



IAC-FH-CK-V1

Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: PA/02280/2020

PA/02282/2020

THE IMMIGRATION ACTS

Heard at Field House

On the 22nd October 2021

**Decision & Reasons
Promulgated**

On the 22nd November 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR JB
MISS MB**

(AN ANONYMITY ORDER IS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Khan, Counsel instructed by Legal Justice Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellants are siblings, born in 1996 and 1999. They are citizens of Afghanistan who arrived in the UK and claimed asylum in March 2019.

They claim to be Hindus who, along with other members of their family, were targeted by the Taliban in their home area of Khost. They claim to fear persecution on return to Afghanistan on account of their religion.

The appellants' protection claim was refused by the respondent in February 2020. They appealed to the First-tier Tribunal where their appeal came before Judge of the First-tier Tribunal Boyes ("the judge"). In a decision promulgated on 20 November 2020 the judge dismissed the appeal.

The judge accepted that the appellants, whilst in the UK, have been attending a Hindu temple, but rejected their claim to be Hindus. The judge gave several reasons for not accepting that they are Hindus, one of which was that their knowledge of the Hindu religion was "woeful". In paragraph 47 the judge stated:

"Similarly, like the first appellant, [the second appellant's] knowledge of the Hindu faith, its beliefs, customs and practices is woeful. Again, I do not accept that it is due to a lack of schooling. One doesn't need to know how to read and write or add up in order to learn and understand the central tenants of one's faith. Particularly in light of the claim that she has been practising in the faith all of her life and has been worshipping and attending the temple regularly."

The grounds of appeal argue that:

the appellants had some degree of knowledge about Hinduism such that describing their knowledge as "woeful" is inaccurate; and

not knowing details about a religion does not demonstrate that a person is not a member of that religion.

A further argument, raised in Ms Khan's skeleton argument but which is not in the grounds, is that the judge failed to have regard to two factors which support the appellants' claim to be Hindus: (i) they have Hindu names; and (ii) they speak Punjabi-Indian, which is a language spoken by Sikhs and Hindus in Afghanistan.

Ms Khan relied on a (very helpful) detailed skeleton argument. Amongst other things, she set out questions about the Hindu religion that the appellants answered correctly in their asylum interviews.

Ms Everett submitted that the decision needs to be considered holistically. She argued that the judge, for sustainable and unchallenged reasons, rejected the appellants' account of what occurred in Afghanistan and that the background evidence is inconsistent with their claim to have lived in an area with other Hindus. She also maintained that the judge was entitled to have regard to gaps in their knowledge. She drew attention to paragraphs in the decision where the judge highlighted numerous questions about the Hindu religion that the appellants were unable to answer.

I agree with Ms Khan that the Asylum Interview Record does not support the conclusion that the appellants have a "woeful" knowledge of the Hindu religion. As Ms Khan argued, during their asylum interviews the appellants answered correctly multiple questions about the Hindu religion. I set out below extracts

from Ms Khan's skeleton argument where she has summarised the answers given correctly by the appellants.

In the first Appellant's interview he was asked the following questions on Hinduism:

- i. Q 69 – the Appellant correctly states the names of the three gods – Brahma Vishnu Mahesh. He correctly states Brahma is the creator of the world.
- ii. Q71 – He correctly stated that Hindus do not ask others to change their religion and they do not force people to change their religion. However, there are many different view in Hinduism.
- iii. Q72 - Priests perform the role of imparting knowledge in Hinduism.
- iv. Q73 – Janam Ashtimi does celebrate the birth of Shri Krishna.
- v. Q74 – Raksha Bandhan is correct
- vi. Q76 he mentions Diwali and Q79 correctly summarises the reason for celebrating it. Q80 correctly states the frequency. Q81 states how they celebrate it.
- vii. Q82 correctly identifies the Bhagwat Gita as a holy scripture.
- viii. Q84 – Does not know Veda – but that is associated with high caste Hindus, the Brahmin class. Britannica states *“For members of the upper castes, a principle characteristic of Hinduism has traditionally been a recognition of the Veda, the most ancient body of Indian religious literature, as an absolute authority revealing fundamental and unassailable truth.”*
- ix. Q85 he does not know the ritual for a baby but the Appellant is a young unmarried man.
- x. Q87-91 – He correctly identifies the three Gods and principle of Tridev.
- xi. Q92 the Appellant confirms he is not married but is still asked to explain the ritual for marriage.
- xii. Q93 – he correctly uses the word ‘hawan’ or ‘haven’ for a Hindu ritual fire¹.
- xiii. Q93 – he uses the Hindu word for ‘phere’ the practise of walking round the fire in a Hindu wedding. A correct description of the Hindu ritual of marriage.
- xiv. Q95 – he uses the Sanskrit word for priest
- xv. Q96 – he is asked about the four aims of life – the Appellant does not name the 4 purposes by name but the purpose of these aims is to *“act morally and ethically and lead a good life”*. The Appellant's answer is directed towards that.
- xvi. Q98 – the Appellant correctly describes the Hindu diet.
- xvii. Q100 – the Appellant attends the temple and that is an important part of the Hindu faith.
- xviii. Q103 – the Appellant correctly states both Hindu prayers he recites

In relation to the second Appellant, it is submitted that she did answer a number of questions correctly:

- i. Q49 - She correctly identifies some Hindu holiday.
- ii. Q50 - She correctly states what Janam Msutami (variation in spelling) is
- iii. Q52 and 53 she correctly names Hindu Gods.
- iv. Q54 – she correctly describes what Vinshu does
- v. Q55 – she correctly describes what Brahma does.
- vi. Q56 – she correctly describes what Mahesh does
- vii. Q57 – she is asked about what the Hindu holy book is – there is no one Hindu holy book. Judge Boyles mistaken thinks there is.

- viii. Q58 – she is asked about Veda – but that is not ‘a Hindu holy book’.
- ix. Q64 – she correctly states why Diwali is celebrated
- x. Q64 – she correctly states how Diwali is celebrated
- xi. Q69 – she uses the word Mandir – a Hindu temple
- xii. Q70 she uses the Sanskrit word of ‘manter’ when she goes to the temple.
- xiii. Q76 – correctly states Mata Rani is a God.
- xiv. Q162 – she makes a point to say that cows bones were thrown at her when she went to the Temple in Afghanistan. Cows have a special significance in Hinduism.
- xv. Q164 knows cows meat is forbidden in Hinduism

It may be accurate to say that the appellants have a limited knowledge of the Hindu religion, but to describe their knowledge as “woeful” is inconsistent with the interview record as summarised above.

I agree with Ms Everett that the judge gave other reasons for rejecting the appellants’ claim to be Hindus. However, it is clear, from reading the decision as a whole, that the judge’s finding that the appellants had “a woeful” knowledge of the Hindu religion played a substantial part in the decision and was material to the outcome.

Ms Khan’s submissions about the appellants having Sikh/Punjabi names and speaking Punjabi-Indian were not raised in the grounds. Nor do they appear to have been raised before the First-tier Tribunal. I therefore decline to take these additional points into consideration. This is, however, immaterial, as, for the reasons set out above, I find that the judge materially erred.

I reserved the decision at the hearing. However, I asked Ms Khan and Ms Everett to address me on whether, in the event that I found there to be an error, the decision should be remitted to the First-tier Tribunal or remain in the Upper Tribunal. Ms Khan submitted that the decision should be remitted as extensive fact-finding would be necessary in order to resolve the question of whether or not the appellants are Hindu. Ms Everett agreed that further fact-finding would be necessary. I asked Ms Everett whether, in the light of the current situation in Afghanistan, it was the respondent’s position that it was necessary for the appellants to establish that they are Hindus in order to succeed in a protection claim. She stated that it was, as the respondent does not accept that all Afghans are entitled to protection. As the appeal will need to be made afresh with no findings preserved – and significant fact-finding is likely to be necessary - I have decided to remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Date: 11 November 2021