



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01616/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2019**

**Decision and Reasons
Promulgated
On 18 March 2019**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR NARINDER SINGH (aka: SURINDER SINGH SETHI)
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms J Fisher of Counsel

For the respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant who claims to be a national of Afghanistan but who the respondent believes is an India appeals to the Upper Tribunal against the decision of First-tier Tribunal Judge G Wilson dated 15 October 2018 refusing his appeal against the decision of the respondent dated 17 January 2018 refusing him asylum and humanitarian protection in the United Kingdom.

2. Permission to appeal was granted by Deputy Upper Tribunal Judge McCarthy on 17 January 2019. The Judge was of the view that the appellant's nationality is disputed which is at the heart of his case. The appellant claims to be an Afghan national but that this the respondent believes that the appellant is an Indian national. It is arguable that the Judge failed to give adequate reasons for preferring the respondent's evidence regarding the appellant's nationality to the appellant's evidence.

The First-tier Tribunal's findings

3. The Judge in his decision made the following findings which I summarise.
 - I do not accept the appellant's account that the appellant's visa application in 2006 was made by his agent in India such that he would have little or no knowledge of these applications. The applications were made to the New Delhi British High Commission and an interview was conducted with Narinder Singh and his wife Gulgeet Kaur. On the basis that the application was made to the British High Commission in New Delhi; the address for Narinder Singh and Gulgeet Kaur is a New Delhi address and interview template records questions which were put to Narinder Singh and a question put to Gulgeet Kaur through an interpreter. The interview was carried out in person in New Delhi with those persons present and there was no suggestion that it was done over the telephone. The purpose of the interview was to establish whether the appellant and his wife's 2006 application for visitor visas were genuine. The British High Commission was in possession of the passports of Narinder Singh and Gulgeet Kaur as the passport numbers were noted on the application form and copies were produced by them.
 - The appellant accepts that the photographs attached to these applications are those of himself and his wife. If I am to accept the appellant's account that he had no knowledge of these 2006 visa application I must accept one of two propositions. Firstly, that those conducting the interview did not verify identity of the persons that they were interviewing against photographs and the passports that were in their possession, notwithstanding the purpose of the interview was that the entry clearance officer had concerns as to the validity of the visa application. Alternatively, the agent to arranged for two people of an identical or very similar appearance to the appellant and his wife to attend the interview.
 - I find that both propositions are so implausible as to be incapable of any reasonable belief. I find that the appellant and his wife attended the interview in New Delhi on 5 July 2006 for the purposes of obtaining an entry clearance visa with their Indian passport. In addition, based on the address provided on their visa applications form, I find that the appellant lived in New Delhi at the time the 2006 visa applications were made. I find that the information in the visa application forms as inconsistent with the appellant's evidence under cross-examination. The appellant stated that he has never been to

India. I find that this is a material inconsistency which goes to the heart of the appellant's account. This material inconsistency undermines the appellant's personal credibility, the credibility of his account and the veracity of his case.

- The appellant has produced Afghan birth certificates for himself, his wife and his mother. The appellant has sent, what he asserts are, original Afghan passports to the respondent which were handed to me at the hearing. The documents were considered in line with the case of **Tanveer Ahmed** and that the documents need to be weighed in light of all the evidence in the case.
- The birth certificate for the appellant is dated 11 November 2016. The birth certificate for the appellant's mother and wife dated 22 December 2016. Despite the certificates being issued within a relatively short period of each other the header and logo for the appellant's birth certificate is different to the appellant's wives and mothers' certificate. The telephone numbers given for the Embassy on the appellant's birth certificate is different despite the address being the same. The note contained on the appellant's birth certificate is different to that contained upon his wife and mothers. The note about the appellant's birth certificate states "it is not common practice in some parts of Afghanistan to provide newly born babies with birth certificates. This certification based on evidence seen may therefore be considered as information only for the date of birth of the person identified above". The note in relation to the wife's appellant's wife and mother's birth certificate states that this "certification is based on evidence seen may therefore be considered as information only for the date of birth of the person identified above".
- The date of birth for the appellant, his wife and his mother are first January. The date given to each of his children in his witness statement is also first January. I find that different format between the birth certificates given the relatively short period within which they were issued, the difference telephone numbers and the difference of the note on each of the birth certificates ways against their reliability. I find that each family member sharing the same birthday of first January is implausible.
- The appellant has provided what it seems original Afghan passports together with an original letter of verification from the Afghan Embassy in relation to the passports and birth certificate. The verification of the birth certificate contains a spelling mistake because in the letter "to whom it may concern" it is been written as "consern". The letter verifying passport spell this the word concern correctly. The letter adopts the same stamp that is used of the birth certificates. However, there is a sticker which is attached letters which is not attached to the earlier birth certificate. It is unclear why put the sticker and the stamp was required to demonstrate authenticity of the letter but not the birth certificate. The letters do not attach copies of

the passports demonstrate that the photographs have been verified. Both the passports and birth certificates have been issued while the appellant has been in the United Kingdom.

- The hearing was previously adjourned by Judge Boyes who gave Directions that the appellant may wish to provide evidence as to how he came to obtain the passport and the process and the information that he provided to obtain it. Despite this Direction there is no evidence before me as to the processes that were undertaken in order to obtain the birth certificate or passport other than the statement within the appellant's statement that he underwent verification process with the Afghan Embassy. Each other factors detailed above weighs against the reliability of the documents.

The grounds of appeal

4. The appellant in his grounds of appeal states the following which I summarise. The respondent accepts that the appellants are Sikhs as claimed. The main issue in the appeal before the First-tier Tribunal was whether the appellants are citizens of Afghanistan or citizens of India. The Judge refused to accept the appellant's account that he had no knowledge of the 2006 entry clearance applications made in India. The appellant stated that he has never been to India.
5. The Judge found it implausible that all the appellants shared the same date of birth of first January of different years. The appellant produced copies of his identity documents but they were not legible and had not been translated. The Judge made findings of the linguistic report and noted that the appellant was fluent in Dari and was able to understand a little Pushtu and gave evidence in Dari at the hearing which the judge accepted was one of the languages of Afghanistan. These are both Afghan languages and not commonly spoken in India. The Judge agreed with the respondent that the linguistic report was inadequate as it did not set the characteristics of the dialect and accent and compared those characteristics of the appellant's outspoken Dari.
6. There is no data suggesting Indian citizens speak Dari at all. There is data suggesting Afghan Sikhs speak Punjabi and sometimes Dari and/or Pashto. In reaching his conclusion the Judge did not address himself to this crucial evidence.

The hearing

7. At the hearing I heard submissions from both parties and reserved my decision which I give now.

Error of law findings

8. I have given anxious scrutiny to the decision of the First-tier Judge and have taken into account the grounds of appeal and the documents.

9. At the heart of the appeal was whether the appellant is an Indian national or a national of Afghanistan. If the appellant was a national of India, the events that he claims occurred in Afghanistan could not have happened because he was not in Afghanistan. If the appellant is a national of Afghanistan, then his asylum claim must be considered accordingly.
10. The Judge has given ample and cogent reasons for finding the appellant is not a national of Afghanistan but is indeed a national of India. The burden of proof in proving nationality, like any other evidence, falls on the appellant to the lower standard of proof required in asylum cases.
11. The Judge considered the evidence of the respondent that the appellant and his wife made an application for entry clearance to the United Kingdom as visitors in 2006. The respondent provided documentary evidence that both were present at the British High Commission in New Delhi and were interviewed personally. The Judge noted that both the appellant and his wife were asked questions by an interviewer which they answered which shows that the interview was not conducted remotely. The Judge also placed reliance on the evidence that at the British High Commission, the passports that they produced were Indian passports and their address was stated as in New Delhi. This evidence therefore squarely put the appellant and his wife as physically present in New Delhi in 2006 with Indian passports.
12. The Judge was entitled to place no reliance on the appellant's bare denial that he did not make the visa applications, and nor did he attend interviews at the British High Commission in New Delhi and his claim that he had never been to India. There was no credible evidence before the Judge, other than the appellant's evidence, that he and his wife were actually in Afghanistan in 2006 and therefore could not have been at the High Commission in Delhi. The most persuasive evidence that the Judge relied upon was that the appellant and his wife were physically present at the British High Commission being interviewed was that the appellant himself accepted that the photographs attached to these 2006 visa application forms were of himself and his wife.
13. The Judge stated that if he was to accept the appellant's account that the appellant had no knowledge of these 2006 visa application, he must accept one of two propositions. Firstly, that those conducting the interview did not verify identity of the persons that they were interviewing against photographs and the passports that were in their possession, notwithstanding the purpose of the interview was that the entry clearance officer had concerns as to the validity of the visa application. Alternatively, the agent who arranged for two people of an identical or very similar appearance to the appellant and his wife to attend the interview. The Judge was entitled to find that both propositions were incapable of belief.
14. The Judge was not only entitled to accept but he was bound to accept that the respondent had provided cogent evidence to show that the appellant

and his wife were present at the New Delhi British High Commission in 2006 being interviewed for visa applications with their Indian passports.

15. No credible reason was advanced by the appellant for the respondent's evidence other than a bare denial that they were at the British High Commission 2006 and also claimed that they have never been to India. The appellant not having provided an explanation for the respondent's evidence, relied on his and his wife's Afghanistan passports to show that there are nationals of Afghanistan and thus imply that they could not have been present at the British High Commission. This evidence is not mutually exclusive. The Afghan passports do not in themselves cast doubt on the respondent's cogent evidence that the appellant and his wife had made an entry clearance application in New Delhi in 2006 where they were both physically present with Indian passports with addresses in New Delhi, albeit in different names. The claimed Afghan passports were subsequently obtained, and which do not prove that they were not physically present at the British High Commission in 2006. These are two separate issues.
16. The Judge noted that the appellant's appeal had been previously adjourned, and Directions given by Judge Boyes for the appellant to bring evidence and to explain the process and documents that he used to update his Afghanistan passport in Europe. Despite this Direction, the Judge noted there is no evidence before him as to the processes that were undertaken in order to obtain the birth certificate or passport other than the statement within the appellant's statement that he underwent verification process with the Afghan Embassy.
17. The appellant therefore was given every opportunity to provide evidence about the process and the kind of information he provided to be issued Afghanistan passports.
18. The Judge was entitled to rely on the inconsistencies and anomalies in the birth certificate and other documents provided by the appellant and was entitled to place no reliance on them. The Judge was also entitled to rely on background evidence that Afghanistan passport are easy to obtain fraudulently. The fact that an Embassy in Europe issued the Afghanistan issued the passports does not in itself mean that they are reliable within the **Tanveer Ahmed** principles especially given the inconsistencies in the birth certificates and other documents. It is reasonable to assume that birth certificate had to be submitted for Afghanistan passports to be issued.
19. The grounds of appeal make much of the fact that the appellant speaks Dari and some Pashto which languages are spoken in Afghanistan and not commonly spoken in India. It was argued that this demonstrates that the appellants must be nationals of Afghanistan. The Judge did not rule out the possibility that the appellant and his wife could have been originally from Afghanistan but moved to India a very long time ago and by at least 2006 had become Indian nationals. Judicial notice is taken of the fact that

people move countries and thereby nationalities. There are British citizens who have lived in this country for a very long time and still speak Pashto and Dari. Therefore, it would be possible for the appellant to speak Dari and still be a national of India.

20. Although the Judge said that he did not find credible that all the families members date of birth is first January with different years, is an error because it is customary in Afghanistan to give the date as first January with different years. I find that this is not a material error in the circumstances of this appeal, and this has not rendered the decision unsafe.
21. I find that the Judge was entitled and required to reach his conclusion based on his consideration and evaluation of the evidence as a whole. The appellant's grounds of appeal are of no merit whatsoever and a merely quarrel with the Judge's findings. The permission is very generous and there is no material error, real, actual, perceived or embryonic.
22. For each of these reasons the Judge was not satisfied, even to the lowest standard, that the events of which the appellant speaks happened in Afghanistan are not credible because the appellant has lived in India since at the very least since 2006 when he made applications for visitor visas at the British High Commission in New Delhi with Indian passports under a different name and date of birth.
23. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

"15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings."
24. I find that I have no difficulty in understanding the reasoning in the Judge's decision for why he reached his conclusions which he was bound to reach on the evidence before him. In any event, I find that a differently constituted Tribunal would not come to a different conclusion on the evidence in this appeal. There are many inconsistencies in the evidence which cannot be explained by the appellant providing an Afghan passport and his ability to speak Dari and some Pashto.
25. I find that no material error of law has been established in the decision. I find that the Judge was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decision.

DECISION

Appeal dismissed

Dated this 14th day of March 2019

Signed by,
Deputy Judge of the Upper Tribunal

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Mrs S Chana