



IAC-AH-KEW-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/04504/2015

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons  
Birmingham Promulgated  
On 19<sup>th</sup> February 2016 On 15<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**RSS  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H Samra of Harbans Singh & Co Solicitors  
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Graham of the First-tier Tribunal (the FTT) promulgated on 13<sup>th</sup> July 2015.

2. The Appellant is a male citizen of Afghanistan who claimed asylum in the United Kingdom. His wife and two children are dependent on his claim.
3. The application was refused on 27<sup>th</sup> February 2015, and on 5<sup>th</sup> March 2015 the Respondent made a decision to remove the Appellant and his family from the United Kingdom.
4. The subsequent appeal was heard by the FTT on 11<sup>th</sup> June 2015. The FTT found the Appellant to be incredible and did not accept his claim. In relation to risk on return to Afghanistan as a Sikh, the FTT found that there was discrimination and harassment of Sikhs in Afghanistan, but this did not amount to persecution. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT erred in law and had failed to make findings as to whether as a Sikh, the Appellant would be at risk in Afghanistan. It was contended that it would be exceptional for a Sikh not to be at risk if returned to Afghanistan, and reliance was placed upon DSG and Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC). It was submitted that the FTT had accepted that Sikhs in Afghanistan “have a problem” and therefore should have granted the Appellant asylum, as the harassment in Afghanistan amounted to persecution.
6. Permission to appeal was refused by Designated Judge Baird on 5<sup>th</sup> August 2015, and the Appellant thereafter submitted renewed grounds seeking permission to appeal to the Upper Tribunal.
7. In the renewed grounds it was submitted that the case law of DSG should be taken into account and the FTT had failed to follow the principles set out in that case. If the FTT had followed the principles in DSG, then the FTT could have departed from the country guidance relied upon that being SL and Others (returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 00137.
8. It was submitted that in SL the Tribunal had wrongly concluded that the population of Sikhs and Hindus in Afghanistan amounted to approximately 20,000 people, but in DSG this figure was said to be 3,700. It was submitted that the FTT should have looked at the diminishing number of Sikhs in Afghanistan, and accepted that this was caused by persecution.
9. Permission to appeal was granted by Upper Tribunal Judge Perkins in the following terms;
  - “1. The decision is measured and might stand up to scrutiny.
  2. However I consider the grounds to be arguable. In particular it is arguable that the First-tier Tribunal did not consider properly the diminishing size of the Sikh community and the identified background material.”

10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the grounds amounted to no more than a disagreement with findings which had been properly made by the FTT and the FTT had directed itself appropriately and that SL and Others remained a country guidance decision, until it was replaced.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

### **The Appellant's Submissions**

12. At the hearing on 19<sup>th</sup> February 2006 Mr Samra relied upon the grounds contained within the application for permission to appeal, together with the written submissions submitted to the Tribunal dated 15<sup>th</sup> February 2016, to which there was attached a copy of TG and Others Afghanistan CG [2015] UKUT 00595. There are in fact two sets of written submissions submitted on behalf of the Appellant both dated 15<sup>th</sup> February 2016, both in similar terms.
13. In summary it was submitted that the FTT had erred, and relocation within Afghanistan was not possible, the Appellant and his family faced discrimination which had been accepted by the FTT, the Appellant would not be able to access accommodation or employment and his children would not be educated and the Appellant has no family in Afghanistan who could assist. The gurdwara would not be able to provide adequate support, and the Appellant's wife would face difficulty as she does not adhere to strict Islamic principles and does not wear the hijab, and is unable to speak Dari or Pushtu.
14. Mr Samra submitted that issues had now been clarified by the Upper Tribunal in TG and Others, although it was accepted that this decision had not been published when the FTT decision was promulgated.

### **The Respondent's Submissions**

15. Mr Richards relied upon the rule 24 response. He submitted that the FTT had clearly taken into account the diminishing number of Sikhs in Afghanistan as this was referred to in paragraph 45 of the decision. The FTT clearly could not take into account TG as the decision had not been promulgated when the FTT decision was made.
16. The FTT had considered the objective evidence put before it and noted the absence of any expert report. The FTT had considered the education of the Appellant's children and had considered their best interests.
17. I was asked to note the adverse credibility finding made by the FTT at paragraph 42. I was asked to find that the FTT had given reasons for not departing from the existing country guidance decision of SL and the decision disclosed no error of law.

## **The Appellant's Response**

18. Mr Samra pointed out that at paragraph 30 of the FTT decision it was accepted that the Appellant and his family faced discrimination in Afghanistan, and submitted that this might amount to persecution.
19. At the conclusion of oral submissions I reserved my decision.

## **My Conclusions and Reasons**

20. There has been no challenge to the credibility assessment carried out by the FTT at paragraphs 30-42 and the conclusion of the FTT at paragraph 42 that the Appellant is not credible, and that all that was accepted of his account was that he may have faced societal discrimination in Afghanistan, but the remainder of his account was not accepted, and he had not been persecuted in Afghanistan.
21. Having found that the Appellant had provided an incredible account, the FTT went on to assess the risk to the Appellant and his family as Sikhs, as their religion was not disputed. Risk was assessed at paragraphs 43-51.
22. It cannot fairly be said that the FTT did not consider DSG and Others. Consideration of this case is contained within paragraphs 44 and 45. The FTT was demonstrably aware that in certain circumstances it was possible to depart from a country guidance decision, and that DSG demonstrated this.
23. In my view the FTT was entitled to conclude that on the facts of this appeal, it was not appropriate to depart from the country guidance in SL. For example in DSG, the FTT pointed out that the Upper Tribunal had found it relevant that there were positive credibility findings, and that it had been found that the Appellant in that case had experienced persecution in the past in Afghanistan. This contrasted with the findings of the FTT in this appeal, which had found the Appellant's account to be incredible.
24. The FTT demonstrated an awareness of the diminishing numbers of Sikhs in Afghanistan, and this is recorded in paragraph 50, and it is also accepted that Sikhs in Afghanistan faced societal discrimination and harassment in their daily lives.
25. The FTT considered the background evidence placed before it, and this is demonstrated by reading paragraphs 46-49.
26. The FTT concluded that the harassment and discrimination faced by Sikhs, which was demonstrated by the background evidence, did not amount to persecution, and found that there was a reasonable option of internal relocation to Kabul. It is accepted that the most recent country guidance, TG and Others, was not in existence when the FTT decision was made. It is not an error of law to fail to consider a country guidance decision which has not been published.

27. The FTT did not disregard any material evidence, and made findings which were open to it on the evidence, and I conclude that the grounds contained within the application for permission to appeal, and the submissions made on behalf of the Appellant, demonstrate a disagreement with the findings made by the FTT, but they do not disclose a material error of law.

### **Notice of Decision**

The making of the decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside.

I do not set aside the decision. The appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

An anonymity direction was made by the FTT. I continue that anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26<sup>th</sup> February 2016

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee is paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 26<sup>th</sup> February 2016

Deputy Upper Tribunal Judge M A Hall