Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06028/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 19 March 2018	**On 05 April 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS K L
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr M Diwnyciz, Home Office Presenting Officer
For the Respondent: Ms C Soltani, Solicitor, Iris Law Firm (Gateshead)

DECISION AND REASONS

1. The appellant (hereafter the Secretary of State or SSHD) brings a challenge with permission to the decision of First-tier Tribunal (FtT) Judge Caskie sent on 16 August 2017 allowing the appeal of the respondent (hereafter the claimant) against the decision made by the SSHD on 12 June 2017 refusing her claim for international protection. The claimant is a national of Afghanistan and is a Sikh.

2. The SSHD's grounds allege that the judge gave inadequate reasons for departing from **TG and others (Sikhs persecuted) (CG) [2015] UKUT 595 (IAC)**. It is also contended that the judge's reasons contain a contradiction as regards whether the claimant would face destitution. It is submitted that the only findings for allowing this appeal refer to the individual financial circumstances of the claimant and her family, namely being in receipt of NASS support and the numerical reduction of Sikhs in Afghanistan.

3. The grounds also state that the judge allowed the appeal under paragraph 276ADE(vi) of the Immigration Rules "but no separate reasons have been given".

4. I received helpful submissions from both representatives.

5. I find no material error of law in the judge's decision.

6. First of all (and as Mr Diwnyciz conceded) the suggested contradiction in the judge's findings is the result of nothing more than an obvious slip or typing error. The clear purpose of paragraph 29 read as a whole and in light of the preceding paragraphs was to find that the claimant would be unable to access sufficient resources to avoid destitution.

7. Leaving aside for a moment whether the judge's reasons involved a departure from country guidance, they were clearly in my judgement sufficient to warrant the conclusion that the claimant would face persecutory risk on return, notwithstanding such return would be as part of a family unit. The judge did not find that there was one factor or reason on its own that demonstrated a real risk of persecution on return; rather the judge considered the likely harms would reach this threshold when considered cumulatively. Three factors were taken into account. There was first of all the low-level discrimination and harassment facing Sikhs in Afghanistan generally (see paragraph 29). There was secondly the very substantial reduction in the Sikh population indicated in the Home Office's own Country Information Report. At paragraph 26 the judge stated:

> "26. It is clear that the Sikh population in Afghanistan has continued to decline significantly, where apparently reliable sources, certainly sufficiently reliable to be referred to in the Secretary of State's Country Information Report, indicate figures as low as 1,350 Sikhs in Afghanistan. In June 2016, the position of the Sikh community is clearly a perilous one, with their extinction as a minority group in Afghanistan being foreseeable and predictable. Whilst other sources indicate that in 2017, there was a combined Hindu and Sikh population of less than 7,000, and in the same year another estimate for the same population group of around 3,000. The decline since *TG* was issued is a stark one. "

8. A third factor concerned the claimant's likely financial circumstances. It being sixteen months since Judge Manchester had dismissed the mother's appeal (on 25 April 2016, in which the claimant was a dependant), it was open to the judge for the reasons given to consider that the family's financial circumstances had changed. The

judge heard evidence from the appellant and was entitled to conclude that the family no longer had assets in Afghanistan, was now reliant on NASS support and could not rely on dwindling Gurdwara support in Afghanistan.

9. Taken cumulatively these facts clearly sufficed to amount to a real risk of persecution or serious harm.

10. The only remaining question, then, is whether the judge erred in departing from country guidance. In focus here is what the judge stated at paragraph 32:

> "32. In reaching this decision I am of course departing from an existing country Guidance case. The recent evidence indicates by means of reliable evidence a significant deterioration since ***TG*** was issued. I consider there is a proper evidential foundation for departing from **TG**."

My response to this question is twofold. First, even taking it for granted that the judge did depart from the country guidance, I consider it was open to him to do so. The country information he relied on – the Home Office country information – did not consist solely of a statement of position; the document cited various sources post-dating **TG** detailing the aspects in which the Sikh population had declined and weakened. It must also be borne in mind that in all the recent Tribunal country guidance cases on Sikhs in Afghanistan there has always been an abiding concern that if the numbers of Sikhs dropped below a critical mass, there was the prospect of group persecution.

11. In any event, I am with Ms Soltani in her submission that despite portraying her decision as a departure from country guidance, she did not in fact do so. Her assessment is consistent with an application of the guidance given in **TG**. The judge did not seek to rely merely on "the cumulative impact of discrimination" (head note (ii)). The judge carried out a fact-sensitive assessment, having regard to likely financial circumstances, the family's difficulties in pursuing their remaining traditional pursuit as shopkeepers/traders; and the inability of Gurdwaras to provide support (see head note (iii)).

12. The judge's assessment is perhaps open to the criticism that she did not address the issue of internal relocation, even though the SSHD had in her refusal decision. But that was not a point relied on in the grounds, nor did Mr Diwnyciz seek to revive it before me.

13. For the above reasons I conclude that the judge did not materially err in law in allowing the appeal on protection grounds.

14. For completeness, I see no legal error either in the judge's decision that the claimant also stood to succeed on Article 8 grounds. The only challenge raised by the SSHD to that decision was that it relied on the reasons given for refusing the protection claim. In my judgment that is not so: paragraph 31 is a distinct treatment of the issue of very significant obstacles to integration and was entirely within the range of reasonable responses.

15. For the above reasons:

The judge did not err in law and her decision to allow the appellant's appeal on protection and human rights grounds shall stand.

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 him or any member of their 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.

Signed: Date: 3 April 2018

Dr H H Storey
Judge of the Upper Tribunal