



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08331/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> May 2018

Decision & Reasons Promulgated  
On 11<sup>th</sup> June 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

A S B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Ms Z Ahmed, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan born in 1987. His appeal against the refusal of his asylum claim and his removal to Afghanistan was dismissed by First-tier Tribunal Judge Whitcombe on 9 July 2015. The Appellant appealed to the Upper Tribunal and Deputy Upper Tribunal Judge Murray dismissed the Appellant's appeal on 28 June 2016.
2. Since the First-tier Tribunal hearing the country guidance case of TG & Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC) was promulgated. This replaced the country guidance of SL & Others (returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 00137. The First-tier Tribunal refused to depart from

the findings in SL and the Upper Tribunal concluded that this did not amount to an error of law. At [14] Judge Murray stated:

“Read as a whole, the report does not conclude that Afghan Sikhs are persecuted per se. Dr Seddon concludes at paragraph 5.14, that on the basis that the Appellant’s account is plausible, he would be at risk of a level of discrimination and harassment amounting to persecution from which the authorities are not able or willing to offer sufficient protection. Whilst the First-tier Tribunal does not specifically refer to Dr Seddon’s report at paragraph 62 of the decision, he states that he finds no evidential basis for departing from the country guidance. I find that Dr Seddon’s report did not provide an evidential basis for departing from the country guidance. The report does not conclude that Afghan Sikhs are persecuted per se. The First-tier Tribunal did not find the Appellant to be credible and in the circumstances there was no error of law in refusing to depart from established country guidance. Further, in the case of TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 promulgated after the decision in this case, the Upper Tribunal considered the country evidence since 2005 and concluded that 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. It was also concluded that neither could it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.”

3. Permission to appeal to the Court of Appeal was granted by Sir Kenneth Parker for the following reasons:

“1. In the light of TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595, it is arguable that the First-tier Tribunal and the Upper Tribunal did not consider, or sufficiently consider, all relevant factors in relation to these Appellants. TG held that it was not established that merely by reason of being a Sikh or Hindu in Afghanistan there is a real risk of serious harm from non-state actors (paragraph 83). However, TG went on to identify specific factors that needed to be considered carefully in each individual case, for example the economic opportunities open to the Appellant on return. The First-tier Tribunal noted the evidence that the Appellants had no family support in Afghanistan and that there might be difficulty in finding means of support (determination, paragraph 24), but that aspect does not appear to have been given consideration in the final analysis.

2. On balance, the grounds of appeal appear well arguable; the First-tier Tribunal was at significant disadvantage in not having the benefit of TG: the Appellants were unfortunately not represented in the appeal in the Upper Tribunal and the context requires anxious scrutiny. For these reasons the criteria for second appeals are satisfied in this case.”

4. The Court of Appeal ordered that the appeal was allowed. The decision of Judge Murray was set aside and the matter remitted to the Upper Tribunal for a rehearing for the following reasons:
- “6. It is noted that before the First-tier Tribunal it was accepted that the Appellant and his wife were Afghan Sikhs. It is noted however that the First-tier Tribunal rejected AB’s credibility in his account of the specific persecution he and his wife experienced. The First-tier Tribunal indicated that it did not consider internal relocation was available and rejects that it would be reasonable for the Appellant to live in the Gurdwara.
  7. The Court of Appeal in granting permission held that the criteria for the second appeals test were satisfied for the reasons set out in the Order.
  8. The parties agree that permission should have been granted by the Upper Tribunal for the reasons set out at paragraphs 9-11 of the Appellant’s skeleton argument before the Court of Appeal: namely that (in summary) it is arguable that the UT did not consider a relevant factor in relation to this Appellant and his wife when applying TG & Others, namely the economic opportunities available and whether the Appellants would be accommodated. Both parties accept that TG & Others was not reported as country guidance at the time of the First-tier Tribunal’s determination.
  9. Accordingly, the parties agree that the appeal should succeed and the matter be remitted to the Upper Tribunal to proceed substantively.”
5. I am therefore of the view that the Court of Appeal, having remitted the case to be dealt with substantively, found that there was an error of law in the decision of Deputy Upper Tribunal Judge Murray. Alternatively, I find that Judge Murray erred in law in failing to properly apply the country guidance case of TG and I set his decision aside and remake it as follows.
6. The Appellant did not challenge the credibility findings of the First-tier Tribunal. Accordingly, I propose to proceed by applying TG to the unchallenged facts found by the First-tier Tribunal Judge and the evidence presented by the Appellant at the hearing before me.

### **Preserved findings of fact**

7. The Appellant and his wife are Afghan Sikhs who lived together in Jalalabad with his wife’s grandmother. They do not have any children or siblings. They speak Punjabi but almost no Dari and no Pashtun at all. They arrived in the UK on 21 October 2013 and the Appellant applied for asylum on 22 October 2013.
8. The First-tier Tribunal judge stated at paragraph 45, “It is true that the Appellant referred at interview both to his father in law having been beaten up and also to him having been killed.” The judge accepted the Appellant’s explanation that the Punjabi word for those two English phrases was the same. He did not find that this damaged the Appellant’s credibility. I conclude that the First-tier Tribunal judge accepted that the Appellant’s father in law was deceased.

9. The First-tier Tribunal judge found the Appellant account was inconsistent with that of his wife and he was not a credible witness. The First-tier Tribunal judge was not satisfied to the lower standard that the Appellant had suffered persecution in Jalalabad. Accordingly, his account of harassment, beatings and sexual assault on his wife was not accepted.
10. The Appellant and his wife gave inconsistent evidence of the whereabouts of his wife's grandmother. Neither the Appellant nor his wife had any idea of the grandmother's current whereabouts and they had made no attempt to contact her. This damaged the Appellant's credibility. The Appellant could not internally relocate. It was unrealistic to expect him to live in the Gurdwara.

### **The Appellant's evidence**

11. At the hearing before me, the Appellant stated that he could not go back to Jalalabad because there was nobody there. He did not know where his wife's grandmother was living. They had no contact with her since coming to the UK and they could not find her. The house in which they lived was given to the people who brought them to the UK. The Appellant did not work in Jalalabad prior to coming to the UK and used to go to the Gurdwara for food. However, it was not possible to stay inside the Gurdwara overnight.
12. The Appellant was unable to work as there was no opportunity to do so. He did not know anything about his father-in-law's shop in Kabul or what had happened to the business since his father-in-law's death. The Appellant could not return to Jalalabad as he would have the same problem he had prior to leaving and would be harassed. He would not be able to practise his religion and had often had his turban taken away. He was threatened by other Muslims living in Jalalabad that he must change his religion or he would be killed or they would take his wife away.
13. In cross-examination, the Appellant stated that he could sometimes take food from the Gurdwara and sometimes people outside the Gurdwara would give him food. Other Sikhs who were visiting the Temple would sometimes give him food, but this was not on a regular basis. He also suffered threats to his life and there was a problem with his religion. His wife did not have any other siblings. He did not know what had happened to his father-in-law's business and they could not go to Kabul. In any event, they had not visited his shop there as the Appellant's father-in-law would visit them.
14. In response to further questions from me, the Appellant stated that he could not get a job when he lived in Jalalabad because he could not speak the language. He had asked other Sikhs in the area, but they would not give him a job because they were busy supporting themselves. He had only received help from his wife's father who had paid for the wedding, but they had not seen him since the wedding. He was not able to live elsewhere in Jalalabad, he did not know where to go or who to ask.

## Submissions

15. Ms Ahmed relied on paragraphs 77, 78, 82, 83, 89, 109 and 110 of TG and submitted that the Appellant was not at risk because he was a Sikh. Although Sikhs may suffer harassment in Afghanistan, there were few examples of violence. The evidence before the Tribunal did not support a finding that all Muslims were hostile and the Appellant would not be at risk from non-state actors because he was a Sikh. Generally, Sikh males could go about their business and there was a reduction in corruption because most of the valuable properties had already been taken away from the Sikh community. Employment opportunities were available to Sikh males. The Appellant could work for other Sikh businesses and, in view of the previous credibility findings, I should reject his evidence today that he was unable to obtain a job within the Sikh community. The Appellant was young and able bodied and there was no direct discrimination from the government. His father-in-law's business should be available to the Appellant and his wife since she had no siblings.
16. The Appellant submitted that he had nowhere to go to, nowhere to stay and no one who could help him. Since he had run away to the UK no one would keep him in their house. In any event, he would only be able to stay with somebody for one or two days and then he would be out on the road and would not have anywhere to stay. Although the Gurdwara was still there, they would not be able to help the Appellant because they had problems with the Muslim community who would often throw stones at the Temple. The Appellant submitted that he would be killed on return by the people where he used to live. Apart from Jalalabad he did not know any other place, that was the only place he could go.

## TG & Others CG

17. The Tribunal held:
- (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 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 real risk of persecution upon return to Afghanistan is fact sensitive or 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 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;
  - (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.
- (vi) This replaces the county guidance provided in the cases of K (Risk – Sikh women) Afghanistan CG [2003] UKIAT 57 and SL & Others (returning Sikhs and Hindus) Afghanistan CG 2005 UKAIT 00137.”

18. The relevant paragraphs relied on by Ms Ahmed are set out in Annex A attached to this decision.

### **Findings of fact and conclusions**

19. The Appellant and his wife lived with his wife’s grandmother prior to coming to the UK. Notwithstanding their inconsistent evidence as to her whereabouts when they left Afghanistan, I find that there is a reasonable degree of likelihood that she has had to move out of the house in which they lived to go and live with others. She is an elderly Sikh woman who would not be able to remain living alone without a make protector. There is also evidence in the country guidance that many Sikh properties have been confiscated (IG [89]).
20. I accept the Appellant’s evidence that he was unable to get a job in Jalalabad because he could not speak Dari or Pashtun. Further, the Muslim community were unlikely to employ Sikhs for fear of reprisals. The Appellant’s evidence that the Sikh community

were unable to give him a job was consistent with country guidance that there were only a small number of Sikhs remaining in Afghanistan (TG [78]). Given the lack of employment or means of financial support, there is a reasonable degree of likelihood that the house in which the Appellant and his wife lived was given to those who brought him to the UK.

21. The Appellant is an Afghan Sikh who speaks almost no Dari and no Pashtun. He did not suffer persecution prior to coming to the UK. The Applicant and his wife had no siblings and his wife's father was deceased. They have no family to return to in Afghanistan. The Appellant did not work in Jalalabad and was supported by the Gurdwara and members of the Sikh community. The Appellant would be returned to Jalalabad without any means of financial support and without accommodation.
22. Applying TG to the facts of the Appellant's case, he has not suffered persecution in the past and therefore I do not accept that he would be at risk of harassment and discrimination such that it would reach the threshold of persecution on return. He is not a refugee and is not at risk of serious harm or treatment in breach of Article 3.
23. However, looking at the economic opportunities, the Appellant has nothing to return to in Jalalabad. He would be unable to find employment because he cannot speak Dari or Pashtun, the Muslim community fear reprisals and the number of Sikh run businesses is in serious decline. He has no financial means in the UK and therefore would be unable to set himself up in business or in accommodation such that he would be able to support himself and his wife on return.
24. There is also evidence in the country guidance that the Gurdwara is facing increasing difficulties in supporting members of the Sikh community. Any support provided by the Gurdwara would be limited to food on occasion, but not accommodation. The Appellant would not be destitute, but given that he has been in the UK for five years, there is a reasonable degree of likelihood that he would not be able to access any support network such as to be enable him to re-integrate into society.
25. The Appellant has only ever lived in Jalalabad and has no family or other contacts in Kabul. At a local level, the Appellant would not be sufficiently protected against non-state actors and relocation to Kabul was not an option. The Appellant's wife would not be able to return without a male protector and she has no means of economic support. Neither the Appellant nor his wife could run her father's business because they could not relocate to Kabul.
26. Accordingly, on the totality of the evidence, I find that there would be very significant obstacles to the Appellant's integration in Afghanistan and I allow the appeal on Article 8 grounds.

### **Notice of Decision**

**The appeal is allowed on Article 8 grounds.**

**Direction Regarding Anonymity - 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 her or any member of her 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.

*J Frances*

Signed

Date: 8 June 2018

Upper Tribunal Judge Frances

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

No fee is paid or payable and therefore there can be no fee award.

*J Frances*

Signed

Date: 8 June 2018

Upper Tribunal Judge Frances

**ANNEX A**

77. We found Dr Giustozzi to be a measured and impressive witness who took care to answer questions as accurately as possible. We have found his evidence helpful and have attached weight to his opinion. We do not however accept that his opinion is determinative either in isolation or when considered together with all the other material we have been asked to consider especially as it is based in part on evidence of events that occurred seven to eleven years ago as demonstrated in paragraph 40. In particular we do not find the claim that all Sikhs and Hindus are at risk in Afghanistan to be substantiated as at the date of hearing for the reasons set out below.
78. It is not disputed before us that historically members of the Sikh and Hindu community in Afghanistan have been subjected to what may be perceived as acts of persecution by both state and non-state actors. The material we have been asked to consider demonstrates that the number of such incidents has reduced (but this might be explained by the reduction in the Sikh and Hindu population) and there is currently little material to support a claim of official state Sponsored persecution. The material does support a finding that there is ongoing harassment of and discrimination against some members of the Sikh and Hindu community in Afghanistan, as set out above, but the evidence includes very few examples of recent acts of harm or threats of harm sufficient to satisfy the necessary test. We bear in mind Dr Giustozzi's point that this is an area that has not been prioritised by the media for reporting but when we consider all the material available to us, we find it of note that there is little to suggest that there have been continuing recent incidents of harm towards Sikhs/Hindus. Although Dr Giustozzi has described the picture of intensive harassment at page 12 of his report he has not supported this by drawing attention to specific examples of individuals being repeatedly harassed. Expropriation has been said to have almost stopped because the most valuable properties have already been taken away. Under the heading 'post-2005 violence and harassment' Dr Giustozzi focuses on examples of violence up to 2010 and references to more recent years are vague and generalised. This is notwithstanding the fact that Dr Giustozzi's researcher carried out three interviews in December 2013-January 2014 with senior members of Sikh and Hindu communities. We accept that whilst the subject group diminishes in size opportunities to inflict harm may also decrease and note that the small number of Sikhs and Hindus who remain in Afghanistan have been reported to be even more vulnerable to abuse but the lack of evidence of such ongoing issues is a relevant consideration. Perhaps the best evidence in support of the existence of a current real risk from the perspective of the Appellants is to be found in the Respondents OGN of 2013 which we set out above.
82. We do not find the material provided supports a finding that all Muslims are hostile to members of these religious groups. The historical analysis refers to a tradition in which all religions were able to live in harmony in Afghanistan. There is no evidence showing that such attitudes do not remain in existence both amongst state and non

state actors today. In a news article headed "Tough Times for Afghan Hindus and Sikhs" there is reference to the problems encountered by these groups but also the following:

'Yet some people still have fond memories of a time when Muslims and Hindu communities lived peacefully together. 'We shared our happiness and grief' said Badshah, a Muslim shopkeeper in the town of Khost. 'When we go to India now, we stay in their homes'. They are proud Afghans. They are hospitable. They worked alongside us to address problems. I miss them'.

We accept the evidence of government initiatives such as the allocation of land to enable a new settlement to be built on the outskirts of Kabul which includes an area to allow cremation to be undertaken away from residential areas and the proposal that a parliamentary seat be reserved for members of these groups even though it was rejected as being unconstitutional. The Afghan Constitution prohibits the allocation of benefits based upon ethnic lines. The letter from the British Embassy also refers to other initiatives and an alleged lack of knowledge of or failure to mention the same in interview, by those interviewed by Dr Giustozzi's researcher, does not mean such initiatives do not exist or are not representative of a more positive attitude existing at the level of the Executive in Afghanistan towards the Sikh and Hindu minority than may have been the case in the past. It was put to Dr Giustozzi in his oral evidence that within the government there is a desire to promote tolerance between the different communities in Afghanistan which he accepted.

83. Notwithstanding the evidence of incidents of continuing hostility against some members of the Sikh and Hindu community, we do not find it established on the evidence that merely by reason of being a Sikh or Hindu in Afghanistan there is a real risk of serious harm from non-state actors in Afghanistan even to the lower standard of proof applicable to appeals of this nature. We refer in this regard to the limited nature of the evidence provided of actual specific incidents of such ill treatment towards Sikh and Hindu individuals since 2005 and more specifically in recent times as set out above. Notwithstanding that the majority of the evidence before us related to members of the Sikh faith, Sikhs and Hindus are viewed as one by many in Afghanistan as stated above, they both form religious minorities and are treated in a similar manner as a result, both worship in the same religious buildings. No submissions were received during the course of the hearing inviting us to separate the two groups or to suggest that they should not be considered together for the purposes of this guidance. In doing so we note the decline in actual numbers of members of these religious groups remaining in Afghanistan although we also appreciate this may increase their vulnerability. This can be contrasted with the figures available to the Tribunal in SL and Others for the period around 2005 as considered in DSG and Others. Dr Giustozzi referred to an escalation in such events since 2005 but we have not been taken to actual evidence of specific incidents to support a claim of such escalation. We also note that there have been some limited returns from India who wish to conduct business activities in Afghanistan. This lends support to our view that hostilities against members of the Sikh and Hindu communities have not escalated and in fact have reduced in frequency.

89. It is clear that a Hindu or Sikh Afghan male is able to go about his day-to-day business although he may from time to time be the subject to verbal abuse and harassment. If he has a business and property there is a risk of being subjected to demands for money by way of extortion by corrupt individuals and in extreme circumstances may be subjected to further more serious threats or acts of violence. Such incidents are rare now as the most valuable properties are seen to have already been taken away from Sikhs. Whether such events or combination of these events and other forms of discrimination amount to persecution such as to entitle an individual to a grant of international protection is fact sensitive, and will depend upon the individual's particular characteristics, wealth and background.
109. As with many aspects of this country the evidence relating to economic reality for Sikhs and Hindus is contradictory. On the one hand there is evidence of members of the Sikh and Hindu community holding positions within the legislative bodies and various community and other influential groups, holding trading licences and having viable businesses, owners being able to retain land and property or to rent accommodation for themselves and their families and being able to send remittances to families living abroad, in places such as India. On the other hand, there is evidence of poor members of the community being unable to earn a living and having to live in the Gurdwara which, in accordance with the tradition of Sikh and Hindu hospitality, provides food aid, shelter, and a degree of companionship and protection. The evidence indicates that the declining numbers and economic wellbeing of those remaining in Afghanistan has an impact on the ability of the Gurdwara to continue to provide such hospitality and support as it is itself dependent upon donations to be able to meet its own financial needs and purchase food and other items.
110. A family without adequate resources is unlikely to be able to pay for private education which may be relevant when considering the situation of Sikh and Hindu children in Afghanistan whom it is proposed to return if receiving such education is demonstrated to be fundamental to that person's identity. There is also evidence that a Muslim is unlikely to employ a member of the Sikh or Hindu community in place of a Muslim, out of fear of potential reprisal or loss of business, indicating difficulties in securing an income with which to fund accommodation or essentials such as food, heating, clothing. The evidence we have been able to consider indicates that there is nothing in the law, the attitude of the Afghan government, or in theory preventing a member of either of these faith groups returned to Afghanistan from being able to set up their own businesses but whether they are able to do so will depend upon the availability of adequate funding, their ability to secure business premises in the light of possible hostility or opposition from Muslim traders who may see them as competition or not wish to rent premises out to them, making it difficult for them to pursue what has now become the remaining traditional trade of shopkeeper/trader. Whether an individual is in such a position is fact specific and they will have to satisfy the Tribunal that they are without economic means especially if they have paid a considerable sum of money to come to the United Kingdom, that they will not be able to re-establish themselves economically, and the impact upon family members as a result. Such individuals may

also be required to provide appropriate evidence to show that there are no alternatives such as being supported by NGOs or through the Gurdwara and that any impact upon them, if destitution is alleged, is such that the threshold of Article 3 ECHR will be breached.”