Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04156/2011

THE IMMIGRATION ACTS

Heard at Bradford
On 11th July 2013

Date Sent
On 9th September 2013
…………………………………

Before

UPPER TRIBUNAL JUDGE REEDS

Between

JEET SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M. Bradshaw, instructed by Warnapala & Company
For the Respondent: Mr A. McVeety, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, born on 1st January 1977, is a citizen of Afghanistan. The Appellant is accompanied by his wife, Mrs Baldeep Kaur born on 1st January 1981 and their twin daughters Jasveen and Sukhveen Kaur both born on 25th August 2007 whose status is to be determined in line with that of the Appellant as his dependants.

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The Background to the Appeal:

1. The family entered the United Kingdom on 18th February 2011 and applied for asylum on that date.

2. On 17th March 2011 the Respondent made a decision to refuse to grant him asylum under paragraph 336 of HC 395 (as amended) and on 21st March 2011 a decision was made to remove the first Appellant as an illegal entrant under paragraphs 8-10 of Schedule 2 of the Immigration Act 1971.

3. The Appellants exercised their rights to appeal that decision and in a determination promulgated on 11th July 2011 the First-tier Tribunal (Judge Khawar) dismissed the appeals on asylum and human rights grounds and further found that the Appellant was not entitled to a grant of humanitarian protection.

4. An application was made for permission to appeal which was refused by the First-tier Tribunal (Judge Juss) by an order dated 4th August 2011. That application was renewed before the Upper Tribunal and on 4th January 2013 Upper Tribunal Gleeson granted permission to appeal and set out a number of directions with the grant of leave. On 29th March 2012, Upper Tribunal Judge Gleeson found that the determination of the First-tier Tribunal contained a material error of law and she therefore set the determination aside.

5. The decision of Upper Tribunal Judge Gleeson was as follows:-

   "Error of Law Decision

   1. On 1st January 2012, I granted the Appellants permission to appeal against the determination of First-tier Tribunal Khawar, for the reasons set out in my decision at paragraphs 4 and 5 thereof as follows:

      '4. The Appellants renewed their application to the Upper Tribunal. The proposed Grounds of Appeal on the second application were that the First-tier Tribunal Judge's determination was inadequately reasoned as to risk on return and internal relocation, focussing almost exclusively on credibility.

      5. The Grounds of Appeal are arguable. The evidence before the First-tier Tribunal Judge indicated that there was discrimination and social marginalisation, and occasionally violence, against the small remaining number of Sikhs in Afghanistan. The First-tier Tribunal Judge accepted that the Appellant was Afghan. He does not seem to have doubted that he was also a Sikh, though the determination did not say so in terms. A more thorough and nuanced analysis of risk was therefore required.'

   2. I gave directions accompanying my decision, requiring both parties to put in writing any further matters on which they wished to rely. I said in those directions that if either party failed to do so, the Upper Tribunal was likely to conclude that they had nothing, or nothing further, to add.

3. The Respondent replied, saying that she opposed the Appellants' appeal and that in summary the Respondent will submit, inter alia, that the Immigration Judge directed himself appropriately. That does not indicate that the Respondent has actively engaged with the Grounds of Appeal.

4. The Appellants' further submissions, received with permission out of time, and settled by Ms Charlotte Bayati of Counsel, may be summarised as follows:

   (i) The First-tier Tribunal Judge's determination disclosed material errors of law in relation to the assessment of credibility and risk on return; and in particular;

   (ii) The First-tier Tribunal Judge made no reference to the country background evidence regarding the risk in Jalalabad, the Appellants' home area, or for his conclusion that the types of incidents which occur are incapable of amounting to persecution;

   (iii) In **SL and Others** **(Afghanistan) CG [2005] UKIAT 00137**, the most recent country guidance on the issue, the Immigration Appeal Tribunal had accepted that Jalalabad was unsafe for Sikhs and had focussed on the protection offered by internal relocation to Kabul;

   (iv) The First-tier Tribunal Judge had failed to consider whether relocation to Kabul was unsafe and unduly harsh, focussing solely on safety. The First-tier Tribunal Judge should have considered the general conditions in Kabul and whether the Appellant and his family had any connections to Kabul, to assist them in resettling, particularly as the Sikh community in Kabul was now very small indeed.

   (v) There had been no consideration of the best interests of the children as required by Section 55 of the Borders, Citizenship and Immigration Act 2009.

   (vi) In the light of these errors the Appellant contended that the determination should be set aside and remade afresh. Ms Bayati, Counsel who settled the submissions had done so without the witness statements and the other individual's evidence which had been before the First-tier Tribunal and so, in the event that the Upper Tribunal wishes to preserve any factual findings, she was unable to indicate which findings ought to be preserved.

   (vii) Ms Bayati reserved the right to make further submissions when she was properly instructed and to file further personal and country background evidence which has not been available to the First-tier Tribunal Judge pursuant to Rule 15(2A) of the Procedure Rules 2008.

5. That is not a proper Rule 15(2A) notice. However, the lines of argument being pursued have been set out on the Appellants' behalf. Any further submissions will require the leave of the Upper Tribunal.

6. Having considered the arguments, and the determination itself, I am satisfied that it is appropriate to set the determination aside and for the Upper Tribunal to remake it at an oral hearing on a date to be fixed.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

The Upper Tribunal to remake the decision on a date to be fixed.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005."

6. Thus the matter was listed for hearing before the Upper Tribunal.

Preliminary Matters

7. At the hearing, the Appellant was represented by Mr Bradshaw of Counsel and the Respondent was represented by Mr McVeety, a Home Office Presenting Officer. The first substantive hearing took place on 24th May 2013. At that hearing there were some difficulties raised in respect of the interpreter and that an interpreter in the Punjabi language had been required by the Appellant's solicitors despite the direction given by the Tribunal that a Dari interpreter was necessary. There was no Punjabi interpreter available until the afternoon and thus the Upper Tribunal took that opportunity to view a DVD film concerning the position of Sikhs in Afghanistan. As to the findings of fact to be preserved from the First-tier Tribunal's decision, it was agreed between the parties that the findings of fact made by the First-tier Tribunal in respect of the Appellant's nationality should remain. The judge made a finding of fact at paragraph 30 that the Appellant was a national of Afghanistan for the reasons given. As noted by Judge Gleeson, it did not appear to be in dispute that the Appellant and his family members were Sikhs. Indeed evidence had been produced on behalf of the Appellant relating to his father and mother with whom he had recently re-established contact. From the documentation they had produced via the Respondent, it demonstrated that they were Afghan nationals of the Sikh faith who had been granted indefinite leave to remain on the basis of their nationality and claimed religion in 2004 and were now British citizens. In the light of that evidence, the matters originally set out in the refusal letter that dealt with issues of identity and nationality were not pursued by Mr McVeety.

8. As to other issues, it was agreed between the parties that the Tribunal should hear the evidence of the Appellant and also his wife concerning the alleged incidents in Jalalabad which led him to leave the United Kingdom. Whilst the Appellant had originally only given evidence concerning the incident that included his wife, it was apparent from evidence given by the Appellant that part of the account had not been disclosed which related to his wife as a result of cultural reasons but she had filed a witness statement concerning those matters and thus it was agreed between the parties that the Tribunal in those circumstances should consider the evidence and make fresh findings upon the issue of credibility.

The Appellant's Claim

9. The basis of the Appellant's claim is set out in his witness statements of 18th April 2011, 28th February 2013, 5th July 2013, his screening interviews and substantive interview.

10. The Appellant was born and brought up in the Rege Shabat Mohammed Khan District of Jalalabad alongside other Sikh families. His father made his living from a bicycle shop run in the nearby Shur Bazar. The Appellant did not attend school as a result of the impact of the Mujahedeen/Taliban insurgency but stayed at home. At a later date he joined his father in the bicycle shop.

11. The Appellant's father suffered incidents from the local population including his landlord in respect of incidents of extortion and included an allegation of assault. Thus the family made arrangements to leave Afghanistan. The Appellant's parents separated from the Appellant. They subsequently arrived in the United Kingdom in 2004 (unknown to the Appellant). He was taken by the agent out of Afghanistan but nine months later was taken back to Jalalabad. At that time his parents' house and his father's shop were occupied by Muslims. The Appellant did not re-establish contact with his parents until 2011. They were subsequently granted asylum in 2004 and are now British citizens.

12. Once in Jalalabad, the Appellant lived at the gurdwara but then lived within the community as a result of his marriage to the second Appellant, Baldeep Kaur.

13. The Appellant with another Sikh named Amrik, who was in the business of running a bicycle shop in the centre of town was joined by the Appellant. The Appellant claims that both he and Amrik ran into difficulties as the Muslim bicycle seller operating in a neighbouring business accused them of under cutting the prices leading to a series of violent confrontations. The Appellant claims that he was attacked on five or six occasions and the last occasion was fifteen months before he left Afghanistan.

14. The more serious events occurred related to a Pathan named as Huzemat.

15. The Appellant also claims that Amrik Singh's house was attacked by four or five Pathans, Amrik and his wife were beaten and he decided to leave and split the contents with the Appellant. The Appellant continued to run the business by himself for nine months.

16. In respect of the man named Huzemat, this man and four or five of his associates came to the shop to collect money from the Appellant. This man and his associates had come to the business once a month for checking their accounts and would ask for money, approximately 12,000 Pakistani rupees, every two or three months. On occasions they would come and ask for more, 2,000 or 3,000 rupees, and threaten to assault him if he did not pay.

17. In or about August 2010, Huzemat appeared at the Appellant's business seeking to extort further sums of money. He told the Appellant that he should give them $35,000, money which the Appellant stated he did not have. He was told to get the money and the next month when they returned in September, he gave them the usual amount but they stated that they wanted $35,000. The Appellant was hit across his face with one of his tools. The Appellant did not return to work for the following 25 to 28 days.

18. Three or four days after he returned to work, about a week to ten days before he left Afghanistan, he was on his way back from the temple and to do some shopping when he was stopped by Huzemat. He was accused of closing the shop and running away and he was told that "there is nowhere in Afghanistan you can run to – I will get my money from you". The Appellant states that Huzemat followed the Appellant to his home striking him on his back with a rifle. Once they arrived at the house, the Appellant's wife intervened and was hit by Huzemat. As their daughters ran towards their mother, Huzemat picked up one of them and threw her against the wall and threatened them further that if he did not get his money he would kidnap his wife and children. He was given a length of time to get the money.

19. The Appellant states that he found an agent thereafter who in exchange for his business agreed to help them leave Afghanistan. They left on 13th or 14th November 2010, travelling by car to Peshawar, Pakistan where they stayed for between 45 to 47 days, they then travelled to Lahore and then caught planes to a different country until arriving in the United Kingdom on 18th February 2011. The Appellant claimed asylum on that day.

20. In 2011, the Appellant found out that his parents were in the United Kingdom and he re-established contact with them. His parents having arrived in 2004 had claimed asylum on the basis of their religion and experiences in Afghanistan and were granted refugee status and are now British citizens.

The Evidence

21. There were a number of bundles submitted on behalf of the Appellant. The original bundle was dated 27th April 2011 and contained a statement of the Appellant and copy ID documents for the Appellant, his wife and the two children. It also included a large amount of background material. There were further bundles produced. On 28th February 2013 a further bundle was submitted containing a further statement of the Appellant, copies of British passports and news articles on Afghan Sikhs. On 16th May 2013 a further bundle was submitted including documentation relating to the Appellant's father Gopal Singh Harjyani, copies of status documents and previous information statements, SEF form and interview provided to the Home Office, an expert report from Roger Ballard dated 8th April 2013. A further bundle was submitted on 21st May 2013 including a chronology, skeleton argument, the UNHCR 2010 document, the decision of **<u>The Queen on the application of Luthra v SSHD</u> [2011] EWHC 3629**, the Tribunal decision in **<u>DSG and Others</u> (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC)**. There was also

provided in addition to a copy of the DVD a document entitled "Script from the DVD" and also a summary of the DVD entitled "Mission Afghanistan" produced by Pritpal Singh. The new documentation that was sought to be admitted to the Upper Tribunal had been set out in a Rule 15(2A) application notice. There was no dispute between the parties that that information was relevant and should be admitted for consideration before the Upper Tribunal.

22. In respect of the Respondent, the original Respondent's bundle was produced. In addition Mr McVeety relied upon an extract from the COIR Report for Afghanistan dealing with Sikhs and Hindus.

23. The Appellant gave evidence with the assistance of the court interpreter and gave evidence in the Dari language. There was also an interpreter present to translate in the Punjabi language. At the hearing before the FtT, the Appellant gave evidence in Dari. At a hearing in March, the language of the interpreter was clarified and again a Dari interpreter was requested. Mr Jabarooti, the Dari interpreter, attended on 24th May 2013. At that hearing the Appellant gave evidence in Dari and there was no difficulty identified by the Appellant or either party with the Appellant being able to give evidence in the Dari language. No concerns were raised in respect of that at any time by Mr Bradshaw or by the Appellant. Mr Mumtaz, the Punjabi interpreter, was also present to assist if there were any difficulties using any particular vocabulary. There were no difficulties either with the Appellant giving evidence in the Punjabi language. At the hearing on 11th July 2013, Mr Ali, the court interpreter, was present and spoke Punjabi and it was agreed between the parties that he should continue his evidence in Punjabi. At that hearing the Tribunal sought the assurance of the Appellant and also his Counsel, Mr Bradshaw, that there had been no difficulties with the evidence given on the last occasion and it was confirmed by Mr Bradshaw and the Appellant that there were no issues raised concerning the interpretation. I would further note that there were no difficulties with the Appellant being able to give evidence or with the interpretation or any concerns raised during the hearing in relation to that.

24. The Appellant in his evidence adopted four witness statements that he had made on 18th April 2011, 20th June 2011, 21st February 2013 and 5th July 2013. He confirmed that he had run a shop with a man by the name of Amrik whilst he lived in Afghanistan and that the Appellant continued to run the business after he had left. He confirmed that after he was running it on his own he continued to have hostile visitors to the shop. He confirmed that there were four to five of them and one named man called Huzemat. The Appellant stated that they would come and ask for money and he would give them money and did so every month and that between every two to three months they would come asking for 2,000 and 3,000 which he would give them but on one occasion they came with a demand of US$35,000 and he said that he did not have that amount of money. Their attitude was that they did not care even if he did not have the money. He confirmed that they would ask for $12,000 per month. He confirmed that there was 12,000 paid by way of a monthly regular payment and 2,000 or 3,000 was on top of that. He said that when he could not pay they would beat him with chains (the chains that he would tie up the bicycle

with) and he was hit across the forehead. He said that they had threatened that they would beat him next time they came which is what they did and they assaulted him. He confirmed that he had claimed asylum on 18th February 2011 which was the same day that he had arrived. He had left Afghanistan in or about November 2010.

25. In cross-examination he was asked about the demands of money and he confirmed that the 35,000 was in US dollars. The other payments that he had referred to, namely 12,000, were Pakistani rupees. When asked about the 35,000 dollars, the Appellant said that he explained that it was a huge amount and that he could not pay such a large amount and said that that was when the problems had started. He was asked questions about Huzemat. He confirmed that he had ordinary clothing on, sometimes Asian clothing but did not wear a uniform. When asked about whether there were other Sikhs in business in the area, he said that there were not very many and they were a distance away. He said that many Sikhs had been scared and had left. He was questioned about the DVD which showed Jalalabad with a shop run by Sikhs and he was asked if he had spoken about his problems with anybody else. The Appellant said that it was a known fact that people were scared to talk about the problems for Sikhs and it was common for other Afghani citizens to come to shops and threaten for money. He said a couple of times he did report it to the police but he was basically ignored and nobody would listen to him. He said that he was "banging his head against a wall". He said there was no protection and that it would bring more danger to go to the police because it would be held against a person who made the complaint. He was asked if he moved to Kabul whether or not he would be found by Huzemat. The Appellant said that Afghanistan was not a very big country and that if you came from a minority background you would be easily recognised and you could not hide away. He said that Huzemat had told him that he would find him wherever he was and the Appellant said that he believed him. He confirmed that the interest in him was financial. As to how he left Afghanistan, he confirmed in his evidence that he had given the agent his shop. He had had no choice because he could not pay him any money and he had left the shop with the agent including all the stock.

26. He was asked questions about how he found his father in the UK. The Appellant said that he had asked a number of people and was advised to go to the community in Southall where there was a temple. At the Sikh temple he found out some information and became reunited with his family. He confirmed that his father was from Jalalabad and they had lived together. They had the same shop and business. The Appellant confirmed that after his father had left in 2004 the Appellant had returned back to Jalalabad. The Appellant confirmed that he had been threatened with violence by Huzemat and that he had been beaten once before. He said that he had been beaten on his body by chains on his forehead. When asked to describe how the police had dealt with him when he had made his complaint, he said that when he had reported to the police, they would not deal with it and told him that he ought to "deal with it yourself". He confirmed that that is the way that Sikhs were treated and the police openly told them that they could not be protected.

27. In cross-examination he was asked further questions by Mr McVeety about the incident involving Huzemat. He was asked about the US$35,000. He confirmed that it was a large amount of money even in the United Kingdom and that Afghanistan was much poorer than the UK. Against that background the Appellant was asked why Huzemat had asked for such a large amount of money when he knew the Appellant could not pay it? The Appellant said that he had visited the shop and had seen the goods and got the impression that he had a lot of money. The Appellant told him that he was a poor man and could not raise that amount. He confirmed that his shop was selling bikes and that from that shop the income he received fed him and his family. He said that his shop was middle sized, had a lot of customers and that Huzemat must have thought there would be enough money. He said there were other shops as well as his that sold bikes and they were about the same sort of size. He said that he had not told anyone else what had happened to him because no one would have listened to him. He confirmed that he had attended the temple in Jalalabad but did not tell anybody there. He explained that people had different problems and that they did not tell anyone.

28. The Appellant's father also gave evidence, Gopal Singh Harjyani. He confirmed his witness statement and that he had left Afghanistan in 2004. He said that he had not re-established contact with his son until 2011. The statement in respect of Mr Harjyani confirmed that he had been granted indefinite leave to remain as a result of his experiences in Afghanistan and now he and his wife had become British citizens.

29. The Tribunal also heard evidence from the Appellant's wife, Baldeep Kaur. She adopted her witness statement as her evidence-in-chief and confirmed that the contents were true. In cross-examination she was asked about the incident that occurred in Jalalabad. She confirmed that when her husband went to the temple she was at home with her daughter. It was put to her that as her husband had previously had threats was it risky for her and her daughter to be alone in the house? She said that they had run out of a lot of things and it was necessary for him to go out to purchase them and that he had gone via the temple to do that shopping. She confirmed that she had not seen the man who had attacked her before and that he had never been to the house before. She was asked where she had been hit with the rifle butt and she indicated that it was on her back. She said that she had not suffered any immediate injury but following the attack she had had back pain and that she had been taking medication since that time. She confirmed that she had not been subject to sexual assault but that he had ripped her clothes. She was asked if she knew how much money the man was asking for? The witness said that the man had been asking for a lot of money but she was not aware of the exact amount because men in their culture did not share that type of information. In respect of her daughter, she confirmed that her daughter's head had been hit against the wall and that she had some head injuries. The witness was very upset at this stage. There was no re-examination.

30. There is a full record of oral evidence of the Appellant which appears in the Record of Proceedings. I shall refer to the relevant parts of the evidence during my analysis of the case. I have heard both advocates by way of summary at the conclusion of the

case which I have recorded in my Record of Proceedings. I confirm that I have considered those submissions during my analysis of the evidence and in the conclusions that I have reached, even if not specifically referred to.

31. I note that I was guided to certain passages in the objective material. I confirm that I have read those passages with care, but I read them in the context of the entire document. I further confirm that I have read the whole of the documentation set out before me in order to assist me in reaching my conclusions.

The Submissions

32. Mr McVeety made the following oral submissions; it was submitted that it was accepted that he was an Afghan Sikh but the issue was whether or not he had suffered any incidents in Jalalabad and if so, could he internally relocate to Kabul with his family members. In respect of Jalalabad, Mr McVeety referred to the DVD. He submitted that there was a Sikh population in Jalalabad although the numbers are a lot fewer. The Appellant's account was that he was subjected to extortion but the amount that was indicated in this case of $35,000 was a ludicrous amount. This was an average shop and it was not credible that he would be asked for such a large amount. Whilst the Appellant claims to have reported it to the police he did not tell his fellow Sikhs in the close knit community thus that was not a credible action on the Appellant's behalf. The DVD did show parts of Jalalabad but the director of the programme was returning to look at problems and to raise funds or awareness of the issues for Sikhs. It was a Sikh who was the main actor in the video. However the DVD did show Sikhs living openly and there were shops open and a taxi driver therefore it is possible to be economically viable in Jalalabad. There was a temple that was in use and that was maintained. None of the individuals mentioned persecution in Jalalabad but were talking of financial matters. They had left due to economic reasons.

33. Even if the Appellant had suffered persecution in Jalalabad, the Secretary of State's position was that he could relocate to Kabul. Mr McVeety referred to the background material in the COIS report at paragraph 21.36, 21.37 relating to schools, 21.38 to demonstrate that the family could relocate safely to Kabul city. In respect of the DVD, it showed that people were living at the crematorium site in Kabul and that was supported by the transcript at page 20. It demonstrated that when a complaint was made the police and the army had intervened. Huzemat was a local thug and there was no evidence that his influence extended to Kabul and he had no connections to the government.

34. As to whether it would be unduly harsh for the family to relocate to Kabul, the Appellant would be able to obtain employment. The gurdwara temple was seen on the DVD and it was being repaired by a building company run by Muslims. In the DVD, the man who was interviewed referred to the Sikhs as "Afghans". The attitude demonstrated that they saw each other as fellow Afghans and there was no indication of abuse given in the DVD and they were repairing the temple. As to the conditions, the DVD was of some assistance here also. It demonstrated that women

were living in a room and it was not at the best quality but that did not mean that it was not unduly harsh to expect the family to locate there. It showed that they had a carpet, sofa and TV. The information at page 120 of the expert report was an exaggeration and did not demonstrate the conditions on the DVD. At page 121 the expert report did not state where he obtained the information from. No one in the DVD referred to Sikhs as "kaffir" and they were building the temple for them. The Appellant would have to re-establish the contacts that he had before so that he could import parts for bicycles but there is nothing to show from the evidence that he could not re-establish his business. Whilst the economy is parlous in Afghanistan it was not sufficient to demonstrate it would be unduly harsh for the family to relocate to Kabul.

35. As to sufficiency of protection, Mr McVeety conceded that he would not get protection in Jalalabad.

36. The background material, he submitted, demonstrated that there was some societal discrimination but that it was not as described by Dr Ballard. Whilst the Secretary of State was not submitting there were no problems for Sikhs but the evidence did not show that Sikhs as a class are being persecuted. Thus he submitted that it would be open to the family to relocate to Kabul.

37. Mr Bradshaw on behalf of the Appellant relied upon his skeleton argument. In addition he submitted that the Appellant had given a credible account of what had happened to him and his family members in Jalalabad. The account given is consistent with the expert evidence of Dr Ballard as to the type of events that took place set out at page 31 (paragraph 68). He looked at the case studies of seven Jalalabad families and that their decision to flee had been precipitated by demands of the type described by the Appellant. The account given by the Appellant is entirely consistent with the evidence in the expert report. As to the point raised by Mr McVeety relating to the amount of $35,000, it was not such an outrageous amount to put forward because it was easy to imagine a scenario when they would accept a lower figure. The point was that the man was holding power over him and that it was not to make a realistic demand but to put pressure upon him to give further amounts of money. In any event there was no evidence of turnover or business to see whether $35,000 was a grossly inflated figure. He submitted that in respect of the incident that occurred of violence in Jalalabad, there had been no discrepancies between the witnesses identified in cross-examination and the account as to the assault is consistent with the account given in the interview of the Appellant at questions 72 to 75.

38. Thus he submitted that the Appellant's account as to the events in Jalalabad was credible.

39. As to the point made by Mr McVeety that the DVD did not show Muslims calling Sikhs "kaffirs", that is not the general attitude of the population and that Dr Ballard has given good evidence concerning the general view held about Sikhs in Afghanistan. As to the shopkeepers in Jalalabad, the fact that they were able to trade

there did not mean that they were facing the same problems. He submitted it was dangerous to draw conclusions that just because a business was trading that there were no problems. There were limitations to the DVD and the weight that was being attached to it by the Presenting Officer did not take into account those limitations for example the motivation for the video, what it was seeking to draw attention to, the danger of assessment and it is not known what other type of information had been obtained before the DVD was produced. The DVD, should not be taken in isolation without considering all the other evidence.

40. As to risk on return to Kabul, the decision of the Tribunal in **DSG** demonstrated that the numbers of Sikhs in Afghanistan had reduced dramatically compared to those in the country guidance case of **SL**. At paragraph 24 it demonstrated glaring differences, 3,700 as opposed to 20,000. The decision of **DSG** referred to 1,000 or 2,000. The large numbers that have left are significant and it must follow that something has caused a significant exodus between 2003 and 2013. Whilst the Respondent submits that it is due to economic reasons, that may be part of it because businesses cannot trade due to extortion and thus for economic reasons may also be persecutory reasons. Dr Ballard's case studies demonstrate that that is a plausible reason as to why so many have left alongside the general societal attitude towards Sikhs set out plainly in the background material. Mr Bradshaw invited the Tribunal to consider the case of **Luthra** and Dr Ballard's report. In considering whether or not it would be unduly harsh to relocate to Kabul the temple would not provide sufficient accommodation for the family. Kabul was described in the DVD as an expensive city with most people barely surviving. The Appellant has no business, the most he could expect was a day labouring but the question for them is that it is not sufficient for them to afford to provide accommodation or to feed the family. In the DVD Ravinder Singh said that even those who were able to find a labouring job had to rely on the gurdwara. Whatever has been said about the visibility of the living conditions in the gurdwara, there is nothing known about the availability of such accommodation and whether it is going to be suitable where there are three children including a young child involved. Furthermore the gurdwara must have a limit and there is no evidence as to how many they could accommodate. At page 18 of the transcript is a description of the accommodation and the living conditions were very poor. It would be important to consider that type of living accommodation during the inclement weather conditions, in particular in the winter. As to the cremation grounds, there were still confrontations about cremations and they were still required to perform them secretly.

41. Mr Bradshaw submitted that it was not possible to read anything into the timing of the Appellant's departure. Those who could leave did so sooner and it supports the gradual fall in numbers that each have their own individual reasons for leaving rather than a mass exodus. He submitted there had been a change in attitude and those of the Sikh religion were now in a small minority and as a result of the low level of numbers, they are more at risk of the pervading attitude and there is nothing to suggest that what has led them to leave in their large numbers has gone away thus those who return are more at risk now because there are so few amongst whom they can live. There is something with the saying "safety in numbers".

42. Mr Bradshaw submitted that it was noteworthy that the entire COIS Report originally issued in February had been reissued on 8th May 2013 solely to add the quote set out at 21.36 stating "according to some reports members of the Hindu and Sikh communities continue to face societal discrimination, harassment and in some cases, violence at the hands of members of other religious groups". He submitted that the addition of the quote was indicative of the growing recognition of the difficulties faced by the Hindi and Sikh communities and that it had escalated to the level of violence. This escalation takes the situation beyond the severity seen at the time of the country guidance case of **SL**. The US State Department Report refers to the issue of education and that it was systematically aimed at Sikhs thus therefore gives rise to persecutory treatment. The ability to go to school is of relevance in this case. There are two young children and one young baby and there is also the Section 55 duty to consider their needs. The reference to private schools has to be seen in the light of their economic position and it would be very unlikely indeed if the Appellant would be able to set up a similar business, provide accommodation and food and also provide education in that context. It is unaffordable for most families and it would not be affordable for this Appellant.

43. Looking at the COIS Report, both that and Dr Ballard make reference to the case of Baljit Singh an Afghan Sikh returned to Afghanistan after a failed asylum claim in the United Kingdom. Dr Ballard's analysis is set out at paragraphs 104 to 105 and demonstrated at least an inability or unwillingness of the state to protect Mr Singh from assaults and forced religious conversion along with a wish to publicly broadcast such an event. At worst, it demonstrated the targeting of an Afghan Sikh immediately on return as he was not considered Afghan either on religious grounds or because of his status as a failed asylum seeker.

44. It was noted in **AA (Unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)** that the Tribunal did not consider the risks to accompanied children were sufficient to engage the need for protection. However it did highlight that some risks remained for accompanied children such as landmines and the risk of trafficking. It is submitted that given the societal discrimination shown to Sikhs it would place Sikh children at particular risk of exploitation and trafficking if they were able to leave their homes. If such individuals are so poorly treated, it is submitted little value is likely to be attached to their lives making them a heightened target for those wishing to recruit.

45. In summary, it was submitted that the situation and conditions for Sikhs has escalated beyond "difficult and frequently unpleasant" as defined in **SL** particularly in the light of the vulnerability of the light of the small numbers remaining in Afghanistan. The treatment faced is now a level which is worse than societal discrimination and engages the Refugee Convention, Article 3 of the ECHR. The general position applies in Kabul thus the Appellants were entitled to succeed in their appeal.

The Law and the Burden and Standard of Proof

46. In reaching my decision I have borne fully in mind the relevant law and Immigration Rules, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Handbook on Procedures and Criteria for Determining Refugee Status ('The Handbook') (Geneva, January 2000). By Article 1(a)(2) of the Refugee Convention the term "refugee" shall apply to any person who:-

> "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or, owing to such fear, is unwilling to return to it."

47. The provisions of SI [2006] No.2525 "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006" now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29th April 2004 on 'minimum standards' for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9th October 2006.

48. The determination I have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended Immigration Rules. These have permitted us to consider whether the Appellant is in need of Humanitarian Protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, I have gone on to consider whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.

49. The burden of proof is upon the Appellant. The standard of proof has been defined as a '*reasonable degree of likelihood*', sometimes expressed as '*a reasonable chance*' or a '*serious possibility*'. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. We regard the same standard as applying in essence in human rights appeals although sometimes expressed as '*substantial grounds for believing*'. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of Humanitarian Protection.

50. Paragraph 339C of the Immigration Rules defines a person eligible for Humanitarian Protection, as a person who does not qualify as a refugee but in respect of whom

substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.

51. Accordingly, where below I refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying respectively:

    i. whether on return there is a well-founded fear of being persecuted under the Geneva Convention;

    ii. whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and

    iii. whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.

52. In reaching my conclusions as to whether the Appellant will be at real risk on return, I have been further mindful that the amended Immigration Rules contain among other provisions, paragraph 339K which deals with the approach to past persecution and paragraph 339O headed "*Internal Relocation*".

53. The Appellant places specific reliance on Article 3 of the ECHR. It is for an Appellant to show that there are substantial grounds for believing that he or she is at real risk of ill-treatment contrary to Article 3 ECHR, which prohibits torture, inhuman or degrading treatment or punishment. The standard of proof equates to that in asylum appeals.

54. In coming to my determination, following Section 85 (4) of the 2002 Act, I may take into account evidence about any matter which I think relevant to the substance of the decision, including evidence which concerns a matter arising after the date of decision.

Assessment of Evidence and Findings of Fact:

55. I must make findings as to the credibility of the Appellant and the claim in the light of the totality of the evidence that is before me, including the background evidence. The Respondent took the view that the Appellant's claim was not credible for the reasons indicated in her letter of 17th March 2011. However, it is not in issue now in the light of the preserved findings of fact, I should say, that the principal Appellant is a national of Afghanistan and is a Sikh and I so find.

56. I have carefully considered all the evidence before me, both documentary and oral, and I have had the opportunity to assess the Appellant's evidence which has been the subject of cross-examination and in the light of the documents and the country materials. Thus I set my findings of fact against that background.

57. As conceded by Mr McVeety, he does not rely on any credibility matters relating to identity or mode of entry into the United Kingdom, or nationality in the light of the evidence provided from the Appellant's family members which has been produced subsequently to the refusal letter.

58. The Appellant's claim is that he and his family members resided in Jalalabad, which is situated between Kabul and Peshawar. The history of this area is as set out in detail in the report of Mr Roger Ballard (page 95) and it is said to be the next largest Sikh colony located outside the capital. The history demonstrates Sikh presence in the city has diminished as a result of insurgency (Taliban) and that as a religious minority they have found themselves subject to discrimination and violence and demands for money in return for protection, known as "jiziya".

59. I have considered the factual claim made by the Appellant in the light of the background material, the expert evidence and the documentary and oral evidence given before the Tribunal. In doing so, I accept the Appellant's account of the earlier history in respect of his family and business dealings. The Appellant's father made his living from a bicycle shop which he ran in the Shur Bazar and the Appellant joined his father to work there. The problems that his father had with local Pathans in the area and in particular his landlord, are set out in the witness statement, screening interview and substantive interview that took place in 2004. The Appellant's father was a victim of violence in Jalalabad and the witness statement and interview sets out a picture of him being subjected to demands for money. The situation in Jalalabad was such that the shop was forcibly taken from him and the family left Afghanistan.

60. It is plain from the documentation that has now been produced, subsequently after the First-tier Tribunal hearing, that the Appellant's father and mother arrived in the United Kingdom on 5th February 2004. They made a claim for asylum based on their persecution in Afghanistan as members of the Sikh community. They were subsequently granted refugee status and are now British citizens.

61. The history demonstrates that the Appellant did not fare as well as his parents and whilst they were able to leave Afghanistan the Appellant was taken back to Jalalabad by the agent. He lived at the gurdwara on a temporary basis and was later to marry the second Appellant, Baldeep Kaur.

62. I accept the history given by the Appellant, which is supported by the independent evidence given by his father who arrived in the United Kingdom in 2004 as set out in the documents that he provided to the Respondent. The account given by the Appellant subsequently is entirely consistent with the account given by his parents in 2004 which was given before the Appellant had even entered the United Kingdom. He did not have the opportunity to re-establish contact with his parents until 2011 not knowing that they were in the UK or where they were until that date when they were traced.

63. Thus I accept the account given concerning the historical factual circumstances which led to the Appellant's family leaving in 2004 and also the events that they say occurred in Jalalabad as a result of persecutory treatment at the hands of Muslims in the area.

64. As to the events thereafter, the Appellant claims to have been the victim of extortion at the hands of members of the local population and in particular, a man identified as Huzemat, culminating in an attack upon the Appellant, his wife and daughter. I am satisfied that the account given as to the events in Jalalabad is reasonably likely to be true. The account as described in his evidence, both documentary and oral, is wholly consistent with the treatment he had endured earlier when his parents were living in Jalalabad which led to them being granted refugee status. It is also consistent with background material placed before this Tribunal. In this respect, I have given consideration and weight to the report of Dr Roger Ballard. He has not appeared before the Tribunal to give oral evidence and thus his report has not been the subject of cross-examination. Nonetheless the contents of the report do not appear to be inconsistent in general terms with the background material in the COIS Report concerning the history and background relating to Sikhs in Afghanistan and in particular in Jalalabad.

65. At paragraph 68 of the report, the expert refers to seven families from Jalalabad (see Appendix 2). From those case histories, he considers that their decisions to leave Jalalabad were precipitated as a result of predatory demands in respect of their property. That type of conduct routinely included demands for "protection money", failing which the predators would simply remove goods from the shop without payment, physical assaults including beatings, removal of turbans, threats to cut off hair and beards, kidnap for ransom, during which attempts are frequently made to enforce conversion, armed break-ins into the privacy of the Appellant's houses (as opposed to their shops) accompanied by threats to women and children if protection money was not paid and escalating levels of violence, including the kidnap of women and girls.

66. The description of those incidents is consistent with the evidence given by the Appellant concerning the experiences that he and his family members had in Jalalabad before they left. The description of the physical assault and demands for money and the threats made are consistent with the experiences of other Sikh families in that area. It is also consistent with the earlier behaviour suffered by his parents. It is also noted from those families and their experiences that they were not able to gain any significant kind of protection either from the police or the courts as a result of those experiences.

67. The main point raised by Mr McVeety relates to the size of the money that the Appellant was being asked to provide. He submits that the sum of US$35,000 was a ludicrous amount to be asked for and that it was not credible that anyone would ask for such a sum from the Appellant, in the light of the fact that this would be a large sum even in the United Kingdom.

68. The Appellant's evidence was that prior to being asked for the sum of US$35,000, he had been paying regular sums on a monthly basis in Pakistani rupees. The figures given in the evidence would not seem to be overly substantial in the light of his circumstances. I do not consider that the fact that the man identified as Huzemat asked for such an inflated sum demonstrates that the event did not happen. As Mr Bradshaw submits, it is possible to envisage a scenario where the person wielding power and having already obtained sums of money, asks for a sum the Appellant could not possibly provide to exert further pressure upon the Appellant to provide larger sums of money. The fact that the sum of US$35,000 would be a large amount of money given the circumstances in Afghanistan in 2010, I do not think that that in itself demonstrates that he was not asked for such a sum. The Appellant volunteered the amount of money and if he were simply seeking to give an amount that was credible, he could have given a much smaller amount. The Appellant has always been consistent concerning the figure and I do not find that the fact that it was such a large amount meant that the threat was not made by Huzemat.

69. I have also had the opportunity of hearing the evidence of the Appellant and his wife, both of whom gave consistent evidence concerning the physical assaults made upon them and upon their daughter by Huzemat. As Mr Bradshaw submitted, no discrepancies have been identified in their evidence concerning those events.

70. Having considered the evidence, I accept the Appellant's account as to the events that occurred in Jalalabad and find that the Appellant was originally targeted when running a business with Amrik and was also later subjected to financial demands at the hands of Huzemat. I also find the Appellant was assaulted by him, that he had been hit on his back with a rifle and the Appellant's wife was also assaulted as was their daughter. The Appellant's wife continues to suffer from back pain as a result of that incident.

71. The evidence as to the background of Huzemat has not been described by the Appellant with any certainty. Whilst he described the man Huzemat as threatening to find him and that nowhere "he could run to" in Afghanistan would be safe, there is no cogent evidence of his profile or standing to demonstrate that he has any links with the government or held any position of power or influence beyond Jalalabad.

72. Mr McVeety accepted that if the Appellant's account was credible concerning Jalalabad, that the evidence would demonstrate that there is not a reasonable likelihood of a sufficiency of protection for the family in Jalalabad.

73. Thus the issue as both Advocates have submitted, is one of internal relocation to Kabul.

74. Thus I have found that the Appellants have been subjected to past persecution whilst in Afghanistan. The issue now relates to internal relocation.

75. Article 8 of the Qualification Directive reads as follows:-

> "Article 8
>
> Internal Protection
>
> 1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
>
> 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
>
> 3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin."

76. Paragraph 339O of the Immigration Rules sets out as follows:-

> "339O. Internal relocation
>
> (i) The Secretary of State will not make:
>
> (a) a grant of asylum if in the part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
>
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
>
> (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
>
> (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

As it can be seen the paragraph refers to a different part of the country where that person would not have a well-founded fear of being persecuted and the person can

reasonably be expected to stay in that part of the country. In making that assessment sub-paragraph (ii) directs the decision maker to have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

In **<u>Jasim v SSHD</u> [2006] EWCA Civ 342** Sedley LJ said:-

> "16. The possibility of internal relocation is relevant to refugee and human rights claims because it may demonstrate that a fear of persecution or harm though warranted by the applicant's experience in his place of origin, is not well-founded in relation to other parts of the state whose duty it is to protect him. But while the two issues – fear and relocation – go ultimately to the single question of safety, they cannot be decided in the same breath. Once the judge of fact is satisfied that the applicant has a justified fear of persecution or harm if returned to his home area, the claim will ordinarily be made out unless the judge is satisfied that he can nevertheless be safely returned to another part of his country of origin. Provided the second issue has been flagged up, there may be no formal burden of proof on the Home Secretary (see **<u>GH</u> [2004] UKIAT 00248**); but this does not mean that the judge of fact can reject an otherwise well-founded claim unless the evidence satisfies him that internal relocation is a safe and reasonable option.
>
> 17. It is necessary to stress both adjectives – safe and reasonable. It is well established that relocation to a safe area is not an answer to a claim if it is unreasonable to expect the applicant to settle there. There may be no work or housing. He may not speak the language. Similarly, relocation to an area may be perfectly reasonable by these standards but unsafe, for example because of the risk of continued official harassment or – as in this case – revenge-seeking."

77. Thus if a person is at risk in his home area, internal relocation should be considered as a potential means of affording him protection. The decision of the House of Lords in **<u>AH</u> (Sudan) [2007] UKHL 49** related to three Appellants all of whom were in their 30s and were Sudanese nationals. The judicial committee considered the position of members of black African tribes who formerly lived in Darfur. Two of the Appellants were subsistence farmers.

78. It is clear from the opinion of Lord Bingham of Cornhill that the enquiry has to be directed to the situation of each particular applicant whose age, gender, experience, health, skills and family ties may all be relevant in the enquiry. It is said that there is no warrant for excluding or giving priority to consideration of the applicant's way of life in the place of persecution or for excluding or giving priority to consideration of conditions generally prevailing in the home country. Instead there has to be a consideration of all circumstances of the case. That conclusion is to be found between paragraphs 12 and 14 of his opinion.

79. The scope of the consideration was also dealt with by Baroness Hale in paragraph 20 of her opinion. In referring to Lord Bingham of Cornhill's opinion in **Januzi [2006] UKHL 5**, Baroness Hale recorded this passage from Lord Bingham's thinking in the earlier appeal:

> "The decision maker taking account of all relevant circumstances pertaining to the claimant and his country of origin must decide whether it is reasonable to expect the claimant to relocate or whether it will be unduly harsh to expect him to do so."

80. In approaching that task Baroness Hale also drew upon a UNHCR document which also considered that the task was a holistic exercise where the decision maker looks at the individual personal circumstances including past persecution or the fear of it, psychological and health conditions, family and social situations and survival capacities. In setting out those categories there was not meant to be any limitation on the scope of what must be considered.

81. The Tribunal has been provided with a copy of the UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan (dated 17th December 2010). I enquired of both advocates as to whether there was an updated UNHCR document but both advocates informed the Tribunal that the only one available was the one in the Appellant's bundle and set out above.

82. The Tribunal has been directed to the relevant pages. This states as follows:-

> "Whether an IFA/IRA is 'reasonable' must be determined on a case-by-case basis taking fully into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. To this effect, the following elements need to be taken into account:
>
> (i) the availability of traditional support mechanisms, such as relatives and friends able to host the displaced individual;
>
> (ii) the availability of basic infrastructure and access to essential services, such as sanitation, healthcare and education;
>
> (iii) ability to sustain themselves, including livelihood opportunities;
>
> (iv) the criminality rate and resultant insecurity, particularly in urban areas; as well as
>
> (v) the scale of displacement in the area of prospective relocation.

83. Whilst the report is dated 2010, it seems to me that those matters are general guidance and are still relevant factors to consider.

84. Mr McVeety on behalf of the Respondent submits that in general terms it would not be unduly harsh to return to Kabul as a place identified as a place for internal relocation for the family members.

85. I should say something about the background material that had been placed before this Tribunal. The Appellant has produced a DVD published in 2013 produced by Mr Pritpal Singh, an Afghan Sikh who left Afghanistan a substantial time ago. There are no details concerning Mr Singh's background or circumstances and the transcript of the DVD appears to refer to him having left "two decades ago" and then returning to Afghanistan for the DVD.

86. There has been little background material submitted on behalf of the Secretary of State to this Tribunal. It consisted of a short extract from the COIS Report relating to the position of Sikhs and Hindus in Afghanistan and the 2011 US Department Report for Religious Freedom. However Mr McVeety has placed much emphasis on the DVD which he submits shows a different picture to that given by Dr Ballard. He submits that the DVD shows the cremation sites and the interviewee referring to the police intervening, he places weight upon a Muslim interviewee who refers to Sikhs as "ordinary Afghans" and thus is contrary to the view established in the report of Dr Ballard when he refers to active hostility to Sikhs as "kaffirs" and thirdly, that the DVD of the inside of the gurdwara shows good living conditions and are not like a "ghetto" or a "refugee camp" as opined by Dr Ballard. In his submissions, he submitted that he accepted that the documentation demonstrated societal discrimination against Sikhs but that was the extent of the problems that they faced.

87. Both myself and the Advocates have had the opportunity to view the DVD and a transcript has been prepared. There is no dispute that the transcript is an accurate representation of what the DVD has shown. Having considered its contents and having viewed the DVD, I consider that the DVD itself as a piece of evidence has considerable limitations and the weight to attach to it is lessened in my view as a result of those limitations. There is no information given concerning the profile and background or circumstances of Pritpal Singh. There is no information concerning his own background. Similarly there is no evidence before the Tribunal as to why the programme was commissioned, by whom and what it was setting out to demonstrate or its motivation or what it was seeking to draw attention to. Those matters are not known. I consider that there is a danger of ascribing too much weight to such a DVD in the absence of any evidential background to the DVD. The fact that no one who was interviewed had made reference to any threats or attacks upon Sikhs in Kabul does not necessarily mean that such attacks, which have been credibly referred to in other background evidence, do not occur. There may be a number of reasons why Sikh residents in Kabul may not wish to give an account on camera concerning their mistreatment for obvious reasons. Similarly, it is not known if Pritpal Singh intended to make a programme to show that kind of treatment towards the Sikh community. Mr McVeety placed reliance upon part of the video clip whereby a Muslim in Kabul did not speak of Sikhs in a derogatory manner and the inference sought by Mr McVeety was the conclusion that Dr Ballard had reached in his report where he referred to the Sikhs being known as "kaffirs" by the general Muslim population was not made out. I do not consider that such an inference can be made on that evidence. I think it highly unlikely that someone being filmed would give a hostile account in that way. Furthermore, even if that was a belief held

by that particular interviewee, it does not mean that the population in general share that individual's views.

88. For those reasons, the DVD in my judgment should have little weight attached to it given the problems and limitations identified. If further evidence was to be available to answer some of those questions, I may have taken a different view of the DVD and the weight to be attached to it, but from the present evidence before the Tribunal I consider that the DVD is to be of limited evidential value and assistance.

89. It is not disputed by Mr McVeety that Sikhs in Afghanistan are the subject of societal discrimination and that this is amply demonstrated by the background material in the COIS Report of February 2013 upon which he relies. Furthermore, he did not seek to rely on the country guidance decision of **SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 00137** nor did he make reference to the contents of **SL** in his submissions in the light of the decision of the Upper Tribunal in **DSG and Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 148 (IAC)** and the number of Sikhs remaining in Afghanistan.

90. The decision in **SL** (as cited) noted that there were approximately 20,000 Sikhs in Afghanistan and thus the evidence did not support the risk of persecution general to the entire community but that the conclusion was that they were victims of random and opportunistic attacks. In the decision of **DSG** (as cited), the Tribunal found that it was open to the judge in the light of the "glaring difference" in the figures (3,700 as opposed to 20,000) to consider that the Tribunal figures in **SL** were significantly wrong and that at the date of the hearing before them that remained the case. They made reference to what was said by Collins J in **Luthra** and what was said in the report of Dr Giustozzi which was a report specifically prepared for that appeal. The judge also took into account what was said by Dr Ballard. The Tribunal at paragraph 24 also thought that it was relevant that there were positive credibility findings in relation to past persecution in Afghanistan. It is of relevance in this appeal that the authority of **Luthra**, a report by Dr Ballard in respect of this particular Appellant and positive credibility findings in respect of past persecution in Afghanistan also apply to this Appellant's case.

91. The Tribunal at paragraph 25 made it clear that in their judgment, the judge was entitled to depart from the country guidance in the case and that whilst inevitably, the remaining number of Sikhs and Hindus in Afghanistan must be to some extent a matter of speculation, it is:

> "clear if one looks at the evidence as whole in such documents as Dr Ballard's report, Dr Giustozzi's report, the earlier UNHCR report and the more recent UNHCR report of July 2011 handed up by Mr Bazini that the remaining numbers are in the region of 1,000 or 2,000. Indeed the Operational Guidance Note from Afghanistan of April 2002 states at paragraph 3.9.2 that there are an estimated 2,200 Sikhs and Hindus remaining in Afghanistan. This, together with the evidence set out in Dr Giustozzi and Dr Ballard's reports, clearly justified the judge in departing from the existing country guidance".

92. The implications of this was made clear at paragraph 26 that country guidance retains its status until overturned or replaced by a subsequent country guidance decision. However, country guidance is not set in stone. The evidence before the Tribunal in **DSG** is strikingly similar to that in the current appeal. I have had the opportunity of considering an expert report by Dr Roger Ballard prepared specifically for this case dated 8th April 2013. Appendix 1 is a general study of the position of Sikhs in Afghanistan and this was the same report before the Tribunal in **DSG** (see paragraph 6).

93. The evidence concerning the size of the current Sikh population is still a matter of speculation and this Tribunal cannot provide a precise figure. The Tribunal in **DSG** found that the number of Sikhs in Afghanistan was likely between 1,000 and 2,000 and was thus markedly less than the 20,000 as set out in the decision of **SL**. The UNHCR Report referred to in that case as at July 2011 gave the figure for 1,000 Sikhs remaining and that the view of the general authorities was that Sikhs and Hindus face an "acutely difficult" position economically and socially (see paragraph 7). The 2011 International Religious Freedom Report (prepared by the US State Department) referred to 2,000 Sikhs in Afghanistan and also refers to "the population shrank in the past year compared to the year before". The same report refers to "non-Muslim minority groups, particularly Christians, Hindus and Sikh groups, continued to be the targets of persecution and discrimination". Thus the precise figure remains a matter of speculation but that evidence gives some account of the vast reduction in numbers.

94. Whatever the figures are for the present Sikh population in Afghanistan, the approximate figures demonstrate a significant reduction in the number of Sikh families residing in Afghanistan. I have considered the reasons for such a significant change from the evidence before me. Mr McVeety on behalf of the Respondent submits that the reasons are wholly economic. He relies on the COIS report at paragraph 21.36 where it refers to Sikhs facing discrimination when seeking government jobs and later, "since the fall of the Taliban some members have returned, others have left Kabul due to economic hardship and discrimination".

95. I have also considered the evidence in the report of Dr Ballard. In doing so, I conclude that the emphasis on economic reasons to be too simplistic an explanation for large and significant numbers leaving Afghanistan. In the three case studies he describes (including the case of Baljit Singh also referred to in the COIS Report) and two of those returns were made to Kabul, the other relates to a situation where harassment and threats of kidnap were raised. If those case studies are an accurate representation, the reasons why Sikhs are leaving are not just due to economic reasons but because they have been the subject of persecution and violence at the hands of non -state actors and against the background of the authorities and the police not being able to offer sufficiency of protection. This is supported by Dr Ballard at paragraph 94 of his report where he states, when referring to protection:-

> "There is little sign that they did so with any degree of enthusiasm. Most stayed on for as long as they could, continuing to each other for mutual support. But as their numbers steadily declined, and as the harassment, insults, exploitation and assaults to which they found themselves exposed became steadily more intense, so one by one

almost every family has by now found themselves confronted by the straws which broke each camel's back, one by one an ever increasing number of families began to conclude that they had no alternative but to conduct fast sale of their assets to seek refuge overseas."

96. It seems to me that the number of families leaving has a relevance to the situation of security and risk. With fewer members the vulnerability to those who remain increases. Sikhs form a distinctive social group with religious, linguistic and cultural terms and this stands out amongst the majority population. As the presence of Sikhs become lessened, it follows that there is a real risk that those who would wish to seek and cause them harm will be able to do so and will do so with impunity without there being protection for them.

97. The OGN dated June 2012 at paragraph 3.9.2 states that non-Muslim minorities such as Sikhs, Hindus and Christians continue to face societal discrimination and harassment and in some cases violence. It was said that it was not systematic but that the government did nothing to improve conditions. As to other background material that demonstrates risk to Sikhs and their general security, the COIS Report originally issued in February 2013 has been reissued on 8th May 2013 solely to add this quote at 21.36:-

> "The UNHCR Eligibility Guidelines for Assessing International Protection Needs of Asylum Seekers from Afghanistan, December 2010 noted, 'According to some reports, members of the Hindu and Sikh communities continue to face societal discrimination, harassment and in some cases, violence at the hands of the members of other religious groups'."

98. It is difficult to speculate why such a quote has been added to the reissued May 2013 report when it was not in the original report dated February 2013. Is this because there is growing recognition of the difficulties faced by Sikhs and Hindus as a result of an escalation in violence? The evidence is not clear but at its highest it suggests that the situation has changed substantially from the country guidance case of **SL** and that violence has been used against Sikhs.

99. As to the sufficiency of protection, Dr Ballard notes that where persecution has happened against the Sikh population it is not deliberately perpetrated by the state but by non -state actors whose activities the authorities are unable or unwilling to provide the victims with sufficiency of protection. The report makes reference to the limited capabilities of the Afghan National Police referring to evidence of extortion by police officers (page 39) and that the Afghan National Police units have been populated by rebadged Mujahedeen "who had just changed their clothes". At paragraph 87, relating to Kabul itself, it is stated that although nominally under the control of the Afghan security forces, the high concentration of government and internal institutions creates a target rich environment. Reference is made at paragraph 88 to the Taliban who have regained control of the large part of the countryside but had begun to act with increasing impunity within Kabul itself and despite the ISAF's huge expenditure on training up the Afghan National Army and the Afghan National Police, their capacity to offer members of local minority groups

who find themselves targeted by local insurgents is close to zero, especially in the case of the Afghan National Police. Dr Ballard's view is that the authorities are not able to provide a sufficiency of protection to those who are the most vulnerable to the predatory activities of non state actors. In this case he is referring to those who seek to extort money, to threaten, use violence or kidnap members of the Sikh population. The description at paragraph 88 by Dr Ballard relating to sufficiency of protection appears to be consistent with the quote from the OGN that the government had done nothing to improve conditions.

100. The case of Baljit Singh is referred to in both the COIS Report relied upon by the Respondent and by Dr Ballard. He was an Afghan Sikh returned to Afghanistan after a failed asylum claim in the United Kingdom. The analysis of Dr Ballard is set out at paragraphs 104 to 105 of his report. In the COIS Report it is referred to at paragraph 21.41 citing the Guardian newspaper report. It is clear from that report in the COIS Report that Mr Singh was deported from the UK and was spotted by Afghan Government officials as soon as he stepped off the aeroplane marked out by his distinctive Sikh turban. He was taken aside for questioning, put in prison for eighteen months during which time he never received a charge sheet, let alone a conviction. He was told informally that his crime was falsely claiming to be Afghan. He refers to being verbally and physically abused in prison and that his turban had been kicked; that which marked him out as a Sikh. It is dangerous to draw conclusions from the evidence of one person but if that account is true, it gives some indication of the issue of sufficiency of protection for those who are highly visible religious minorities such as Sikhs.

101. When considering whether internal relocation is reasonable, this must be determined on a case by case basis taking into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. In this respect I have taken into account the availability of traditional support mechanisms such as relatives and friends able to host the Appellants. There is no dispute before the Tribunal that the traditional extended family and community structures in Afghanistan society continues to constitute the main protection and coping mechanisms, particularly in areas where the infrastructure is under pressure. Afghans rely on the structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. In urban centres, for example Kabul, the IDP population and economic migration has put increased pressure on the labour market and resources. When applied to the facts of this appeal, there is unchallenged evidence that the Appellant and his family have no remaining relatives in Afghanistan. The Appellant's parents left Jalalabad, their home city, as a result of persecution arising from their religious background and were granted refugee status in the United Kingdom in 2004. They are now British citizens. It is not suggested that there are any other family relatives in Kabul who would be able to provide any form of assistance should the family seek to relocate. Thus they are not in the position of returnees with a family support network.

102. In this context, I have considered the competing submissions concerning possible accommodation for the family. Mr McVeety submits that the family could obtain

accommodation, help and assistance from the gurdwara in Kabul. He submits that the DVD shows the circumstances in which people live and that there would be room available for the family should they wish to access it. The evidence from Dr Ballard's report at paragraph 120 is that whilst the gurdwara would provide a temporary safe haven for locally based Sikhs and Hindus who have had to leave their homes, as well as those who have returned to Afghanistan, taking up residence in a compound does not provide a meaningful prospect for the future. He describes the gurdwara compound as something being "turned into something lying halfway between a ghetto and a refugee camp whose occupants rely on the charity of the remaining members of the community to provide them with food, clothing and shelter". On the DVD the gurdwara in Shur Bazar was filmed. It is set out at the transcript at page 17. The interviewee stated that she did not have a house and that she had no relatives. She confirmed that she had lived in the room and it was poorly constructed with light material. The interviewer said:-

> "Look at the house, its roof is built with feeble and uninsulated material. Kabul, Afghanistan, has cold and harsh winters, snow will start to fall within two or three weeks. This woman together with her husband and four children live in a small confined space. You can see yourself the living conditions they live in."

103. The description given by Dr Ballard as it being somewhere between "a ghetto and a refugee camp" may be an overly descriptive phrase but what the DVD shows of that particular gurdwara is that the conditions are extremely poor and whilst it showed a carpet and a television, the occupants made it clear that this was unsuitable accommodation but was all that was available. Whatever has been said about the visible living conditions, little evidence is known about the availability of such accommodation. This is a family of five, with a child who is now 1 year of age and female twins aged 6. The gurdwara must offer finite resources and there is no evidence before the Tribunal as to how such accommodation could be accessed, what is in fact available for families in the circumstances of these particular Appellants.

104. In respect of education, the 2011 International Freedom Report demonstrates that many of the Sikhs and Hindu communities do not send their children to public school because of reported abuse, harassing and bullying by other students. It refers to in previous years Hindus and Sikhs sending their children to private schools but that many schools have closed down since the country's deteriorating economic circumstances and that the private schools are now unaffordable for most families. Given the circumstances in which they left Jalalabad, it is likely that they would not wish to subject the children to further abuse and harassment and thus would not send their children to public school. The family would not have any resources available to them to use a private system.

105. I have also considered whether or not they have the ability to sustain themselves including any livelihood opportunities. Sikhs as an ethnic group tend to be the trading/shop owning class. That is amply demonstrated by the family's historic employment concerning the Appellant's parents and this Appellant himself. In the findings of fact made earlier in this determination, it was as a result of the occupation

as a shop owner trading in bicycles that led him and his family members to become the victims of persecutory treatment that led them to leave Jalalabad in the first place. The report of Dr Ballard makes it clear that there is little prospect of this Appellant obtaining employment. He refers to the need to rent a shop and to rebuild a relationship with suppliers then attract customers but also coping with established bicycle merchants in the immediate locality who are likely to be Muslim and that it is likely that he would face exploitation against that background (see paragraph 121 of the report). It would be difficult if not impossible in my view for this Appellant against the background that he has stated to rent a shop and rebuild his relationship with suppliers upon return. It is not said on behalf of the Respondent how he would be able to rebuild a relationship with suppliers in a wholly different area and little consideration has been given to the position of the Muslim majority who are not likely to provide assistance to this Appellant given his religion as a Sikh.

106. The reference at paragraph 3.9.3 to the United States Commission on International Religious Freedom Report from 2011 stating "the situation of Afghanistan small communities of Hindus and Sikhs has improved since the fall of the Taliban" appears to be in the context of the ability to practise faith in places of public worship only. It does not appear to address the situation in relation to attitudes and actions of those within society committing acts of intimidation and violence against members of those faiths. To that extent that evidence is stating a generality rather than to give any specific evidence as to risk. It is also in this context that it is said that the Sikh community are able to practise their religion publicly and are able to perform cremation rites. Mr McVeety relies upon the COIS Report at paragraph 21.38 where it is recorded that Hindus and Sikhs complained of not being able to cremate the remains of their dead in accordance with the customs, due to interference by those who live near the cremation sites. It is recorded that the government did not protect Sikhs' rights to carry out cremations but however a Sikh senator requested the intervention of the Ministry of Interior to provide protection and escort to Hindus and Sikhs in the event of cremation within their communities. Thus they were able to cremate their remains. The fact that they were able to carry out that part of their religious heritage does not in my judgment suggest an improvement as a whole for the position of Sikhs in Afghanistan given the material that I have referred to earlier. Indeed the 2012 US CIRF Report which highlighted the apparent improvements since the fall of the Taliban also added that the communities face discrimination and violence.

107. Therefore drawing that evidence together, I find that the evidence demonstrates that the Sikh community is the subject not only of societal discrimination but also being subject to violence, threats, harassment and also the threats of kidnap (see Dr Ballard's report). Afghan Sikhs are particularly susceptible to persecution given their particular status as Afghan Sikhs and thus taking into account all those factors I have reached the conclusion when considering the particular circumstances of this Appellant and his family members that it would be unreasonable or unduly harsh to expect them to relocate to Kabul. I have taken into account the situation of this particular Appellant, whose age, gender, experience, skills and family ties are relevant, in deciding whether it is reasonable to expect the Appellant and his family members to relocate. As noted in the case of **DSG**, each case must be considered on

its own individual basis and on its own individual facts. This decision does not necessarily mean that every Afghan Sikh returning to Afghanistan will not be able to relocate to Kabul or any other identified area. Much depends on their own particular circumstances.

108. Having considered the evidence produced for this particular appeal in relation to this particular Appellant and his family members, who have given a credible account of having being subjected to past persecution on account of his religion and ethnicity in Afghanistan, I have reached the conclusion that internal relocation is not a reasonable possibility and that return for this family would be unduly harsh looking at the evidence and assessing it in the round and in its totality.

Decision

109. The decision of the original Tribunal involved the making of an error on a point of law. The appeal is remade as follows:-

The appeal is allowed on asylum grounds and on Article 3 grounds.

Signed Date 30 August 2013

Upper Tribunal Judge Reeds