Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/07921/2015

**THE IMMIGRATION ACTS**

| Heard at: | Field House | Decision & Reasons promulgated |
|---|---|---|
| On | 4 March 2016 | On 29 March 2016 |

Before

Upper Tribunal Judge Gill

Between

Baldev Ram
(Anonymity Order not made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr D Sellwood, of Counsel, instructed by Malik & Malik Solicitors.
For the respondent: Mr S Staunton, Senior Presenting Officer.

**Decision and Directions**

1. The appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Parkes who, in a determination promulgated on 18 September 2015, dismissed his appeal against the respondent's decision of 8 May 2015 to refuse his asylum claim.

2. The appellant is a national of Afghanistan. He claimed protection under the Geneva Convention and Article 3 of the ECHR on the ground that he will be at real risk of persecution and treatment in breach of Article 3 in Afghanistan on account of his Sikh religion.

3. At the hearing, Mr Sellwood submitted that the judge had failed to make adequate findings of fact. He submitted that this ground came within the ambit of the sentence that reads: "*Given the appellant's evidence ……, the A has more than satisfied the burden on him*" in para 1 of the original grounds. I do not accept that this ground comes within the ambit of the original grounds on any reasonable view of the

sentence quoted. Accordingly, Mr Sellwood requires permission to advance this ground. In order to decide whether permission should be granted, I permitted Mr Sellwood to develop his argument.

4. Mr Sellwood referred me to the appellant's evidence that his sister had been killed in a bombing. At his interview, the appellant had also given the details about the circumstances leading to his brother's murder by the Taliban. He was abducted. Extremists went to his father's house and said that they wanted to convert his son. His brother was found dead with his head shaven. The appellant had given evidence about other experiences in Afghanistan, including that he was called names and had stones thrown at him. The judge had failed to make any findings on these facts. Mr Sellwood submitted that any assessment of the viability of internal relocation could only be made against a clear factual matrix.

5. Mr Sellwood proceeded to address me on the grounds that were lodged. I heard Mr Staunton in reply. However, it is not necessary from me to deal with these grounds as I have decided to grant permission on the ground advanced at the hearing and which I have summarised at 4 above.

6. The only paragraph in which the judge mentioned the appellant's account of his experiences in Afghanistan was at para 15. This is very brief. For example, it gives no indication that the judge had appreciated the circumstances of the abduction and murder of the appellant's brother. Importantly, there is no indication whether the judge had accepted or rejected the evidence of the events that were described by the judge at para 15.

7. At paras 18 and 20, the judge made adverse comments on credibility. He considered that the fact that the appellant had chosen to leave Russia, a country where he had the right to live and work safely, and his failure to claim asylum in France undermined his credibility. Mr Staunton submitted that paras 18 and 20 show that the judge had rejected the entirety of the appellant's account.

8. I do not accept Mr Staunton's submission that the judge had rejected the entirety of the appellant's account. In the first place, para 15 reads as if he accepted the appellant's account, whereas paras 18 and 20 clearly indicate that at least some aspects of the appellant's accounts were not accepted. Accordingly, para 15 is not consistent with paras 18 and 20.

9. In the second place, it is difficult to see how the judge could have properly relied upon the reasons given at paras 18 and 20 as the sole basis for rejecting the entirety of the appellant's account of his experiences in Afghanistan.

10. I have read the appellant's interview. His evidence was that his sister was hit by shrapnel when a bomb landed on a vacant space during the fighting in 1991/1992. I could see nothing to suggest that the sister's death was linked in any way to her religion. Thus, I am not persuaded that the failure to assess the credibility of the evidence of his sister's death and make findings of fact upon it, *per se*, are material.

11. However, the circumstances in relation to the murder of the brother are different. I have briefly described this at para 4 above. In addition, it is correct that the appellant had given evidence of having experienced other problems, including being told by his father to remove his hair because he would be in danger otherwise and that the women had to wear "*burkhas*". He also gave evidence of having lived in Kabul.

12. Having read the interview record, I am satisfied that the judge simply failed to engage with the asserted facts of this case. The single paragraph at para 15 is unfortunately woefully inadequate as a summary. There are no findings of fact on the appellant's account of his experiences in Afghanistan, including his account of his experiences in Kabul.

13. In these circumstances, I have decided to grant permission to argue the ground that Mr Sellwood advanced at the hearing and which I have summarised at para 4.

14. For the reasons given above, I am satisfied that the judge materially erred in law, in that:

    (i) He failed to engage with the appellant's case adequately. Indeed, para 15 is inadequate to the point that I am satisfied that the appellant has simply not had a fair hearing of his case.

    (ii) He failed to assess the credibility of, and make findings of fact on, the appellant's account of his experiences in Afghanistan.

15. For all of the above reasons, I set aside the decision of the judge.

16. The effect of my decision is that the appellant's appeal will need to be determined on the merits on all issues.

17. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

    "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

    (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

18. In my judgment this case falls within para 7.(b). In addition, given that I have decided that the appellant's case will need to be decided on the merits on all issues and having regard to the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal is the right course of action.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Parkes.

Signed Date: 4 March 2016
Upper Tribunal Judge Gill