



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07918/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34

**Decision & Reasons Promulgated
On 10 December 2020**

Before

UT JUDGE MACLEMAN

Between

P S

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. The appellant is a citizen of Afghanistan, and a Sikh. The respondent does not dispute his nationality and religion.
2. The respondent refused the appellant's claim by a decision dated 7 August 2019, on the grounds that his account was not credible; *TG and others* (Afghan Sikhs persecuted) CG [2015] UKUT 595 did not support a risk to him as a Sikh in Afghanistan; state protection was available; and, alternatively, he did not have to return to Kunduz or Jalalabad, where he claimed to be at risk, and could reasonably relocate to Kabul, where a small minority of Sikhs remained.
3. FtT Judge Steer, for similar reasons, dismissed the appellant's appeal by a decision promulgated on 29 November 2019.

4. Deputy UT Judge Hall heard the appellant's appeal to the UT on 18 March 2020, and allowed it by a decision promulgated on 6 April 2020. The adverse credibility findings of the FtT had not been challenged, and were preserved. The SSHD conceded error in respect of failure to consider whether the appellant could safely return to Jalalabad, or relocate to Kabul, and failure to consider the most recent background evidence, post-dating country guidance. There was to be a further hearing before the FtT to remake the decision, by way of submissions only.
5. The pandemic intervened. Parties have since agreed to the decision being remade on the basis of written submissions.
6. A transfer order has been made to enable another UT judge to complete the decision.
7. The appellant's submission dated 10 June 2020 is on these lines:
 - (i) The situation has deteriorated significantly since *TG*, with only some 550 Sikhs now left in Afghanistan.
 - (ii) *TG* showed sufficient protection at governmental level, but not at local police level.
 - (iii) *TG* held that those without access to independent income were unlikely to be able to relocate, because of depleted community support mechanisms.
 - (iv) The evidence from the European Asylum Support Office (EASO) now shows general risk due to indiscriminate violence in Nangarhar [the province of which Jalalabad is the capital]. Such risk is heightened for a Sikh.
 - (v) Based on evidence from Professor Magnus Marsden, the remaining Sikh community in Kabul offered scarce opportunity for employment.
 - (vi) The appellant would have no independent source of income or direct family support in Kabul.
8. The SSHD's submission dated 12 June 2020 is on these lines:
 - (i) On retained findings, the appellant, on return, would have access to a home, with his parents and a brother, and to an income. He would be able to find employment. The Taliban would have no motive to pursue him.
 - (ii) There is no risk in the appellant's home in Jalalabad. Indiscriminate violence there does not reach the level to engage protection.
 - (iii) There is no general risk to Afghan Sikhs, on authority of *TG*.
 - (iv) The respondent's CPIN, May 2019, based on European Asylum Support Office (EASO) information, shows no grounds to depart from *TG*.
 - (v) *AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130* holds that there is no general risk in Kabul.

9. The appellant's response is dated 24 June 2020:
 - (i) The SSHD has not responded to the evidence that 82% of the Sikh population in Afghanistan in 2015 has since left, or to the evidence of the level of indiscriminate violence in Nangarhar.
 - (ii) The CPIN notes evidence of an attack on Sikhs in Jalalabad in 2015 and, more seriously, in Kabul in 2020.
 - (iii) The evidence in the CPIN, and as a whole, shows "an ever increasingly marginalised community unable to protect itself from targeted and indiscriminate attacks".
10. Having considered the submissions summarised above, and the evidence on which they are based, I conclude that the appellant would be at risk of persecution if returned to Afghanistan, in Jalalabad, in Kabul, and elsewhere, against which risk there is no legal sufficiency of protection, and which cannot be avoided anywhere in the country.
11. The evidence as a whole, and particularly as cited at [12 - 16] of the appellant's response, supports the proposition that Sikhs in Afghanistan form "an ever increasingly marginalised community unable to protect itself from targeted and indiscriminate attacks".
12. The position, based on the evidence at the time of *TG*, was little better than marginal for any Afghan Sikh. All subsequent evidence is that matters have got significantly worse. On the evidence of a letter from the British Embassy dated 4 February 2019, there is only a small remnant of the community, made up of those too impoverished to flee.
13. The criteria set out in *TG* for a fact sensitive assessment are satisfied, when read with the most recent background information. The appellant has no realistic prospect of security at a local level, of employment, or of support from the Sikh community.
14. I would not go so far as to hold that the evidence shows entitlement to protection for anyone in Jalalabad, or elsewhere, based on indiscriminate violence; but that level is reached for the appellant, based on the additional element of being a Sikh.
15. The decision of the FtT has been set aside. The decision which is substituted is that the appeal, as originally brought to the FtT, is allowed.
16. The FtT made an anonymity direction. It is doubtful whether that should continue, but as parties have not addressed the matter, anonymity is maintained at this stage.

Hugh Macleman

UT Judge Macleman
23 November 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email.**