



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

Appeal Number: PA/12912/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 February 2022**

**Decision & Reasons Promulgated  
On 2 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**M K aka T K  
[ANONYMITY ORDER MADE]**

Appellant

**and**

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

Respondent

Representation:

For the appellant: Mr Alasdair Mackenzie of Counsel, instructed by Elder Rahimi Solicitors

For the respondent: Mr Steven Whitwell, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of M K who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

### **Decision and reasons**

1. The appellant appeals against the respondent's decision on 23 October 2018 to refuse her and her family members refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. Her husband, her two daughters and their son are dependants in this appeal.
2. The appellant and her family all arrived in the United Kingdom at Heathrow Airport on 15 January 2018 and claimed asylum the same day. The citizenship of the appellant and her family is disputed: they claim to be of Afghan Sikhs who travelled to Europe on Indian nationality documents to which they were not entitled. The respondent accepts that if the appellant and her family are of Afghan nationality, they are entitled to international protection in the UK. However, the respondent considers them to be Indian citizens.
3. **Mode of hearing.** The hearing today took place face to face. The appellant and her witnesses gave evidence through an Indian Punjabi interpreter. There were no interpreter difficulties, although the third witness did say that there were some vocabulary differences, and gave the latter part of his evidence in English.

### **The Schengen applications: 14 December 2017**

4. **Indian enquiries.** The respondent made enquiries of Immigration Enforcement International (IEI) in India, and received confirmation that the passports Indian passports relied upon had been issued on 14 August 2012 and 3 October 2012 for the adult appellants, and 1 June 2017 and 26 May 2017 for the child appellants. Tracking numbers for Speed Post delivery of the passports were supplied.
5. Copies of printouts from the Government of India Online Passport Portal were provided, as well as a link to an open source website (<https://ceodelhi.gov.in/OnlineErms/ElectorSearchtest.aspx>), showing that in their Indian nationalities, the adult appellants were listed on the 2018 electoral roll for Assembly Constituency, at an address in Delhi.
6. **French Embassy New Delhi: Schengen applications and supporting documents.** Following an enquiry to the French Embassy in Delhi, the respondent received copies of Schengen visa applications dated 14 December 2017 made by all five family members, in the names on the Indian passports, applying in New Delhi for entry to France via Switzerland.
7. The Indian passports relied upon in those applications were issued in New Delhi on 9 August 2012, over five years before the family travelled to Europe. The appellant and her family have not sought to verify whether the passports are genuine, either through the Indian authorities in the UK or in India.

8. The basis of the Schengen visa applications was that the family would be staying at the Hotel Novotel, Pont de Sevres, Paris, and would arrive in the Schengen area on 24 December 2017, intending to depart from the Schengen area on 2 January 2018.
9. Supporting letters from Blue Diamond Constructions indicate that the proposed visits were for tourism, over the Christmas 2017 and New Year 2018 period. Air tickets were produced showing departures from Delhi Indira Gandhi International airport to Zurich on 24 December 2017 and return from Paris to Zurich on 2 January 2018, and then from Zurich to Delhi, all with Swiss International Air Lines, booked through Luxury Vacations of Delhi. There were also travel insurance and hotel documents, including a reservation for the whole family at the Citizen Oberland in Interlaken, Switzerland, for 2 nights from 24 December 2017. An Indian tax return for the father appears genuine, except that at the bottom it says 'Sign Gere' instead of 'Sign Here'.
10. It is the appellant's account that she and her family left Afghanistan for Pakistan at the beginning of December 2017, before the Schengen visa applications were made in New Delhi, and that the Indian passports on which they travelled were obtained for them by the agent who organised their travel from Afghanistan to the United Kingdom via Pakistan and two other unknown countries, before arriving at Heathrow.

### **Refusal letter**

11. The respondent in her refusal letter summarised and considered the international protection claim. Since it is agreed that the nationality issue will be determinative of this appeal, I do not propose to set out the international protection account here. The respondent accepted that the appellant and her family were of the Sikh religion, that they had lived in Afghanistan for a time, and that they had a reasonable knowledge of circumstances there. She rejected the rest of the appellant's core claim.
12. The respondent accepted that if the appellant and her family were Afghan citizens, and she removed them to Afghanistan, they had established a real risk of persecution or serious harm in Afghanistan. Removal directions would not be set to Afghanistan.
13. The respondent proposed to remove the appellant and her family to India, where there was no risk to them as Indian Sikhs. There were 20 million Sikhs in India, with a literacy rate of 75%, and the Sikh population had grown by 8.4% in the decade 2001-2011. Confusingly, under the heading 'Inclusion in the Refugee Convention' the respondent then proceeded to say that there was no reasonable degree of likelihood that the family would be persecuted on return to Afghanistan. Mr Whitwell has not sought to defend that assertion nor did he rely on it at the hearing.
14. In relation to the nationality question, the respondent noted that the appellant and her family had completed both screening and asylum interviews in Punjabi. Punjabi was not one of the official languages of Afghanistan but it was one of the official languages of India. The

respondent also relied on the enquiries made of the Indian authorities and on the Schengen applications.

15. The respondent found the appellant not to be a credible witness as to her nationality, and was not satisfied that the appellant and her family were Afghan citizens. She considered that the appellant had shown deception in so claiming and found that on the evidence, the whole family were Indian citizens.
16. The refusal letter did not consider in detail the human rights risks to the family in Afghanistan as their Afghan nationality was not accepted. The appellant's claim was rejected both within and outwith the Immigration Rules HC 395 (as amended) and the respondent consider that she had shown any exceptional circumstances or any proper reason for discretionary leave outside the Rules.
17. The appellant appealed to the First-Tier Tribunal.

### **First-tier Tribunal decision**

18. The First-tier Judge considered it not reasonably likely that the appellant and her family, being Sikhs, would have voluntarily gone to live in Afghanistan, 'given the troubled times that have existed and continue to exist in Afghanistan'. However, the judge did not consider it to be 'per se, implausible', that they might have done so. He accepted that if the appellant and her family were Afghan citizens, they would be entitled to asylum.
19. The First-tier Judge did not consider that the appellant was a credible witness. He did accept that the appellant and her family had lived in Afghanistan for some time, and had detailed knowledge of life there. The original Indian passports, and the other evidence on which the respondent relied, were not in evidence before the First-tier Tribunal. They still are not, but the current bundle contains photocopies of these documents.
20. The judge found the family to be Indian citizens and dismissed the appeal. The appellant appealed to the Upper Tribunal.

### **Upper Tribunal hearing**

21. The decision of the First-tier Tribunal was set aside by consent of both parties: Ms Everett for the respondent accepted that the First-tier Tribunal's reasoning was inadequate at the level of an error of law and that accordingly, the decision in this appeal must be remade. Ms Everett also accepted that the question of nationality would be determinative of the appeal: if the family were Afghan citizens, they would be entitled to the status of refugees.
22. I gave directions for the future conduct of the appeal, including a direction that the parties address the decision of the Upper Tribunal in *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 250 (IAC). That is the basis on which this appeal comes before the Upper Tribunal today.

## **Remaking hearing**

23. For the remaking hearing, the parties filed a joint bundle, and skeleton arguments from both representatives. I heard oral evidence from the appellant, from her aunt (Mrs G), and from an acquaintance (Mr K). Mrs G and Mr K are both settled in the UK. Mrs G has indefinite leave to remain, having originally been granted refugee status in 2014 or 2015: Mr K has refugee status following a successful appeal, but not yet indefinite leave. I have had regard to all of the documents, evidence and submissions before me, but particularly those to which my attention was drawn during the hearing.

## **Appellant's evidence**

24. The appellant adopted her two witness statements dated 28 May 2019 and 20 January 2022 (the latter signed at the hearing today). She explained how she had approved the contents and asked that they stand as her evidence-in-chief. She was then tendered for cross-examination.
25. So far as relates to the nationality issue, the appellant's evidence in the first witness statement is that she was unaware of the Schengen visa applications and the Indian passports which had since been made available to the respondent, nor was she clear how these related to her and her family members.
26. The Gurudwara in Jalalabad arranged the agent, an Afghan Muslim who spoke Dari. They knew they were headed for the UK: the agent took them all in one car, spending 5 days in Pakistan and then travelling on. They left Afghanistan in late November or early December 2017 and travelled for about 1½ months to reach the UK in early January 2018. They went first to Peshawar, where they were locked into a house and left for 5 days, then they spent 10 days in a second house. They gave the agent their fingerprints in that second house, and he took photographs of them all on his mobile phone.
27. After 10 days, the first agent transferred the group to a yellow-haired white man, who took them to an airport, probably in Pakistan as all the people were Muslim. He kept the passports the whole time. They flew for about 4-5 hours, landing where there were some women covering their heads and some darker people. They took a train with the white man for 8-9 hours. Many of the people they travelled with were in western clothing (t-shirts and trousers). They had no common language with the people they travelled with or with the white man.
28. At the other end, they were taken by car to a very dirty hotel, where their fingerprints and photographs were taken again. They were locked in, and spent 10-12 days there, before being taken by the white man to an airport, where they travelled on a flight with two transfers in unknown countries. The appellant understood that the final flight was said to have been Brussels-Heathrow. The respondent's evidence shows the family travelling from Dubai to Heathrow on 10 December 2017, the same date that the Schengen visa applications were made in New Delhi. There has

been no fingerprint check to see whether the fingerprints associated with the Schengen visas and the Indian passports are the same as those of the appellant and her family.

29. The appellant summed up her position thus:

“In respect of the Indian passports that the Home Office states relate to me and my family, two of them are noted to have been issued in 2012 and the others in mid-2017. These passports do not relate to us, we have never applied for or been issued with Indian passports. We have no right to live in India. ...

15. The Home Office conclude that we are Indian nationals but that I have resided in Afghanistan. I have never heard of an Afghan Sikh who has the right to live in India choosing to live in Afghanistan. Every Sikh family in Afghanistan that was able to find a way to leave Afghanistan has left. The community now is so much smaller than it used to be. The situation there for our community is so bad that no-one would choose to stay if they had another option, particularly if that option was to live in a country where people speak Punjab, where there is a religious and cultural community to join. It makes no sense.

16. The Home Office in the decision also make the point that Punjabi is a national language of India but not of Afghanistan. All the Sikh community in Afghanistan speak Punjabi. Some of the men speak Pashtu or Dari for business, but for women to speak either of these languages is very rare, as we are not educated, save in the Gurudwara, and we only go out of the house to go to the Gurudwara. ”

30. When the appellant and her family landed in Heathrow in January 2018, the white agent was travelling with them and had held the passports throughout. He told them to sit and wait before the passport control barriers in the airport, then disappeared with the passports and had not been seen since. They waited ‘many hours’ until someone from the airport came to them, by which time the appellant was crying, and her husband was unwell.
31. The appellant relied on letters from the Jalalabad Gurudwara and from the Gurudwara Guru Nanak Darbar in Southall, both confirming that the family were known in those Gurudwaras and were from Afghanistan. There were supporting letters from 6 members of the Gurudwara community in the UK who had known the appellant and her family in Jalalabad.
32. In her second statement, the appellant said that her husband’s mental health had continued to deteriorate. He was no longer speaking to anyone, nor was he receiving therapy. He had lost weight, and was not currently on any medication. Her husband had had Covid twice. She asked again, why she would be in the UK, not India, if she had the right to live in India, ‘a country where I speak the language and have my community around me’.
33. The appellant and her family were living in Sunderland, where there were very few Afghan Sikhs: the majority of that large community were in London. The appellant said that the Punjabi she speaks is Indko Punjabi,

an Afghan dialect of Punjabi. Some words in standard Punjabi were not known to the appellant.

34. The appellant explained that she had not been able to call Mrs G as a witness at the First-tier Tribunal hearing because she was recently widowed. Mrs G was her maternal aunt, also from Jalalabad, and they speak every day, although at the date of the statement, they had only met twice since the appellant came to the UK. Mrs G was vulnerable: she had a heart condition, did not go out much, and was hard of hearing.
35. The appellant was then tendered for cross-examination. Mr Whitwell spent some time on the general medical practitioner notes for the appellant's husband, which recorded the appellant acting as her husband's interpreter at appointments with three general medical practitioners: on 13 March 2018, 18 April 2018 and 16 May 2018 with Dr Ahmed Elsafy, on 13 September 2018 with Dr Helen Parry, and on 6 November 2018 with Dr Asmita Dixit. Dr Dixit's note is more explicit than the others: '[appellant's husband] attended with wife. Consultation in Hindi and English, although both speak Punjabi'. Dr Parry's and Dr Elsafy's notes do not specifically state that the appellant used English in interpreting for her husband.
36. The appellant's evidence about this was unsatisfactory. She said she could not remember events from so long ago, and that she had always brought her daughter along, so that the daughter did the interpretation and explained the situation to the appellant. This part of the appellant's evidence was not credible. I consider that she has understated her ability to speak English. The appellant also said that she did not speak Pashtu or very much Dari, having not been educated beyond year 4 at primary school. After that, she stayed home, as her parents were scared of the surrounding Muslim community.
37. The appellant confirmed that the photographs on the Schengen visa applications were indeed those of her and the family. She had no knowledge of the documents on which they travelled as she had never handled them: the agent kept the passports throughout. They had never made any such application. As to the photographs on the copy passports, those were too dark and unclear for her to be certain if they were photographs of her and her family, or not.
38. The appellant was asked when she had last seen Mrs G in Afghanistan. She was unable or unwilling to answer that question directly. She said they had both lived in Jamalbara, near Jalalabad, but following the index incident in which her husband lost his brother and father, they had dispersed. Mrs G had already come to the UK before that. It is unclear where in Afghanistan Jungalbag is situated.
39. The appellant said that she and her family members and acquaintances never met in each other's homes: she would see Mrs G and Mr K at the Gurudwara. It was not appropriate to meet as a family in each other's homes: the children would shout and play, and the Muslims in the area 'didn't like all that'.

40. There was no re-examination.

### **Mrs G's evidence**

41. The next witness was Mrs G, the appellant's maternal aunt. She adopted her witness statement dated 20 January 2022, which she signed at the hearing. It had been explained to her in Punjabi and she wished it to stand as her evidence-in-chief.

42. In that witness statement, Mrs G said that she understood that she had come to the UK in 2014, but she was uneducated and did not know dates. She knew it was about 7 years earlier. She spoke Afghan Punjabi, not standard Punjabi, so she always needed her daughter-in-law in case interpreters used words she did not understand. She had lived in Jalalabad all her life, near the Sikh temple there. She had two siblings, a brother and a sister (the appellant's mother), both now dead. The families saw each other at the Sikh Gurudwara.

43. After Mrs G left Afghanistan, she did not stay in touch with the appellant, but when they came to the UK the secretary of the Southall Gurudwara made the connection, and the appellant was put in touch with Mrs G's late husband and thus with Mrs G. The Southall Gurudwara was very active in tracing and linking up separated family members. As soon as she saw the appellant, Mrs G recognised her as her sister's only child: the appellant even looked a little like Mrs G's sister.

44. Mrs G had never been to India and did not know when her family had come from there to Afghanistan: they had no surviving connection with India and had been living a very long time in Afghanistan.

45. In cross-examination, Mrs G said she had left Afghanistan '6 years ago' and seemed surprisingly certain of that. Otherwise, her evidence matched her witness statement.

46. There was no re-examination.

### **Mr K's evidence**

47. Mr K relied on the positive decision in his favour on 24 November 2015 by First-tier Judge Eban, and also on his witness statement of 28 May 2019. Judge Eban found Mr K's evidence to be credible and accepted that he was an Afghan Sikh from Jalalabad, who had a limited education, and whose family owned a fabric shop in one of the bazaars. The appellant spoke what the judge described as 'street Dari'.

48. Mr K and his family were targeted for protection payments by the Taliban, and told by them to convert or to hand over their property. They refused: the men came back armed and severely beat both Mr K and his father. The latter had a heart attack and died. Mr K's wife was kidnapped and ransomed for the deeds to his property. He refused, and she was killed. Finally, Mr K exchanged his house and shop for a passage out of Afghanistan for himself and his siblings, in about the middle of November 2014.



49. In his witness statement, Mr K said that he was an Afghan national and was granted refugee status for 5 years on 16 12 2015, valid until 3 December 2020. He lives in Northolt. He knew the appellant and her family from the Gurudwara. Her father-in-law was a *hakim*, an ayurvedic doctor with a shop in Jalalabad. His own family used them, and he was sometimes sent to collect medicines from the shop. The appellant's husband sometimes worked in the shop as well.
50. He remembered seeing the appellant and her family from the Jalalabad Gurudwara. He had met her again at the funeral ceremony in the Southall Gurudwara following the death of Mrs G's husband and recognised her and her husband there. They exchanged telephone numbers and later she asked if he was willing to be a witness. The statement continued:
- "10. I can confirm that [the appellant] and her family were regular attenders at the Gurudwara in Jalalabad. There was never periods of time when they were not there. Their ayurvedic shop was known in the community and there were not periods of time when it was closed as far as I remember. Sometimes people in the community travelled to Pakistan for trading or business, but only high up people like politicians or people high up in the Gurudwara travel to India. Normal families in the community do not travel back and forth to India. As it is a small community, it was known when people travelled. It is not possible that [the appellant] and her family were spending large amounts of time in India, and that it was not known and talked about in the community. This is the kind of thing that would be talked about in the Gurudwara. People would comment on it, and on the fact that the Ayurvedic shop was closed. During the time I was living in Jalalabad, I never heard anything about this family not being in Jalalabad.
11. All of us have to use an agent to leave Afghanistan and find a safe place to live. We don't know exactly what is done by the agent to secure our travel."
51. Mr K adopted his statement and was tendered for cross-examination. His credibility was not challenged. Mr K explained that the last time he saw the appellant was in the Jalalabad Gurudwara, just before he left Afghanistan at the end of 2014. They saw each other in the temple, and also in the Ayurvedic shop, where they went to get medications.
52. There were several Ayurveda shops in Jalalabad, but the witness' father preferred to use the one run by the appellant's family, because they knew them from the Gurudwara. There were few doctors, so everyone went for naturopathic treatment.
53. Jalalabad was a small place, where Sikhs all knew each other, at least those who went to the same Gurudwara. There were only two Gurudwaras, one large and one small. Mr K's family, and that of the appellant, went to the large one. They had never been proper friends, just temple and shop acquaintances. He had never been to the appellant's home.
54. There was no re-examination.

### **Gurudwara letters**

55. An undated letter from the Historical Place of Purity Gurudwara Sri Guru Nanak Darbar Jalalabad Afghanistan is written by Mr Major Singh on behalf of its management committee in Khalsa Diwan, Jalalabad. He describes the appellant's late father in law as 'one of the famous physicians of the area' who was charged with killing a Muslim man, whose family claimed that his Ayurveda medication had killed him.
56. Mr Singh describes an attack on the family home and the shop, leading to the appellant's father-in-law's death, and a threat to abduct his granddaughters, who are dependants in this appeal. Following her father-in-law's death, the shop was permanently shut as the son had no knowledge of his father's occupation.
57. Mr Singh then described the financial difficulties that caused, the continuing threats, and the temple arranging for two rooms in a building which it owned to be made available rent free to the appellant and her family, to protect them. The threats still continued, and the management committee remained concerned:

"The matter had become very serious and members of the management committee called them in the premises and asked them if they have any money with them. They said that they had some gold that belonged to their mother-in-law as well as their own. They had a shop and nothing else. The Gurudwara management cttee sold their gold and shop, and made some contributions from their own funds, and an amount of about US \$40-45000 was paid to an agent so that [the family] could be sent to a safer place. The family left Jalalabad on 28 November 2017. Thus, the entire incident and details have been told to you. "
58. A letter dated 13 November 2018 from the Gurudwara Guru Nanak Darbar in Southall is written on behalf of the Afghan Ekta Cultural Religious Community Centre and the Sikh temple there. After confirming the writer's belief in the Sikh religion and Afghan nationality of the appellant and her family members, the unnamed author listed 5 members of the community who were prepared to vouch for the appellants, with details of their British passports. The list included Mrs G and her late husband, and four other persons described as 'community relative'. Mr K is not on that list: he is an additional person prepared to confirm their status.
59. The writer confirmed that while Punjabi was not one of the national languages of Afghanistan, it was spoken mainly by minorities (Afghan Sikhs and Hindus) as their first language. The temple had in its community a large number of Afghan Sikhs who had fled their country of origin due to religious persecution, and to the lack of safety for them to live there or practise their religion freely.
60. The letter continued:

"We are in contact with Gurudwaras (Sikh temples) in Afghan and receive updates through social media on the situation in the country. We are informed that the situation in Afghanistan for non-Muslims, especially Sikhs and Hindus, is extremely volatile and not safe at all. The Gurudwaras in Afghanistan are finding it difficult to continue providing food, shelter and

security to members of our community and receive no support from the government.

The extremist groups and Islamic fundamentalists in Afghanistan have made situation very precarious for non-Muslims especially for women and children. Due to fear of persecution and regular death threats, women and children are not allowed to go out freely, neither do they receive even basic education. Sikh women are at greater risk and feel vulnerable due to many recent incidents of kidnapping, rape and persecution for not converting to Islam.

We believe Sikhs and other ethnic minorities are not safe anywhere in Afghanistan and are always targeted because of their faith and identity ...”

61. The remainder of the letter is a full and helpful summary of publicly available materials dealing with the situation of Sikhs in Afghan in 2018.

### **Other individual documents**

62. The appellants have produced a herbal medicine certificate from the Ministry of Public Health in Nangarhar Province, confirming her father-in-law’s right to practise under the Health Regulations there; an Afghan driver’s licence for her husband, and Taskiras for the children, which bear the names of both the appellant and her husband, in the form on which they now rely.

### **Country evidence**

63. The appellants commissioned a country report dated 1 December 2018 from Claudio Franco, a writer, analyst and consultant specialising in the Pakistan and Afghanistan region, Islamist Militancy and al-Qaeda terrorism. His expertise in the region and in the Middle East and South Asia dates back to 1999. Since 2011, he has worked in his own consultancy with Dr Antonio Giustozzi, who is well known to this Tribunal. He continues to visit Afghanistan regularly to conduct research and maintain his wide-ranging contacts and research networks there: when his report was written, he had been in Afghanistan in the autumn of 2017, just a month or two earlier. He was working on a book about the history of the Taliban movement and insurgency after 2001.
64. Mr Franco’s report pre-dated by three years the recent coup by the Taliban in Afghanistan in August 2021. At [5], Mr Franco explained that Sikhs in Afghanistan maintained a separate religious identity and preserved the use of Punjabi, which is their liturgical language. For a woman to speak Punjabi, but not Dari or Pashtu, was consistent with what he knew of the Sikh community in Afghanistan.
65. Men, who worked outside the home, would likely speak Pashtu or Dari in addition, but women stayed home, speaking Punjabi and with little opportunity to learn any of the other Afghan languages. Due to the increased social isolation of the remaining Sikh families in Afghanistan,

and the treatment of them and risks to them outside the home, increasingly even male children were not learning any language other than Punjabi.

66. He considered it 'entirely implausible...that an Indian Sikh family would move to Jalalabad to spend time or live there'. Indian-origin Sikhs in Afghanistan would be there for diplomatic or consular roles, probably in Kabul, living in highly secure compounds and armed guards.
67. Mr Franco confirmed that the practice of Ayurveda by Sikh *hakeems* was an important occupation in their community and the majority Muslim population would also use them, partly because Ayurveda was less costly for poor people than medical doctors and pharmaceutical medicines. The clients of *hakeems* were more likely to be poor and illiterate. They were therefore disproportionately likely to have extreme views and the account of them blaming the appellant's father-in-law for the death of someone, and attacking the *hakeem*, was credible.
68. One of his researchers had contacted the Jalalabad temple and a named representative (Mr S) of the Jalalabad Gurudwara had confirmed that the adult appellants were known to them and used to attend the Gurudwara to worship. Mr S had no direct knowledge of the documents purchased to enable the appellants to travel: it might have been dealt with by his predecessor. Mr S confirmed that the Gurudwara made every effort to assist its members who were destitute, homeless, or under threat in their own homes, but the difficult situation of the community meant that they could only provide very basic sustenance and shelter, and no long term solution.
69. Mr S did know about the attack on the appellant's husband's family and their shop in 2017: he did not know the precise details but he knew it was to do with the father-in-law's work as a *hakeem*. He knew that the Gurudwara paid for the funerals, that the appellant's husband was badly injured, that the family had been threatened with the abduction, forced marriage and conversion of their daughters. He also confirmed that Sikhs and Hindus were unable to rely on the authorities for protection and thus unlikely to seek domestic protection from them.
70. Mr Franco considered that the arrangements made for the journey were consistent with his knowledge and experience of how agents operated in Afghanistan. The rest of Mr Franco's report relates to the general circumstances of Afghan Sikhs and does not assist with the nationality question with which I am principally concerned today.

## **Submissions**

71. In her skeleton argument for the respondent, Ms Willocks-Briscoe relied on the Schengen visa applications made in the French embassy in Delhi in December 2017, and the (bad) photocopies of the passports whose details appear in those applications. The respondent has never seen the originals, so it is not possible to assess whether they had been altered. Ms Willocks-Briscoe relied on the Indian government's confirmation of the

issue of passports in those names on those dates, and the voter registration of the adults named on the passports.

72. The skeleton argument continued:

“11. It will be argued that in the appellant’s journey to the UK with her family, that the passports of the individuals *would have been assessed and screened* on a number of occasions by immigration officials at various ports, in terms of establishing that there were genuine documents.

12. Given the information obtained, it is submitted that the appellant and her family’s passports *would have been checked* in Dubai, Heathrow and Brussels airports, and as such, *would have been* subject to scrutiny from port officials.”

[*Emphasis added*]

That part of the respondent’s argument is pure supposition.

73. In oral argument for the respondent, Mr Whitwell also relied on the copy passports and Schengen applications, reminding me that the appellant accepted that the photographs on the Schengen applications were indeed photographs of her family members. It was true that in her 2019 CPIN for India the respondent had acknowledged that false documents were easy to obtain in India, but the same was true of Afghanistan. No greater weight should be placed on the Afghan documents than the Indian documents.

74. Mr Whitwell also relied on the interpretation provided by the appellant for her husband at the GP surgery on a number of occasions. That suggested that she spoke Hindi and/or English, which would be unusual for an Afghan Sikh woman, on the expert evidence before the Tribunal.

75. Mr Whitwell accepted that none of the appellant’s witnesses had been undermined in cross-examination, although Mrs G had insisted that she came from Afghan 6 years ago, which could not be right: her absolute certainty on that point was not consistent with her witness statement which said she was uncertain as to any longitudinal measure of the passage of time. Mrs G was an extended family member, which should go to the weight her evidence bore.

76. Mr Whitwell argued, that overall the appellant had not discharged the burden of proving that the Indian passports and the Schengen applications were not genuine. The respondent had discharged the primary evidential burden on her. The Tribunal should find the appellant and her family to be citizens of India, not Afghanistan, and dismiss the appeal.

77. In his skeleton argument, Mr Mackenzie reminded the Tribunal that the sole issue was the nationality of the appellant and her family. The respondent accepted that if they were indeed Afghan citizens, they would be entitled to refugee status. She also accepted that they were all Sikhs.

78. The appellant’s knowledge of life in Afghanistan at the asylum interview and subsequently was sufficiently detailed that there were only two possibilities: either she and her family were born and lived in Afghanistan

as Sikh citizens of Afghanistan, or they were Indian Sikh citizens who chose to live in Afghanistan during the civil war. Ms Willocks-Briscoe considered that there was no other explanation for the undisputed facts.

79. The respondent's contention that the appellants were Indian nationals rested exclusively on the Schengen visa applications made in Delhi, India, on 14 December 2017 and the poor quality photographs of the accompanying passports. The supporting documents were mostly dated 13 December 2017.
80. The respondent's own records showed the appellant and her family travelling from Dubai, via Heathrow, to Brussels on 10 December 2017 and back to Heathrow from Brussels on 15 January 2018. They were not in New Delhi applying for Schengen visas on 14 December because they were already in Europe, where they had arrived 4 days earlier. The visa applications and supporting documents should not be given weight.
81. On 6 June 2019 in the First-tier Tribunal, the respondent had sought and been granted an adjournment to produce evidence linking the appellants to the visa applications made in New Delhi in December 2017. No such evidence had ever been produced. The Indian government passport status tracker was only an online tool to see where a passport application had reached, and when the documents were posted out. It might confirm the issue of a genuine passport with that number, but not whether the passport was issued to these individuals. Neither the French authorities, nor the respondent, had asserted that any check had been carried out to see whether the passports had been tampered with or photographs substituted, which was obviously relevant.
82. Similarly, the flight bookings which accompanied the Schengen applications, and which routed the appellant and her family from Delhi, through Paris and Zurich, did not fit with the fact that they were already in Belgium, having travelled there through Dubai and London Heathrow just a few days earlier. Any visas they had used to travel to Dubai, London and Brussels had not been supplied by the respondent or any of those countries.
83. The medical evidence was that the appellant's husband was already mentally ill on arrival in the UK and he was therefore unlikely to have been writing letters on company notepaper in a false name, claiming to be running a construction business in Afghanistan.
84. All of the other evidence before the Tribunal pointed towards the appellant and her family being Afghan citizens. It is set out in the appellant's skeleton argument but it is not necessary to recite that evidence here, as the respondent's case turns on the Schengen documents and the Indian passports.
85. In his oral submissions, Mr Mackenzie relied on the skeleton argument and made the same points. Again, there is no need to set out his oral submissions in detail, as they follow closely the written submissions already summarised.

86. Mr Mackenzie asked me to allow the appeal.

### **Analysis**

87. I remind myself that the Upper Tribunal held in *Hussein* that:

1. *A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport.*
2. *The burden of proving the contrary lies on the claimant in an asylum case.*
3. *Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.*

88. The evidence before me is not sufficient to show that this appellant and her family members hold genuine passports, apparently issued to them, and not falsified or altered. The applications with which they were submitted were made in names which are not the names of the appellant and her family members, and although their photographs appear on the Schengen applications, there is evidence in the appellant's account of at least two occasions in their transit to the UK when the agent took mobile phone pictures of all the family members, which could have been used to make such an application. The original passports are not available to consider, and the photographs on the copies are so indistinct that it cannot be said with any certainty that they are images of this appellant and her family members.

89. It seems to be right that passports in these names were issued and posted, and that people with the names of the two adults in the passport group are also on the voters' roll in India. That is not probative of the genuineness of these alleged passports. The test at (1) in *Hussein* is not reached.

90. All of the other evidence points towards the appellants being Afghan citizens. The Gurudwara evidence in the Jalalabad and UK temples is compelling. The Southall Gurudwara identified 6 people who remembered the family, and a seventh, Mr K in this decision, remembered them at the funeral of the second person on that list, Mrs G's husband. The Gurudwara witness in Jalalabad not only remembered the family, but also the attack on the shop, and the help the Gurudwara gave to the family, to keep them safe initially, and then to raise US\$45000 to pay for an agent to help them get to safety in the UK.

91. I do have some doubts about the linguistic ability of the appellant. I think she now has more English than she says she does. However, the point taken against the family, that Punjabi is not an official language in Afghanistan, misses the point that Punjabi is the religious language of Afghan Sikhs and is spoken in all their homes, and that only men who work outside the home normally pick up the other Afghan languages. There is therefore no discrepancy in relation to the interpretation language which the appellant and her family use.

92. The respondent already accepts that the family lived in Afghanistan for some time. There is considerable weight in the finding that unless benefiting from diplomatic or consular status, no Indian Sikh family would relocate to Afghanistan, where the circumstances, even before the Taliban coup in August 2021, were capable of being found to be persecutory: see *TG and others (Afghan Sikhs persecuted) (CG)* [2015] UKUT 595 (IAC) (3 November 2015). There is no updated country guidance yet on the new situation, but it is unlikely to be better than in 2015.
93. The account of their life in Afghanistan and of their circumstances given by the appellant is highly consistent with the country evidence and the individual evidence about her family. I have no hesitation in finding that she and her family are Afghan citizens.
94. Accordingly, this appeal is allowed.

## **DECISION**

95. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

I remake the decision by allowing the appeal.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 4 February 2022