



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09994/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 19th July 2017

Decision & Reasons Promulgated
On 20th July 2017

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

[AMANDEEP S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G H Fama (instructed by Aden & Co, Solicitors)
For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant against the Decision of First-tier Tribunal Judge Woolf. Following a hearing at Hatton Cross on 21st October 2016, in a Decision and Reasons promulgated on 19th January 2017 Judge Woolf dismissed the appeal on all grounds.

2. The Appellant's asylum claim is on the basis that he is an Afghan Sikh from Jalalabad. He lived there with his wife and his parents. His parents had been self-employed dealing in land but 2 ½ years ago, approximately, the business was closed because members of the Taliban were attempting to extort money that his father could not pay. Towards the end of 2015 the Appellant and his wife were threatened with abduction and forced conversion to Islam and so they both fled Afghanistan with the aid of an agent in early 2016.
3. In a detailed assessment of the evidence and credibility Judge Woolf accepted that the Appellant and his wife came under threat of extortion from non state agents who targeted them because they were Sikh and that they had threatened the Appellant and his wife with abduction and forced to conversion to Islam.
4. What Judge Woolf did not accept was the Appellant's claim to be unaware of his parents' whereabouts or their circumstances.
5. In concluding that the Appellant had demonstrated there were grounds for believing that the authorities in Jalalabad would not be able or willing to afford them sufficient protection the Judge then went on to consider internal relocation. She referred to the country guidance case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015]'s UKUT 00595 (IAC) and found that the Appellant had failed to satisfy her that he did not know where his family was. She noted that he had not been able to present facts which would establish to the lower standard what his family's resources are now. She noted that according to him his father had sold the family home but he did not know for how much it was sold. She was not satisfied that he had no family living in Afghanistan and that there would be no assistance from family members were he to relocate to Kabul. She found that the Appellant had not demonstrated that he lacked employment prospects were he to remain in Kabul and he had not satisfied her that he would be unsafe in Kabul or that he could not establish himself there on return. Accordingly she dismissed the appeal.
6. The grounds upon which permission to appeal was granted assert that having made the positive credibility findings the Judge had not properly analysed the situation in Kabul in accordance with the country guidance case.
7. In essence the country guidance case provides as follows:-
 - (i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots;
 - (ii) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution;
 - (iii) A consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following: (a) women are particularly vulnerable in the absence of appropriate protection from a male member of the family; (b) likely financial circumstances and ability to access basic accommodation bearing in mind that Muslims are generally unlikely to employ a member of the Sikh and Hindu communities; such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in

retaining property and / or pursuing their remaining traditional pursuit, that of a shopkeeper / trader; the traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support; (c) the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara; and (d) access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.; (iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution; (v) Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms;

8. While Judge Wolf did not accept the Appellant's claim about his family's presence in Afghanistan, there was similarly no evidence that they were in Kabul. They had closed their business and there was no evidence as to how they were supporting themselves unless it was living from the proceeds of sale of their home. However, of course they would have to provide themselves with alternative accommodation.
9. In particular there was no evidence to support the Judge's view that the Appellant and his wife could establish themselves in Kabul. They have no independent income; there are no adequate support mechanisms and the Appellant is going to have extreme difficulty finding employment as the evidence is that Muslims will not employ Sikhs or Hindus.
10. I find therefore that in finding the Appellant and his wife could safely relocate and establish themselves in Kabul she made an error of law. That finding is not supported by the evidence and is out of step with the country guidance case.
11. The credibility findings are untainted by any error of law and they are preserved.
12. Accordingly, I redecide the appeal purely on the question of internal relocation and for the reasons I have indicated above I allow the appeal. There is simply no basis on which to find this Appellant and his wife could establish themselves in Kabul. It has been established that by reason of their religion the Appellant and his wife would be at risk of persecution in their home area where they have been persecuted in the past and that there is nowhere to which they could safely relocate.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The Appellant's protection appeal is allowed on asylum grounds and under Article 3 of the ECHR.

The First-tier Tribunal made an anonymity order. However, having allowed the appeal anonymity is no longer required.

Signed

Date 19th July 2017

Upper Tribunal Judge Martin