



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13311/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22<sup>nd</sup> June 2018

Decision & Reasons Promulgated  
On 13<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR GS (AFGHANISTAN)  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Plowright, Counsel, instructed by Malik & Malik Solicitors  
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. The Appellant is a citizen of Afghanistan born on 1<sup>st</sup> January 1991. The Appellant applied for asylum in the United Kingdom asking to be recognised as a refugee and claimed to have a well-founded fear of persecution in Afghanistan on the basis of his religion and his fear that he would be killed as a result of a land feud. The Appellant

is an Afghan Sikh. The Appellant's application was refused by Notice of Refusal dated 24<sup>th</sup> November 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Monson sitting at Taylor House on 22<sup>nd</sup> January 2018 and 21<sup>st</sup> March 2018. In a Decision and Reasons promulgated on 29<sup>th</sup> March 2018 the Appellant's appeal was dismissed.
3. The Appellant thereafter lodged Grounds of Appeal to the Upper Tribunal. On 24<sup>th</sup> April 2018 Judge of the First-tier Tribunal Davies granted permission to appeal. Judge Davies considered that it was arguable that the judge in reaching his decision that it would be safe for the Appellant and his family to return to Afghanistan (and Kabul in particular) and did not have proper regard to current case law and country information which indicates the fact that the Sikh population in Afghanistan now numbered in hundreds and that has a direct impact on the ability of members of the Sikh community to assist Sikhs returning. He considered that that particularly impacted on the issue of the best interests of the children and the undue harshness of return.

### **Submissions/Discussion**

4. Mr Plowright starts by taking me to Judge Davies' grant of permission, indicating that the force of his argument is based with regard to the claim that the judge has failed to properly consider the best interests of the children. He accepts that the First-tier Tribunal Judge found that evidence given by the Appellant was not credible but points out that the Appellant would be returning with his family, i.e. wife and two children, who are now aged 6 and 2. His particular focus is on paragraphs 60, 61 and 62 of the judge's decision. He starts by taking me to paragraph 62 and submits that when giving due consideration to the position of the Appellant's father, which is described therein at paragraphs 60, 61 and 62, that the judge had found that the Appellant's father had no reasons to leave and that he considers that it is a failure of logic to conclude that there is no reason to suppose that the Appellant's father abandoned his shop in Jalalabad and left the country with the Appellant and KK in 2011.
5. He indicated at paragraphs 65 and 68 that he noted that the judge did not consider that there were very significant obstacles with regard to the Appellant's reintegration to life and society in Afghanistan and that the judge has failed to give due and full consideration to the position in which the children would find themselves. He refers to the Appellant's asylum interview, in particular question 97, which addresses the issue of how many Sikhs there are in the area, and the Appellant's response that there are only 40 households remaining. Further, he asserts that the authorities are supportive of the Appellant's claim and that *AS (Kabul)*, whilst not being directly relevant to the facts of this case, assists the Appellant as does the finding of the Upper Tribunal in *TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC)*.
6. The main thrust, however, in Mr Plowright's submission is that whilst the First-tier Tribunal Judge has looked at the position so far as an ability to relocate is concerned

he has not, in his submission, really focused on the children themselves and he would go so far as to acknowledge that this is more of an appeal based on Article 8 and what constitutes the best interests of the children.

7. Ms Ahmad starts by taking me to paragraph 39 of the judge's decision, reminding me that it was recited therein that the Appellant's wife gave evidence and that she has acknowledged the age of the children. She thereafter refers me to paragraph 18, which addresses the issue relating to evidence of the position after the Appellant's father-in-law was killed and thereafter takes me to paragraphs 48 and 59 where adverse findings of credibility are made both therein and at paragraphs 59 to 61. She submits that the judge's finding at paragraph 60 that the Appellant's father did not abandon his shop in Jalalabad and leave the country with the Appellant and KK is a finding that the judge was entitled to make. Consequently, she submits that on any interpretation this would be a case where the Appellant returns with his wife and children to Jalalabad and she submits that his father remains there.
8. She addresses the issue of employment opportunities, referring me to the relevant paragraphs set out at paragraphs 109, 110 and 111 of *TG*. She points out that the judge has considered this, that this is an Appellant who has relatives who can help and that the findings made were ones that were open to the judge. She asked me to dismiss the appeal. In final submissions.
9. Mr Plowright indicates that it is appropriate and must take place that the best interests of the children have to be balanced against other interests and this is not what the judge, in his submission, has done.

### **The Law**

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of

significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### Findings on Error of Law

12. This is a well constructed decision. The judge has analysed the Appellant's material history and thereafter gone on to note the basis for the reasons of refusal. He acknowledges that on the issue of risk on return regard has to be had to the country guidance authority of *TG and others* and that on his return the Appellant could seek employment in his father's shop in order to support his wife and children financially and could continue to practise his religion as he was not facing a local threat in Jalalabad. Thereafter he has gone on at paragraphs 26 to 44 to recite thoroughly the evidence that has taken place in this case on two separate hearings.
13. At paragraph 45 thereafter he has gone on to give an analysis of his discussions and findings. He has started off by considering the country guidance to be found in *TG* and thereafter considered objective evidence. He has set out between paragraphs 48 and 59 in some considerable detail reasons why he has found the Appellant's version of events not to be credible. A proper approach to credibility would require an assessment of the evidence and of the general claim. In asylum claims as here the relevant factors would be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. It is this detailed analysis that the judge has carried out. His analysis and credibility can, I conclude, not be faulted and it certainly does not disclose any material error of law.
14. The judge has thereafter gone on to make findings that he was entitled to at paragraphs 60 through to 62. In particular, he has found that there are not substantial grounds for believing the Appellant would be unable to return with his wife and two children to his former family home in Jalalabad or that he would not be able to maintain his family in Jalalabad by helping his father run his grocery store.
15. So far as addressing the best interests of the children is concerned, throughout the appeal the judge has given due consideration to these and noted their position. The judge has acknowledged at paragraph 65 that the Appellant would face difficulties which are faced by all Sikhs generally, either in Kabul or Jalalabad, but has concluded that the obstacles to his reintegration into life and society would not, in his opinion, be very significant. He has analysed the *Razgar* test and taken into account the public interest. Most importantly of all, he has at paragraph 68 accepted that the best interests of the affected children are a primary consideration in the proportionality exercise and has made a finding that there are certain aspects in which their best interests would be better served by remaining with their parents in the UK. That is not an unusual finding. It is quite often accepted that life in the UK may well be better than life in country of origin. That, however, is not the test. Overall, the judge considered that the children's best interests lie in them returning with their parents to the country of which they are nationals. These are findings that the judge was entitled to make. In reaching those findings he has given due consideration to the employment

opportunities and economic position in which the family would find themselves, in particular with regard to the ability to return with his family to Jalalabad and help his father in his grocery store.

16. In all the circumstances the submissions made on behalf of the Appellant amount to little more than disagreement with the decision of the First-tier Tribunal Judge. The decision discloses no material error of law and on that basis I dismiss the Appellant's appeal and maintain the decision of the First-tier Tribunal.

### **Decision**

The decision of the First-tier Tribunal discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and that order will remain in place.

### **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 his 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 10/7/2018

Deputy Upper Tribunal Judge D N Harris

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

No application is made for a fee award and none is made.

Signed

Date 10/7/2018

Deputy Upper Tribunal Judge D N Harris