



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13702/2017

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 4<sup>th</sup> March 2019

Decision & Reasons Promulgated  
On 18 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

UDOM [S]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr H Samra (Solicitor)

For the Respondent: Mrs H Aboni (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge E. M. M. Smith, promulgated on 6<sup>th</sup> February 2018, following a hearing at Birmingham Priory Court on 29<sup>th</sup> January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on 1<sup>st</sup> January 1950. He appealed against the decision of the Respondent dated 8<sup>th</sup> December 2017, refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395. He has remained in the UK with his wife, and his daughter, who was born on 1<sup>st</sup> February 1979, and his son, who is in his mid-20s. It is a feature of this appeal that the Appellant's daughter is deaf and has difficulty speaking and that those difficulties have been in existence since birth.

### The Appellant's Claim

3. The essence of the Appellant's claim is that he is a Sikh. In early 2014, he was visited in his shop by four men who were from the Taliban. They told him to convert to Islam. They asked him to pay US\$20,000 or leave the country. The Appellant had no money. He was struck by the men with a butt of a knife. The next day they made the same demands. At some stage the Appellant handed over US\$10,000 and another US\$5,000 later on. The Appellant sought advice from the local Sikh temple. Some two and a half months later the Taliban returned and demanded another US\$20,000. A week later the Taliban came to the Appellant's home and beat him up. His son was beaten up. They tried to take and drag his daughter away. The Appellant and his wife held onto her. The Taliban desisted and left. The Appellant states he was wanted by the police. He went into hiding. He did so with his family. He stayed with a Muslim friend by the name of [HS]. He stayed in hiding for eighteen months. In the meantime Mr [S] ran the Appellant's two shops. When Mr [S] was also found out as helping the Appellant's family, he was also beaten up. In the end the Appellant and his family were forced to leave Afghanistan with the help of the local Sikh temple.

### The Judge's Findings

4. The judge did not find the Appellant to be a credible witness. She held that the Appellant had concocted his account of the events in Afghanistan. The Appellant had prevaricated and avoided answering even the most straightforward questions. The Appellant's answer in the screening interview (at question 4.1) did not refer to threats from the Taliban (see paragraph 26 of the determination). It was not accepted that the Appellant would have been in hiding for one and a half years and that he was attacked by the Taliban (paragraph 29). On the basis of the country guidance case of **TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595**, the judge proceeded to dismiss the Appellant's appeal (at paragraph 28).

### The Grounds of Application

5. The grounds of application state that the judge failed to take into account all the risk factors set out in the country guidance case of **TG and Others**, bearing in mind the general unlikelihood of Muslims employing any member of the Sikh community, difficulties Sikhs face in retaining their property, and the decrease of support from

the local Sikh temple in that country. Second, that the judge failed to give proper consideration to the vulnerability of the Appellant's wife and disabled daughter.

6. On 5<sup>th</sup> March 2018 permission to appeal was granted.

### **Submissions**

7. At the hearing before me on 4<sup>th</sup> March 2019, Mr Samra, appearing on behalf of the Appellant, relied upon the Grounds of Appeal. He submitted that the judge had erred in the following two respects in particular. First, there was actually no difficulty in the reply that the Appellant gave during his screening interview (at question 4.1), which is set out in full by the judge at paragraph 26. When the Appellant is asked to briefly explain why he cannot return to Afghanistan, the Appellant states,

“Our life was in danger and my pride was in danger as well. Also, due to fighting in Afghanistan..... Because of the revolution I was in danger. You are accepted [in]Afghanistan by law, but you are not accepted by the people who reject us. We shouldn't be amongst Muslims”.

8. The judge had criticised this answer on the basis that the Appellant at no stage referred to threats from the Taliban or to the demands of money that they complained about later. Mr Samra submitted, that the questionnaire, in the screening interview, did not even get round to asking, “who” it was that the Appellant claimed to have been attacked by.
9. Had that question been asked at section 4 of the screening interview, and had the Appellant then not referred to the Taliban in terms, he could be criticised for not having referred to the Taliban as being his tormentors. Yet, the judge in proceeding to apply the country guidance case of **TG and Others** goes on to say that,

“I'm satisfied that this Appellant accepted his answer in the screening interview (4.1) that his complaint was not about the Taliban..... Indeed, he accepted that he is accepted by law and were rejected by some of the people. The Appellant expresses the view that Sikhs should not live amongst Muslims” (paragraph 28).

10. Second, even insofar as it is the case that the judge refers to the country guidance case of **TG and Others**, what the judge does not then do is refer to the risk factors that would eventuate in the Appellant's case. The Appellant is a 58 year old man. He has a disabled daughter. And it is not conceivable that he would be able to return back to Afghanistan and gain employment. The judge should have considered this in the context of **TG and Others**. The failure to give express regard to the risk factors, set out in the country guidance case, was an error of law.
11. For her part, Mrs Aboni relied upon the Rule 24 response. She submitted that the judge in terms set out the country guidance case of **TG and Others** (at paragraph 28). Therefore it could not be said that the approach could be faulted. The judge also had

regard to more than the discrepancy between the screening interview and the Appellant's later evidence. There were questions about whether the Appellant's relatives were in the United Kingdom. There were questions about whether they would be picked out as a target in the Sikh temple (gurdwara), and the Appellant failed to answer these clearly. Furthermore, the Appellant's case was that he and his family lived with a Muslim family friend, and the friend's son and the Appellant's son continued to conduct the Appellant's business for eighteen months. At this stage, Mr Samra, interrupted to say that this was factually incorrect. The suggestion (which appears in the Appellant's witness statement) is that it was Mr [S]'s son who had joined up with Mr [S] to look after the business. It was not the Appellant's son. That made all the difference, submitted Mr Samra.

12. In reply, Mr Samra went on to say that the quote of the Secretary of State was contrary to his own policy (see page 100) which states at paragraph 3.1.4 that "careful consideration must be given to the Appellant's circumstances ...".

### **Error of Law**

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside. My reasons are as follows. First, although the judge does refer to the country guidance case of **TG and Others** (at paragraph 28), she does not undertake an analysis of the risk factors that would apply to the Appellant, at the age of 58, together with a disabled daughter, and a wife, who would have to return back to Afghanistan.

14. In particular, the position of women in Afghanistan in this situation is one that **TG** expressly referred to. In that case there was evidence from Dr Giustozzi (at paragraph 15) that,

"The Sikhs are easy targets for abuse given their minority status. .... discrimination against Sikhs continue to be reported. Harassment from other 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".

15. Second, Dr Giustozzi, had expressly referred to

"Potential problems the Appellant could have if he was returned to Afghanistan without the capital required and restart a business. He would find it difficult to earn his livelihood. He would continue to face discrimination and abuse, and all his dependants. Costs of living are comparatively high and housing is difficult to secure ..." (at paragraph 15).

These matters, accordingly, needed to be carefully considered in the determination.

16. Third, the position of the Appellant's wife and disabled daughter, and their particular vulnerability in this context, needed careful evaluation. In the

circumstances, I am satisfied that the judge did not apply the country guidance case in spirit to this Appellant's family situation. Whilst I understand why that would have been the case, in circumstances where the Appellant presented himself as "an unhelpful witness" (paragraph 29), who failed to answer straightforward questions, it is nevertheless the case, that the scriptures of the country guidance case of **TG and Others** ought to have been properly applied.

### **Decision**

17. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge E. M. M. Smith pursuant to practice statement 7.2(b) of the Practice Direction.
18. No anonymity direction is made.
19. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

13<sup>th</sup> March 2019