Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/00506/2017
PA/00510/2017
PA/00513/2017
PA/00516/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 20th August 2018	**On 27h February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

(1) SAVINDER [A]
(2) JASWINDER [A]
(3) BALVINDER [A]
(4) KARTAR [A]
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr C Bates (Home Office Presenting Officer)
For the Respondent: Mr J Greer (Counsel), instructed by Legal Justice Solicitors

DECISION AND REASONS

This is an appeal against the determination of First-tier Tribunal Judge O. R. Williams, promulgated on 24th November 2017, following a hearing at Manchester on 20th October 2017. In the determination, the judge allowed the

appeal of the Appellants, whereupon the Respondent, Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

The Appellants comprise a family of a mother (the principal Appellant) and her two children, together with the paternal grandmother (who is the fourth Appellant). All are citizens of Afghanistan. They were born respectively on 1st January 1953, on 1st January 1998, 1st January 1989 and 1st January 1934.

The Grant of Permission

Permission to appeal was granted by the Upper Tribunal on 26th June 2018 on the basis that the Appellants disputed nationality by the Respondent, Secretary of State. The Appellants had all claimed to be citizens of Afghanistan. In the grant of permission, it was said that the decision of the judge was arguably in error because of the judge's findings on the Appellants' language (whereby the parents spoke Dari but the children only spoke Punjabi), may wrongly have led the Judge to conclude that the Respondent was wrong to have found they were Afghan nationals, as the Appellants could actually have relocated elsewhere away from Afghanistan. Second, the Appellants' attendance at the Afghan Embassy and applications for birth certificates confirming they were Afghans was questionable, given that the procedure for the acquisition of birth certificate was an application made Online, rather than a physical appearance at the Embassy.

A Rule 24 response was entered to the effect that the decision granting permission was very brief and not clear. The language spoken in Afghanistan is Pushtu and Dari. The Appellants' two youngest members only spoke Punjabi. Yet, the Respondent's own guidance (at paragraph 4.2.5) on Afghan Sikhs, states that:

> "The Wall Street Journal noted the following in an article dated January 2015 'Afghanistan's Sikhs and Hindus stay in small, tight-knit communities and participate in many of the same religious rituals held in a temple both faiths use. At home they speak mainly Punjabi, the language of Sikhism's religious texts that is native to the Indian subcontinent... These days, they [Sikhs and Hindus] are known for the medicinal herb shops that many of them own.' …"

Second, the Rule 24 response stated that the judge had found that the birth certificates issued by the Afghan Embassy were authentic. If the Respondent, Secretary of State, now wanted to prove that they were not genuine, then they should have instructed the National Document Fraud Unit to have the documents tested. This is the normal course of action when a caseworker suspects that the document submitted is fraudulent. This had not been done. The burden in showing that the documents provided were not genuine fell upon the Respondent, Secretary of State, and this burden had not been discharged.

Third, the Respondent did not challenge the fact that the evidence of Raj [A] (at paragraph 16 of the determination) was accepted as genuine. The judge had found him to be credible. In fact, the Respondent Secretary of State, had granted Raj [A] refugee status. He was the eldest son of the family. The Appellant had been able to show, through DNA testing, that the relationship was indeed as claimed. The Respondent had not explained why, if Raj [A] was accepted as the child of the first Appellant, Savinder [A], as an Afghan national, why she would not also be treated as an Afghan citizen either.

Accordingly, it was stated in the Rule 24 response that apart from the birth certificates the judge had found (at paragraph 17) that the questions answered in the asylum interview by the Appellants were consistent with the country guidance information and the appeals had been properly allowed.

Submissions

At the hearing before me on 20th August 2018, Mr Bates, appearing on behalf of the Respondent, Secretary of State, stated that this was really a 'reasons challenge' before this Tribunal. The question was whether there had been "adequate reasons". The judge had accepted (at paragraph 15) that only two of the Appellants spoke the language of Afghanistan whilst the remaining two spoke only Punjabi. The judge found that this was the result of the fact that they received no formal education. However, this was in error. The elders in the family spoke Dari. It was reasonable to conclude that the younger family members would also do so. Second, Judge Williams had failed to adequately reconcile the evidence provided to him in regards to the application process for Afghani birth certificates at the Embassy in London with his finding that it was reasonably likely that the Appellants attended there and genuinely obtained them. He had referred (at paragraph 20) to "minor discrepancies" in the evidence relating to the procedure. However, he had failed to note that all applications are made Online to the Afghan Embassy in London and therefore the suggestion that the Appellants had in person attended there to procure these birth certificates, such as to render them reliable, was misconceived. Third, Mr Bates submitted that the judge was wrong to have said that the answers given in the asylum interview were consistent with the country guidance information (paragraph 17) and, by virtue of that mere fact, that the evidence was credible because the judge was not an expert in this respect. Finally, Mr Bates stated that although he did not have the Presenting Officer's notes on the day, what he had was a post-decision note taken by the Presenting Officer and this note was the basis for the submissions that had been made.

For his part, Mr Greer submitted that there was no error. What this was, was a simple disagreement with the decision reached by the judge. First, the reference to the "language" aspect of the case was simply an attempt to re-argue the case. It was never the Secretary of State's case at the outset that the Appellants were from India or from any other country (see paragraphs 11 to 12 of the Refusal Letter). What the refusal letter stated was that, "he speaks

Punjabi and that is not spoken in Afghanistan …". Clearly, on the contrary, what this suggested was that the Appellants were indeed from Afghanistan, to the extent that the elders spoke Dari, which is the national language of Afghanistan. Second, the documents from the Afghan Embassy in London were reliable and it was up to the Respondent, Secretary of State, to show why they were not reliable. The fact that the normal procedure was to make an application Online did not mean to say that the Afghan Embassy would not respond to an inquiry made by people who physically entered upon the premises and sought documentation in the manner requested. It was for the Respondent, Secretary of State, to prove otherwise.

Mr Greer went on to say that the judge in this case had given five distinct reasons, which had been properly set out in a manner that was easy to follow. There was not only one reason for allowing this appeal. The birth certificates had been filed and copies sent in the right manner. The Secretary of State could have made enquiries. She did not do so. She could not simply say that the documents cannot be relied upon. Finally, if there is an error, it was not material. This is because Raj [A] is the eldest son of the principal Appellant, and he has been granted full refugee status in the UK, as an Afghan national, on the very basis that the present Appellants sought protection themselves. There simply was no consistency in the way in which the Respondent was approaching these appeals.

In reply, Mr Bates submitted that the Secretary of State did not need to specify the country from where it was suspected the Appellants originated and lived. It was enough to say that they did not come from Afghanistan. Second, even if five reasons were given, if some of these fell away, the judge could not there have said that the remaining ones were materially relevant to the eventual outcome of the appeal.

No Error of Law

I am satisfied that the making of the decision does not amount to an error of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. This is a case where there is a country guidance decision. This is the case of **TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595**. It is well-established that if the Secretary of State, or any party, wishes to resile from a country guidance case, which ordinarily must be followed, then "unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so" the country guidance prevails.

The basis upon which permission has been sought is a novel basis indeed. It involves an inverse argument. To suggest that, simply because the elders of the family speak the national language, namely Dari, but the young members do not, that therefore the conclusion must fall to be made that, the Appellants do not come from Afghanistan, but may well do from another country, ignores the fundamental nature of the plight of this particular community in Afghanistan.

As the Rule 24 response makes it quite clear, the Wall Street Journal has reported, a matter that is widely known, and recognised in **TG and others** itself, namely that "Sikhs and Hindus stay in small, tight-knit communities and participate in many of the same religious rituals held in a temple both faiths use" and that "at home they speak mainly Punjabi". It would have been otherwise indeed if the parents and elders in this case spoke Punjabi, and no Dari.

Second, and no less significantly, it had never been the case of the Respondent, Secretary of State, when compiling the Refusal Letter, that the use of the Punjabi language, which was accepted as not being spoken in Afghanistan, would be of significance to the extent that it was suggestive of the Appellants coming from a country other than Afghanistan, where the parents spoke Dari.

Third, the evidence of Raj [A], which is given as a second reason for allowing the appeal, was one that was accepted by the judge, on the basis that he was an Afghan national and of Sikh faith. His relationship to the Appellants, as a son of the first Appellant, was clearly established by DNA evidence. He named the Appellants in his screening interview. The judge was clear that, "I was satisfied that he was a witness of truth in his description of how he fled Afghanistan in 2013 with his pregnant wife" (paragraph 16).

Fourth, insofar as the issue of language was raised, it was entirely open to Judge Williams to say that the Appellants had given credible evidence that they did not receive "a formal education (but rather sometimes attended the Gurdwara) - it is reasonably likely that at times they were taught in Punjabi" (paragraph 13). Moreover, the fact that the evidence that was given by the Appellants was consistent with country guidance information, and the fact that they were all consistent in respect of their religious orientation, meant that the judge was entitled, on the lower standard, to be satisfied in the way that he was. Mr Bates was on thin grounds in arguing that there was a criticism to be made of the judge's reference to "minor discrepancies in the evidence" (paragraph 20). Mr Bates argued that it would have been all right if the judge had referred to the birth certificates from the embassy staff bearing "what appeared to be an original stamp" rather than "an original stamp and signature from the consular section of the embassy" (paragraph 20). There is no rule of law that a judge cannot conclude, upon sight of the documentation before him, that a document is or is not genuine. If it is not genuine, it is for the Respondent, Secretary of State, to so prove.

But, most importantly, the finding that is compelling in the judge's determination is one that appears at paragraph 25, where the judge considers "risk on return", because here he makes it clear that:

> "It is reasonably likely that the Appellants would be a target; the women are likely to be targeted when shopping (**TG** (a) or when seeking to worship (**TG** (c)). I have no reason to doubt the fact that the family worship at a Gurdwara as practising Sikhs and as such due to

> this level of religious devotion they are likely to be subjected to harm/threats whilst accessing the Gurdwara (**TG** (c))" (see paragraph 25).

This was indeed the very issue that is being highlighted in the Afghan cases following the decision in **TG and others**. This is a matter that he could properly have regard to. In **TG and others** there was evidence from Dr Giustozzi (see paragraph 15 of **TG**) to the effect that:

> "The Sikhs are easy targets for abuse given their minority status. It is difficult to resist the Muslim majority. Mistreatment and societal discrimination against Sikhs continues to be reported. Harassment of adult Sikhs and Hindus occurs, particularly at the bazaar, and Sikh children commonly are caught up in fights between themselves and Muslims. Attempts are made to forcibly convert Sikhs from their religion to become Muslims."

The final decision given by Judge Williams was also critical, which was that, "I have no reason to doubt that they have no family members/support system in place in Afghanistan to rely upon" (paragraph 26). Here again, the judge referred to the case of **TG** in highlighting the significance of this evidence.

All in all, therefore, the challenge falls far below what would be probably expected in a case such as this and I reject the challenge by the Respondent, Secretary of State.

There has been a delay in sending out this Determination to the parties concerned, because although it was dictated on the day of the Hearing, and typed up shortly thereafter, it appears to have been held up in the system, before promulgation.

Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order made.

Signed Date

Deputy Upper Tribunal Judge Juss 25th February 2019