



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

Appeal Number: PA/04513/2016  
PA/04565/2016

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
On 18<sup>th</sup> August 2017**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**BSA  
DKA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss E Rutherford, instructed by Migrant Law Project  
(Cardiff)

For the Respondent: Mr. Irwin Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal (“FtT”) has made an anonymity order and for the avoidance of any doubt, that order continues. Both BSA and DKA are granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.
2. This is an appeal against the decisions of FtT Judge Boyes promulgated on 2<sup>nd</sup> March 2017, in which she dismissed appeals by each of the appellants, against decisions of the respondent dated 25<sup>th</sup> April 2016 to refuse their claims for asylum.
3. The appellants are nationals of Afghanistan. They are both of the Sikh faith. Their claims for international protection were founded upon them having been targeted by the Taliban, on account of their Sikh faith.
4. The appellants contend that the FtT Judge made mistakes as to the assessment of the evidence before her, and incorrectly applied the Country Guidance set out in **TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595**. The appellants also contend that the FtT Judge erred in her assessment of what amounts to persecution, and failed to appreciate that a failure of protection from threats and extortion due to religion, could amount to persecution. Finally, it is said the FtT Judge failed to have regard to the medical report of Dr Laws who has diagnosed the second appellant as suffering from PTSD and Dissociative Amnesia, when assessing her evidence.
5. Permission to appeal was granted by First-tier Tribunal Judge Nightingale on 23<sup>rd</sup> March 2017. The matter comes before me to consider whether or not the determination by FtT Judge Boyes involved the making of a material error of law.

6. The respondent filed a Rule 24 response dated 12<sup>th</sup> April 2017. The respondent's provisional view was that the Judge of the FtT may have failed to properly apply the country guidance set out in **TG and Others**. It was a provisional view because at the time, the respondent's file containing the record of proceedings were not before the write of the Rule 24 response.
7. Before me, Mr Richards on behalf of the respondent conceded that the decision of the FtT Judge discloses a material error of law, for the reasons that were identified by FtT Judge Nightingale when permission to appeal was granted. Having read the two decisions of FtT Judge Boyes, in my judgment he was right to do so.
8. The decisions need to be re-made and I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012 which states;

'7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal 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.'
9. In my view, the requirements of paragraph 7.2(a) and (b) apply. The Judge has failed to set out, and carefully consider in her decision, the evidence before her and to properly apply the country guidance to the

