



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

Appeal Number: PA/10529/2018

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 1 August 2019**

**Decision & Reasons Promulgated
On 21 August 2019**

Before

**UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

Between

**R K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dieu, Counsel

For the Respondent: Mr Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The decision under challenge in this case is that of First-tier Tribunal Judge Page. The Appellant asserts that he is a national of Afghanistan. His nationality is disputed by the Respondent. Judge Page dismissed the Appellant's claim for asylum and humanitarian protection in a decision promulgated on 11 March 2019. Permission to appeal was granted on 18 April 2019 on all grounds.

The Appellant's Grounds of Appeal

2. The Appellant argues that the decision was marred by a number of material errors in relation to the Judge's understanding of the evidence amounting to a mistake of fact. It is also asserted that the Judge failed to take account of material evidence leading to flawed adverse credibility findings. We heard submissions from both Mr Dieu and Mr Howells in respect of each allegation which are recorded on record of proceedings on the court file.
3. The Respondent accepted in the reasons for refusal letter 'RFRL' that the Appellant was a Sikh but not that he was from Afghanistan due, in part, to his alleged failure to name any of the roads that led into and out of Kandahar and his evidence in relation to the existence of 'highways' and 'big roads' in Kandahar.
4. The Judge found at paragraph 14 that given the Appellant was in business in Kandahar he would have known if there were highways there. He states that the Appellant had asked him to accept that he was involved in the clothing business with his father in Kandahar and that goods were transported from one shop to another with others that he traded with and yet he did not know when he was interviewed by the Respondent that there were any highways in Kandahar.
5. The grounds assert that the judge misunderstood the Appellant's evidence in relation to the nature of his business, assuming the setup of his shop to be something like a wholesale operation whereas in fact it was more akin to a retail shop. It is said that this was a significant material mistake of fact as the Judge used it to inform his adverse credibility findings about the knowledge of highways. Furthermore, even if there had been some trade between shops, the Judge had assumed that those deliveries would have required the use of a highway and it was not established that the shops were not nearby or used other routes.
6. Having heard Dr Dieu's submissions and read the relevant questions in the asylum interview (q177 to 181) we accept that the nature of the questions in relation to the roads in Kandahar was confusing. The Appellant was asked variously if he could name the 'big' and 'major' roads in Kandahar and name any 'highways'. He named a number of roads in response and did not specifically state that there were no 'highways'. We accept having read the interview, having heard from Mr Dieu as to his notes from the First-tier Tribunal hearing, and having perused the record of proceedings that it was not the Appellant's evidence that the goods from his business were transported from one shop to another with others he traded with. Mr Howells also conceded that it was unclear where this evidence came from. However, he argued that the adverse credibility finding remained sustainable because the Appellant claimed that there were no 'big roads' in Kandahar.

7. We find that the Judge's conclusion that the Appellant should have known more about the roads in Kandahar due to the nature of his business was flawed because the finding was not grounded in the evidence. The Appellant did in fact state in answer to question 178 that there were 'big roads' in Kandahar. His evidence in relation to the question of the size of roads was not as unambiguous as set out in paragraph 14 of the decision.
8. The Appellant also argues that the First-tier Tribunal erred in finding that the Appellant appeared to have difficulties describing the materials that were used in the business, notwithstanding that he claimed to have spent his whole life in it. It is argued that he gave sufficient information about the fabrics used and it is unclear what more he could have said.
9. At paragraph 30 of the decision the Judge finds that there was a paucity of information contained in the Appellant's interview in relation to the materials sold in his business. The Appellant was asked a number of questions about the materials he sold in interview. He gave a number of names of materials in Punjabi which were not translated and have not been said to be wrong. Notwithstanding the fact that he had already explained that he sold mixed materials and given a number of fabric names it was put to him at question 29 of the interview that he was unable to say what materials he sold. He gave further names for a plain and printed material in Punjabi and the interpreter explained as recorded in the interview transcript in the answer to question 29 that there may have been an issue. The Appellant then provided further information about the nature of the fabric in answer to the interview questions.
10. We conclude that it cannot fairly be concluded that there were shortcomings in the evidence in relation to the materials the Appellant sold particularly in view of the explanation during the interview by the interpreter that there could be difficulties and the fact that the Appellant's representative wrote on 16 May 2018 to the Respondent in the following terms:

"Upon review of the transcript and audio recording of the SEF interview with the client, there appears to be significant confusion caused by misinterpretation of what the question entailed, and the interpreter's lack of vocabulary concerning the materials.'
11. These were matters that the Judge did not take account of in concluding that there was a paucity of information regarding the materials sold. We conclude that this adverse credibility finding is also flawed.
12. The grounds also impugn the Judge's reasons for rejecting the evidence of four witnesses who gave evidence that they knew the Appellant from Kandahar and recognised him again in the Southall Gurdwara over 20 years later. The Judge notes at paragraph 31 that their evidence was essentially the same. It was the Appellant's evidence that it was pure coincidence that he had met them all again.

13. The Judge found at paragraph 31:

“I do not accept, although coincidences do occur, that this many coincidences could occur, that the appellant would come to the United Kingdom and go to the Southall Gurdwara at a time when he had no contacts at all in the United Kingdom and suddenly be reunited with many people who remembered him from the Gurdwara in Afghanistan over twenty years before. The only conclusion I can reach after considering all the other evidence before me and in the round together with their evidence is that they are all well intentioned friends made here who want to help the appellant, and his wife and children, remain in the United Kingdom and have been prepared to come along and give false evidence on his behalf.’

14. Mr Howells submitted that the Judge was entitled to doubt that such coincidences occur. However, there is no suggestion that the Appellant or his witnesses gave inconsistent evidence. Mr Dieu confirmed they were all cross-examined. We find that it is not safe to conclude, in these circumstances, that such coincidences cannot occur without further information such as to the number of Sikhs from Afghanistan in the UK and the number and likelihood of Afghan Sikhs visiting the Gurdwara in Southall. Such likelihoods must be assessed in context.
15. The Appellant also impugns the Judge’s finding at paragraph 35 that the Appellant’s wife cannot have been in Kandahar with him because it was her evidence that she did not know any of his witnesses. The Judge concludes that she would have met them in the Gurdwara in Afghanistan. The grounds assert that this finding is unsound because men and women are separated in the Gurdwara. We find that the Judge did not take this into account as a potentially plausible explanation as to why she did not know them.
16. The Appellant also alleges further errors in relation to the approach to the evidence in relation to the Appellant and his family’s Tazkiras; the details of his journey and the payment of the agent. We do not need to deal with these allegations because the errors of law that we have found to be made out render the credibility findings unsafe.
17. With the agreement of the parties we remit the appeal to the First-tier Tribunal to be heard by a Judge other than Judge Page with no findings preserved.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and we set it aside with no findings preserved. The appeal is remitted to the First-tier Tribunal.

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 2 August 2019

A handwritten signature in black ink, appearing to be 'L J Murray', enclosed in a thin black rectangular box.

Deputy Upper Tribunal Judge L J Murray