husband, other male member of the family, or within a family unit in which there is no male member of the household able to provide effective protection, may be entitled to international protection based upon threats and related acts as a result of their perceived vulnerability as a member of a minority religious group with no form of available protection against such.** In this respect we note the evidence regarding abductions of women and female children and forced conversions to Islam. Credible threats of any form of violence or serious harm (including forced marriage involving forced conversion or not), where there is inadequate protection should entitle that person to a grant of international protection."

Ms Khan accepted that the Tribunal in TG and Others had left the "HJ (Iran)" point open. The finding made at [93] of the decision is to be found in the guidance provided but is not relevant to these appeals as the female members of the family have the protection of the male members. The Tribunal's guidance expressly did not say however that women were at risk of persecution on account of a combination of their sex and Sikh religious identity.

40. Mr Tufan drew my attention to the current Country Information and Policy Note ("CPIN") from March 2021 (Version 6.0) concerning Hindus and Sikhs in Afghanistan which sets out an interview with an Afghan Sikh female MP. She

indicated, in response to the question whether a Sikh female could go out alone and whether they are required to cover themselves, that female Sikhs wear traditional scarfs and did not consider that there would be an issue in Kabul. I accept of course that this could not have influenced the Judge's thinking as it was not published at that time and therefore not before him.

41. There was however an earlier CPIN dated May 2019, excerpts of which were before the Judge at [AB/50-55]. That deals with the position of women in Afghanistan more generally, many of whom reported harassment due to their attire. It is said that "[a]lmost all women reported wearing some form of head covering. Some women said they did so by personal choice, but many said they did so due to societal pressure and a desire to avoid harassment and increase their security in public." It is there reported that "Sikh women do not have a good life in Afghanistan because they were unable to go outside or dress in accordance with their culture."

42. I accept that the Judge did not make any express finding stemming from this evidence regarding the female dependents in these appeals. However, the starting point for the Tribunal on this issue was whether there would be treatment amounting to persecution which would or might require an individual to modify his or her behaviour. The Judge made findings that the Appellants were not at general risk of persecution. There was evidence of potential harassment due to the combined factors of sex and religion but, importantly, there was no evidence that Afghan Sikh women face persecution on that account. The Second Appellant's wife's evidence was that she stayed at home, but it is notable as the Judge observed that their daughter attended education. The Second Appellant's wife did not say that she had been attacked in the past or even threatened due to the combined factors of her sex and religion. Importantly, the Judge also noted that the Appellants' claim was not primarily concerned with the risk to Afghan Sikhs generally. Having reached the conclusion he did regarding the lack of a well-founded fear of persecution based on the Appellants' general position as Afghan Sikhs, any failure to make a finding in relation to the risk to the Second Appellant's wife specifically, particularly given the way in which the appeals were presented, could make no difference to the outcome.

43. Finally, the grounds raise as summarised at (4) above a point regarding obstacles to integration in Afghanistan under paragraph 276ADE(1)(vi) of the Immigration Rules ("Paragraph 276ADE(1)(vi)"). The ground as pleaded is that the claim in this regard is made out "for the same reasons as that for the protection claim but the threshold for proving the same is much lower since you do not have to show a real risk of persecution or serious harm and the IJ has failed to consider this". Ms Khan did not press this ground. She was right not to do so.

44. The Judge considered the issue at [82] of the Decision as follows:

> "I incorporate into my consideration of this issue my above findings. I acknowledge that the Appellants are part of a small minority community in Afghanistan but they have always been part of that small community. I acknowledge that they have given up what they had in order to seek a new life in the United Kingdom, and that re-establishing themselves will not come without

some difficulty. However, they have done this in the past and I do not consider that they will be unable to do so if returned. They will be returned as a family unit, and will have support from others in their community. They are not without the means, skills and qualities to be able to do so again without there being the sort of very significant obstacles envisaged by paragraph 276ADE(1)(vi)".

45. The issue for consideration under Paragraph 276ADE(1) is whether the Appellants are able to integrate in Afghanistan. As the Court of Appeal said in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 (to which judgment Judge Chapman had regard), this "calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it". The task for the Judge is not, as the pleaded ground appears to suggest, merely a reconsideration of the protection claim but with a lower threshold. In any event, Judge Chapman took into account his earlier findings in relation to the protection claim. The Judge properly directed himself as to the test which applies. Applying that test to the facts and evidence here, he was entitled to reach the findings he did for the reasons he gave. There is no error of law in this regard.

46. For the foregoing reasons, there is no error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellants' appeals remain dismissed.

DECISION

The Decision of First-tier Tribunal Judge Chapman promulgated on 8 August 2019 does not involve the making of an error on a point of law. I therefore uphold that decision with the consequence that the Appellants' appeals remain dismissed.

Signed: *L K Smith*

Upper Tribunal Judge Smith

Dated: 24 June 2021