



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

Appeal Number: PA/09276/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10<sup>th</sup> February 2020**

**Decision & Reasons Promulgated  
On 2<sup>nd</sup> March 2020**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**G S M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Shaw, instructed by Legal Justice Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant claims to be a citizen of Afghanistan born in 1998. He appeals against the decision of First-tier Tribunal Judge Louveaux, dated 25 September 2019, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Respondent rejected the Appellant's claim to be at risk on return to Afghanistan on the basis that the Appellant was not a national of Afghanistan but was an Indian national. The Respondent therefore proposed to return the Appellant to India. The Appellant's father, an Indian national, made an application for a visit visa to the UK in 2006. The

Appellant was included in the application as an accompanying child and his Indian passport was submitted and included in the Respondent's bundle.

3. The Appellant appealed on four grounds: language; fraudulent document; taskira and passport; and nationality. Permission was granted by First-tier Tribunal Judge Holmes, on all grounds, on the basis that there was an arguable error of law at ground 4 for the following reasons:

"If, as the judge found, the Appellant had acquired a taskira and an Afghan passport through fraud - it is arguably not necessarily the case that he had even voidably acquired Afghan citizenship; merely a fraudulently obtained passport. That begs the question of whether the Appellant had in fact ever renounced his Indian citizenship, and thus whether he remains an Indian citizen even now. It is arguable that TG indicates an error of law in approach to the nationality issue."

### **Submissions**

4. Ms Shaw relied on additional grounds and submitted the points she raised were relevant to the key issue of nationality. I was satisfied those grounds clarified the earlier grounds and did not amount to additional grounds of appeal. Ms Everett agreed and was content to deal with the points raised therein.

#### Ground 1:

5. Ms Shaw submitted that the Appellant speaks Kabli and it is clear from the CPIN that this is an Afghan Sikh dialect and therefore this point should not have been taken against the Appellant. The written grounds submit that the judge concluded that it was implausible that a person who had lived his entire life in Afghanistan would not have acquired some knowledge of Dari (or Pushto). It is submitted that Kabli is an amalgamation of Persian Dari and Punjabi and therefore the judge failed to consider or appreciate this point.
6. Ms Everett submitted that it was the Appellant's evidence that he speaks a little Kabli. The judge was entitled to assess the Appellant's knowledge of Afghanistan and gave adequate reasons for why the Appellant should know more about Afghanistan if his claim to have lived there his entire life was credible. The judge put his finding in relation to the languages the Appellant spoke into context and his conclusion that he would have expected the Appellant to know more about the language and culture in Afghanistan was open to him on the evidence.

#### Ground 2:

7. Ms Shaw submitted that it was the Appellant's case that he had submitted a false Indian passport in his application for entry clearance made in 2006. She accepted that the Appellant produced no evidence to support this assertion, but it was her case that the Respondent had produced no

evidence either. Ms Shaw submitted that there was evidence within the Respondent's knowledge that Indian passports could be procured with the submission of fake identity documents. The Respondent's failure to disclose the Country Information and Guidance of February 2015 had resulted in the judge failing to take such evidence into account. In any event, given that such a document was in the public domain, the judge should have been aware of the relative ease in which fraudulent passports could be obtained in India and should have taken it into account in assessing the Appellant's explanation that his Indian passport was a forgery.

8. In the additional points raised today, Ms Shaw submitted that it was irrational for the judge to rely on evidence in Wikipedia with regard to the Appellant's address in Delhi at Kingsway Camp.
9. Ms Everett submitted that the judge gave adequate reasons for rejecting the Appellant's explanation that he had used a forged Indian passport to apply for entry clearance to visit the UK. Other than the Appellant's assertion that the Indian passport was a forgery, there was no other evidence before the First-tier Tribunal to show that the Appellant had fraudulently obtained his Indian passport.

Ground 3:

10. Ms Shaw submitted the Respondent had failed to show that the Appellant's taskira was not genuine because no checks had been made and the judge's finding at paragraph 29 was irrational.
11. The judge stated at paragraph 29: "I accept that the Taskira itself may be a genuine document; the Afghan Embassy was sufficiently satisfied as to the genuineness of the Taskira to issue the Appellant an Afghan passport. However, I find that it was fraudulently obtained."
12. Ms Everett submitted the judge properly applied Tanveer Ahmed and concluded that the Appellant's taskira was not reliable and therefore he had no right to an Afghan passport.

Ground 4:

13. Ms Shaw submitted that the evidence before the First-tier Tribunal showed that the Appellant could not obtain Indian nationality. The burden was on the Respondent to show that the Appellant could return to India and accordingly the judge had applied the wrong burden of proof. The written grounds rely on TG (Interaction of Directives and Rules) [2016] UKUT 00374.
14. Ms Everett submitted the judge's conclusion that the Appellant was not an Afghan Sikh but an Indian Sikh was open to the judge on the evidence before him. The Appellant had failed to demonstrate that he would not be able to obtain Indian nationality.

15. In response, Ms Shaw submitted that Afghan passports were issued in Germany. The Respondent had failed to show that the Indian passport was genuine and the judge should have attached little weight to the Wikipedia report. Had he done so he would have accepted the Appellant's explanation that he had previously relied on a false Indian passport.

### **Conclusions and Reasons**

16. The Appellant arrived in the UK by plane from Pakistan on 16 February 2018 and claimed asylum. He had no identity documents at his screening interview. He was interviewed substantively on 14 June 2018. He could offer no explanation for why his fingerprints matched the visit visa application made in 2006. He submitted a copy of a taskira in his appeal bundle dated 18 February 2019. His appeal on 26 February 2019 was adjourned due to lack of court time. He applied to the Afghan Embassy for a passport on 10 May 2019.
17. The judge did not find the Appellant to be a credible witness because:-
  - (1) He had little knowledge of Dari or Pushto. He spoke only Punjabi and had a little knowledge of Kabli, an amalgamation of Persian, Dari and Punjabi (paragraph 18);
  - (2) He was largely ignorant of many aspects of life in Afghanistan which could not explain his claim to have lived in the Gurdwara. He had no knowledge of the area surrounding the Gurdwara, notwithstanding his father left the Gurdwara to go to work (paragraph 19);
  - (3) The Appellant's account of having left the Gurdwara was inconsistent (paragraph 20) and his claim to have lived in the Gurdwara was not supported by the documentary evidence he produced (paragraph 22).
18. The judge's findings were open to him on the evidence before him and his conclusion that the Appellant was not a credible witness was not challenged in the written grounds of appeal or in submissions before me today.

### **Ground 1**

19. The judge did not fail to appreciate that Kabli was an amalgamation of Persian Dari and Punjabi. The judge found that the Appellant's lack of knowledge of Pushto was one factor which undermined his credibility. On the Appellant's own evidence, he spoke Punjabi and a little Kabli. The judge concluded that the Appellant's claim to have lived in Afghanistan his entire life was undermined by his lack of knowledge of the languages spoken and his lack of knowledge of Afghanistan and his local area. There was no material error of law as alleged in ground 1.

### **Ground 2**

20. Notwithstanding the Respondent's Country Information and Guidance: India 2015, which states that Indian passports could be procured by the submission of false documents, the judge gave adequate reasons for why

he rejected the Appellant's explanation that his Indian passport was a forgery. The information supplied by the Respondent from Wikipedia did not preclude such a finding. The judge was entitled to reject the Appellant's assertion that his Indian passport was a forgery on the evidence in the entry clearance application, the fingerprint match and the lack of evidence from the Appellant to show otherwise. There was no material error of law in the judge's conclusion that the Applicant is an Indian national.

### Ground 3

21. It was for the Appellant to show that the documents he relied on were genuine. The judge concluded that the taskira was not reliable because it was issued when the Appellant was 16 years old and contained a photograph of the Appellant as a young boy. There was no explanation for this or for why the Appellant's uncle was unable to obtain the original taskira which was generally produced when the Appellant was 3 or 4 years old. There is no duty on the Respondent to check with the Afghan Embassy whether the taskira was genuine. The judge's conclusion that the Appellant's Afghan passport was likely to have been fraudulently obtained was open to him on the evidence before him. His finding at paragraph 29 was not irrational.

### Ground 4

22. Having found that the Appellant was not entitled to Afghan nationality it was open to the judge to conclude, in the absence of evidence to the contrary, that the Appellant was a national of India who could re-acquire Indian nationality. The judge's conclusion that the Appellant had failed to show he was a national of Afghanistan was open to the judge on the evidence before him. The Respondent proposed to return the Appellant to India. The Appellant would not be at risk on return to India. There was no material error of law in the judge's conclusion that the Appellant was a national of India and would not be at risk on return.

23. The reliance on TG (Interaction of Directives and Rules) [2016] UKUT 00374 was misplaced. In that case it was accepted that the appellant was a Chinese national with a well founded fear of persecution in China and the issue was whether the appellant could be returned to India where he had been living illegally. In this case, the Appellant is a national of India and the Respondent proposed to return him to India. The Appellant did not have a well-founded fear of persecution on return to India.

24. Accordingly, I find that there is no material error of law in the decision of 25 September 2019 and I dismiss the Appellant's appeal to the Upper Tribunal.

## **Notice of Decision**

## **Appeal dismissed**

**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 his 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.

**J Frances**

Signed

Date: 14 February 2020

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

**J Frances**

Signed

Date: 14 February 2020

Upper Tribunal Judge Frances