



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/04041/2017
PA/05309/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

MRS MKB (FIRST APPELLANT)
MR KSB (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Y Din of Counsel instructed by Harbans Singh & Co
For the Respondent: Miss Z Ahmad

DECISION AND REASONS

1. The appellants' nationality is in dispute. The first appellant claims to have been born in Afghanistan on 1 January 1961. She is the mother of the second appellant who was born in 1988 and also claims to be a citizen of Afghanistan.

2. They applied for asylum and their applications were refused on 13 April 2017. They appealed and their appeal came before a First-tier Judge on 25 August 2017.
3. The First-tier Judge helpfully summarised the appellants' claims as follows:
 - "7. They are Afghan Sikhs. The first Appellant's husband had a grocery shop, which he had had for 40 – 45 years. The Taliban used to bother him because he was Sikh and had done so for 24 years. She never went to her husband's shop or out of the house apart from going to temple. Her husband did the food shopping and her father in law bought clothes. She did not go to school because the country was ruled by Muslims and when they went out they were spat at and their scarves pulled. It was not too bad at the beginning but got worse later. There were quite a few Sikhs in Jalalabad when she was growing up but there are not many left now.
 8. A month before they left the Taliban went to her husband's shop and wanted extortion money. They said they would return a week later and her husband gave them the money. They then demanded more and when he refused a scuffle broke out and they shot him dead. They had been collecting extortion money every week for a long time, in a group of 5 or 6 people. When her husband was killed her father in law and son were told this and taken to the shop. They grabbed her son and said they would kill him too. Her father in law begged them not to and they said in 15 days time, either they changed their religion or her son would be killed. Her husband's body was taken to the temple, where they all stayed for 3 days then the Gurdwara leader told them to leave because they were in danger. His father in law sold the house, shop and her jewellery to pay an agent to assist them to leave. They did not seek help from the authorities who told them nothing could be done about him. The police had said it was not their job to investigate the matter.
 9. She had never had a passport.
 10. The first Appellant said they travelled out of Afghanistan with her father in law and her other son and her daughter in law. Her father in law and other son were separated from them on the way. Her son, granddaughter and daughter in law were with her. The agent took their passports.
 11. They left Afghanistan in October 2016 travelling through Pakistan to Turkey by car and on foot. They proceeded on foot and by car and were encountered in Dunkirk where the first Appellant gave a different name and date of birth. They entered the UK by lorry on 29.11.16 and claimed asylum on 30.11.16. They cannot return to Afghanistan because they fear being killed by the Taliban who want them to change their religion to Islam. The first Appellant's husband was killed 1 ½ months before the screening interview (which was dated 20.11.16) for not changing religion."
4. The appellants' case was supported by the first appellant's sister, Miss PK. The judge heard oral evidence from the appellants at the hearing on 25 August 2017 and the matter was adjourned until 24 October 2017 to enable a DNA test to be conducted. At paragraph 17 of the decision of the First-tier Judge the judge records that a DNA report stated that Miss PK and the first appellant were sisters.
5. The judge set out her findings on the nationality of the appellants as follows:

- “35. It is accepted that the Appellants are Sikh. The issues then are whether they are citizens of Afghanistan; if so, whether their husband/father was killed by the Taliban and whether they themselves would be at risk on return.
36. I do not accept that the Appellants are citizen (sic) of Afghanistan for the following reasons.
37. The first Appellant said she had no identity documents from Afghanistan. This would reasonably include a Taskira. She then said at the hearing that she had had a Taskira before she left. These statements are inconsistent. The second Appellant appeared at the hearing to be very vague about what a Taskira was and about whether he had one, or where it was. The Afghan Embassy on the printout provided by Mr Hussain states that the application form must be completed before the applicant goes to the Consulate section. This objective evidence is inconsistent with the second Appellant’s statement that he did not complete an application form beforehand.
38. The second Appellant said they had provided no evidence of their nationality to the Embassy. That being so it can only be concluded that if they did obtain birth certificates from the Embassy this was done on their say so alone. This is not credible, and if it were indeed so, then the birth certificates cannot stand as objective evidence of nationality.
39. The Appellants provided a copy of the bank statement of the first Appellant’s nephew showing a payment of £20 on 9.5.7 to ‘Embassy of the Islamic London SW7 GBR. I draw no adverse inferences from the fact that the payee is not spelt out in full – this was a screenshot from a mobile phone of internet banking and it is reasonable that the size of the screen would prevent a full payee name showing. However, I note from the printout provided by Mr Hussain that the postcode for the Embassy is SW7 1QQ, not SW7 GBR as stated on the bank statement. In any event the purported post code given on the bank statement is not a legitimate UK postcode since there is no number on the third set of digits as is usual. (So for example the postcode for the Sheldon Court Tribunal venue is B26 3DU). I do not therefore accept this debit as evidence of probative value that the fee was paid.
40. In any event both appellants purportedly obtained bank statements but only one fee was paid. The printout from the Embassy does not indicate that one fee would cover more than one application. The fee should reasonably, then, have been £40.
41. The first Appellant said she spoke Punjabi and a little Dari. She said at the hearing that she spoke Farsi at the Embassy. This is inconsistent with what she had previously said. Moreover, if her life had been confined to the home, it is unclear where she would have learnt Farsi, which she did not say was a language spoken in Afghanistan. She was unable to explain this at the hearing.
42. The Embassy also requires photographs to show the ears uncovered. Clearly the second Appellant’s ears are covered and therefore it is reasonable to suppose his photograph would not be accepted. If the Afghan authorities, as represented by the Embassy, were so sensitive to Sikhs as to allow an exemption for them, because of their turbans, then this does not square with

the Appellants' claim to fear persecution on return on the grounds of their religion.

43. The Embassy further requires the production of a Taskira in order for a birth certificate to be provided. The Appellants produced none.
44. The Appellants did not, then, conform to the requirements of the Embassy for the issue of birth certificates - previously completed application form, identity documents, photographs, payments of a fee for each.
45. I am not satisfied that, therefore, that the birth certificates can stand as objective evidence of probative value of the Appellants nationality.
46. I also do not accept the Khalsa Diwan letter as objective evidence. The first Appellant says they were given it on the same day as they obtained birth certificates. I do not consider it credible that they would sit and wait while the letter was typed or that the organisation would not suggest posting them the appropriate letter.
47. I accept that if as she claimed the first Appellant never went out of the house except to go to the temple and never went to school her life was extremely circumscribed. If she never went to shops then she would have had no need personally to handle money so it is unsurprising that she would be unable accurately to describe the currency and if she did not learn Pushtu and Dari (and growing up in and marrying into a Punjabi speaking family, and never leaving the house would mean she would have no reason or opportunity to) then clearly she could not understand the television and radio programmes transmitted in those languages. This conclusion, however, is inconsistent with her statement that she spoke Farsi, which is not a language commonly spoken in Afghanistan."

6. As the judge had not accepted that the appellants were from Afghanistan the country guidance case of **TG [2015] UKUT 595** was not applicable. However she would still have dismissed the appeals both on credibility grounds and under the country guidance, even if the appellants were from Afghanistan. She set out her reasons for coming to this conclusion in the following extract from her decision:

- "49. The first Appellant says the Taliban demanded more money from her husband and killed him when he refused and that when her father in law and son went to the shop they were confronted with a demand to change religion. However she had said at her screening interview (4.1) that he was killed for not changing religion. These two statements are inconsistent. In any event she said she was told that he was killed because he refused to hand over all his money. If the Taliban had also, or instead, demanded that he change religion, it is reasonable to expect the bystanders who reported the incident to have mentioned it, since religion is an issue fundamental to an individual's identity.
50. I do not find it credible that the Taliban would give the family 15 days in which to change their religion. Whilst there is no rational explanation for the length of time I accept that the thought processes of the Taliban cannot necessarily be judged according to ordinary standards of rationality. However, even so, the 15 days limit seems arbitrary. Not only that but there was apparently no indication as to how they family expected to demonstrate

that they had changed their religion other than, perhaps, by abandoning the turban and other signs of the Sikh religion.

51. The first Appellant said the family would be beaten if they were seen eating in Ramadan. However, if, as she says, she and her son never left the house I do not accept as credible that anyone other than the family would see them eating.
 52. The first Appellant said the languages spoken in Afghanistan were Dari, Punjabi and Pushtu and that she only spoke Punjabi. She said later that she understood some Dari. There was no mention made that she spoke Farsi yet it is now said that she does and was able to communicate in that language with officials from the Embassy. I do not accept as credible that if she never left the house that she would be able to learn a language that is not common in Afghanistan, or that her husband did not speak it.
 53. The first Appellant gave inconsistent evidence as to documents. In her asylum interview she said that she had never had a passport or a national ID or other documents from Afghanistan. However, at her screening interview she said the agent had taken her passport. She did not say that this was the passport, nor her own, that she had been using, but categorically that he had taken "her" passport.
 54. I accept from the report of the fingerprint expert that the first Appellant used a false identity. I accept that she is illiterate and would not have been able to read the name on any document she was given to use but I do not find it credible that she would not have been asked her name when fingerprinted so that her identity could be recorded alongside the fingerprints. She must reasonably, then, have given the false name recorded, knowing it to be false.
 55. I note that the second Appellant has not addressed the issue of the rupees it was claimed he had on him when he came to the UK although this issue was placed fairly and squarely at issue in the notice of refusal.
 56. Turning to TG, this country guidance case holds *that 'some (my emphasis) members of the Sikh communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots. 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'.*"
7. The judge had made it clear in paragraph 48 above that she did not accept that the appellants were citizens of Afghanistan but she went on to find that as she had rejected their account of the death of their husband/father she did not accept that they fell within the circumstances set out in the country guidance case. She noted that the second appellant was an adult male who would be able to protect his mother. It had been claimed that their property was sold to finance their flight but there was no evidence to confirm this or to establish that they had no property to return to. Although in the light of the country guidance Muslims were unlikely to employ a member of the Sikh community, the second appellant's father and grandfather successfully ran a business and it was not unreasonable to suppose that the second appellant could also do so. While she accepted that the number of Sikhs in

Afghanistan had dropped, there was still a functioning Gurdwara in the appellants' home town to which they could have recourse for assistance. She concluded that no objective evidence has been provided to enable her to find that the situation for Sikhs in Afghanistan since TG had deteriorated to the extent that the country guidance should no longer be followed.

8. There was an application for permission to appeal. Permission was refused by the First-tier Tribunal but granted by the Upper Tribunal on 9 March 2018. The first appellant's sister had been previously accepted as Afghani by the respondent in respect of her own asylum application. Although the judge had addressed the issue of the claimed nationality of the appellants in some detail she did not appear to have considered the first appellant's sister's evidence. As the judge had already decided that the appellants were not from Afghanistan, her consideration of **TG** was arguably flawed. On 10 April 2018 the Secretary of State filed a response. It was said that the First-tier Tribunal had given adequate reasons for finding the appellants not to be credible and in rejecting their claim to be Afghan nationals. In the alternative the judge had given adequate reasons for finding that if they were Afghan nationals they would not be at risk on return.
9. At the hearing Mr Din pointed out that an application for an interpreter had been made – the appellant spoke no English. I noted this was an error of law hearing and it was not usual to provide an interpreter. Counsel explained the matter to the appellants. I further noted from the file that the application had only been made on 18 June 2018 – the day prior to the hearing. Notice of hearing had been issued on 22nd May. In all the circumstances I did not find it appropriate to accede to the application so belatedly made.
10. Counsel relied on the grounds and on the DNA evidence that established the relationship with Miss PK who held British citizenship. It appeared that she had been granted asylum in the UK. She had given oral evidence at the hearing. The Home Office submission made at the hearing was that the DNA evidence established the relationship but not the nationality. While the judge had given detailed reasons for her decision she had made no reference to Miss PK's evidence. Miss PK had been born in Nangarhar in 1972. Nangarhar incorporated Jalalabad where the appellants claimed to have been born. The First-tier Judge had not taken into account the evidence of Miss PK.
11. Miss Ahmad referred me to **VW (Sri Lanka) [2013] EWCA Civ 522** where the Court of Appeal deprecated the tendency:

“... of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully.”

She also relied on **South Bucks District Council & Anor v Porter [2004] UKHL 33** and referred me to paragraph 36 of the opinion of Lord Brown:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

12. The judge had recorded the Presenting Officer’s submission about the DNA report not establishing nationality in paragraph 34 of her decision. While the judge had not referred to the DNA evidence subsequently this was not a material error. The findings made by the judge were open to her. While the consideration of the country guidance was brief, it was plain that the judge had had regard to it, for example the issue of the vulnerability of women “in the absence of appropriate protection from a male member of the family” – see paragraph (iii)(a). Mr Din in reply submitted that the judge had not given intelligible and adequate reasons as required in the **South Bucks District Council** case relied upon by Miss Ahmad. The evidence of the sister was a material consideration. Sufficient consideration had not been given to the country guidance issues.
13. At the conclusion of the submissions I reserved my decision. I have carefully considered the points made by both sides. It is of course necessary to establish an error of law in the approach of the First-tier Judge if the appeal is to succeed.
14. The decision is, in my view, both lengthy and carefully reasoned and the judge’s negative credibility assessment appears to be founded on a very careful sifting of the evidence. I have set it out in some detail above.
15. It is argued that the judge did not deal properly with the evidence of Miss PK. It is plain that the judge had this evidence in mind because she refers to it at paragraph 24 of her decision and records the submissions made in respect of it at paragraph 34. These submissions had been made on 24 October at the adjourned hearing and the decision was signed a few days later on 31 October.
16. The appeal in this case was not from a decision in respect of Ms P K. The judge had to deal with the appeal of the appellants on the evidence as it appeared to her. The judge

gives ample reasons in my view for rejecting the appellants' respective cases. The point made by the Presenting Officer that the DNA report established the relationship but did not establish nationality was not an unreasonable point. I do not find that the failure to deal with the matter further or in more detail to be evidence of a material error of law. Having correctly, in my view, found that the appellants were not citizens of Afghanistan as claimed, it was not necessary for the judge to enlarge on her treatment of the issues arising under the country guidance. As is pointed out by Miss Ahmad, the judge did make reference to relevant factors as set out in the country guidance. Her consideration of the country guidance was adequate in the circumstances of this case as argued by the respondent in the response.

17. For the reasons I have given I am not satisfied that the decision of the First-tier Judge was materially flawed in law and accordingly this appeal is dismissed. The decision of the First-tier Judge to dismiss the appeal on asylum, humanitarian protection and human rights grounds stands.

Notice of Decision

Appeal dismissed

18. The First-tier Judge made an anonymity direction and it is appropriate that this should continue.

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT **FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date: 22 June 2018

G Warr, Judge of the Upper Tribunal