



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06999/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 9 April 2019

Decision & Reasons Promulgated
On 10 April 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

MS
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by Legal Justice Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as MS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant, an Afghan citizen, arrived in the UK on 5th March 2014 and claimed asylum with his wife and child (a girl born in 2009) as dependants. Whilst in the UK they had a son in 2015 who is also a dependant on her father's asylum application. The asylum application was refused, and the appeal dismissed. Further submissions were made, and a further decision taken by the respondent to refuse their protection and human rights claims.
2. The appeal came before First-tier Tribunal judge Cruthers on 17th July 2018 and for reasons set out in a decision promulgated on 18th October 2018, the First-tier Tribunal Judge dismissed the appeal on protection grounds and allowed the appeal on Article 8 human rights grounds. The appellant sought and was granted permission to appeal the dismissal of the protection claim; there was no cross appeal against the Article 8/ human rights decision.
3. The grounds of appeal are, put briefly, that the First-tier Tribunal judge failed to reach a decision on whether the fact that the appellant's wife and daughter would be confined to their home in order to avoid harassment and that the inability of the children to obtain education amounted to persecution.

Error of law

4. The First-tier Tribunal judge found that the basis of the appellant's account lacked credibility; that his account of how they had lived in Afghanistan was not credible and he gave detailed reasons for rejecting witness evidence. This appeal does not however turn on those elements of the claim; this appeal turns on what the position would be on return to Afghanistan – a Sikh family consisting of an adult male, his wife and two children. The eldest child has been attending school in the UK with, for the last academic year an attendance rate of 96.77%. The youngest child, a boy, is attending nursery and there is concern about his development in Prime areas of communication and language. The appellant's wife wishes to attend college but is unable to do so because of lack of child care for their youngest child.
5. The First-tier Tribunal judge found (§64 of his decision)

“... it is my assessment that that test ([very significant obstacles under paragraph 276ADE Immigration Rules]) is made out in the appellant's favour, (whether assessed by reference to Jalalabad or Kabul) – for the following reasons:

 - One relatively consistent theme in the country evidence (and decided cases) is that for many years any Sikh woman who goes out of her home in Afghanistan will almost certainly be subjected to incidents of harassment (scarf pulling and so on) by Muslim men. In my assessment this prevalent harassment means that the female members of the appellant's family would effectively be confined to the house if the family were now to live in Jalalabad or Kabul. The fact that the female members of the appellant's family (in particular) would be subject to frequent harassment and/ or severe restrictions back in Afghanistan appears from (amongst other places) paragraphs 132 and 135 of TG.

- Referring to pages 1 and 4 of the Gurudwara Guru Nanak Darbar letter and TG, I do not find that the risk of members of the appellants' family being kidnapped/ raped/ persecuted rises to the level of a real risk. I would, however, accept that the members of the appellant's family, particularly the female members, would very significantly restrict their ways of living in order to reduce the risk of them being kidnapped.
 - The appellant's children are unlikely to have effective access to education if the family resumes living in Afghanistan (see, for example, paragraph 50 of TG)
 - If the family resumed living in Afghanistan their opportunities for meeting other Sikhs for the purposes of worship would be very curtailed (at best) ..."
6. The First-tier Tribunal judge did not consider whether the significant restrictions on the appellant's wife and daughter and the significant restrictions on education of both children amounted to persecution. This failure amounts to an error of law such that the decision is set aside to be remade.

Remaking the decision

7. The issue to be remade is narrow. There is no challenge to the credibility findings of the First-tier Tribunal judge; this appeal turns simply on whether the strong findings made by First-tier Tribunal judge in connection with confinement to the home and the lack of access to education is such as to amount to persecution.
8. It is difficult to conclude otherwise than that for women and daughters to have to choose to remain confined to their home to avoid harassment and to reduce the risk of kidnapping is persecution. The fact that there is a male member of the family does not prevent that confinement,
9. Furthermore, it is difficult to conclude otherwise than that the prevention of children having access to education is not persecution. In this case the youngest child has some special needs although he has not been formally stated. Whether he grows out of this or not (as considered to be the case by the judge) the restriction on education when this family plainly considers that education is important and relevant to their development cannot be otherwise than persecution.
10. I find that the female members of the family and the youngest child would, on return to Afghanistan be at risk of being persecuted. It follows that the appeal is allowed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remake the appeal by allowing it on international protection grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 9th April 2019

A handwritten signature in blue ink, appearing to read 'Jme Coker', is written in a cursive style.

Upper Tribunal Judge Coker