



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

Appeal Numbers: AA/06609/2014
AA/06610/2014
AA/06611/2014
AA/06612/2014
AA/06613/2014

THE IMMIGRATION ACTS

Heard at Newport

On 24 November 2015

**Decision & Reasons
Promulgated**

On 7 December 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**NS
AK
JK
GK
DS**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr I Ali instructed by M & K Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. I make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the appellants who claims asylum and some of whom are children. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellants. Any disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

Background

2. The appellants are a family consisting of husband and wife and three children born respectively on 1 January 1979, 1 January 1982, 6 June 2003, 30 August 2009 and 3 October 2012.
3. They each claim to be citizens of Afghanistan and to be Sikhs.
4. They entered United Kingdom clandestinely on 7 March 2014 and claimed asylum. The basis of their claim was that they came from Jalalabad in Afghanistan and were followers of the Sikh faith. They claimed to have been ill-treated by Muslim men in Afghanistan. In March 2012, the first appellant claimed that his brother was killed by Muslim men who came to the house demanding money and he and his father were beaten. In the months thereafter, Muslim men would regularly come to the family shop demanding money and taking it from the first appellant's father by force. In August 2012, the first appellant and his family were visited at home by Muslim men and threatened that they would be killed if they did not pay money. The first appellant's father was beaten and the first appellant's wife was raped by one of the assailants. The men threatened to kill the whole family if they did not pay money to them. On 30 December 2013, the appellant's father closed the family shop and the family decided to leave Afghanistan in January 2014. They traded their shop, their house and possessions in exchange for an agent who arranged their passage to a safe country.
5. On 14 February 2014 the first appellant, his wife and children left Afghanistan. His parents remained but left subsequently. The first appellant and his family passed through a number of European countries before entering the UK in a lorry on 7 March 2014 when they claimed asylum.
6. On 19 August 2014, the Secretary of State refused each of the appellants' claims for asylum and made decisions to remove them as illegal entrants by way of directions under paras 8 - 10 of Schedule 2 to the Immigration Act 1971. The respondent did not accept that the appellants were from Afghanistan, were of the Sikh religion or had been attacked and threatened as they claimed by Muslim men.

The Appeal to the First-tier Tribunal

7. The appellants appeal to the First-tier Tribunal. In a decision promulgated on 26 March 2015, Judge Barcello dismissed the appellants' appeals. Although he accepted that they were adherents to the Sikh faith, he did not accept that they were Afghan citizens or, as a consequence, that the ill-treatment they claimed as a family at the hands of Muslim men had occurred in Afghanistan.
8. As a consequence, he dismissed the appellants' appeals on asylum and humanitarian protection grounds and also under Art 8 of the ECHR.

The Appeal to the Upper Tribunal

9. The appellants sought permission to appeal to the Upper Tribunal on a number of grounds challenging the judge's adverse findings in relation to their nationality and in rejecting their account of ill-treatment in Afghanistan. The dismissal of the appeal under Art 8 was not challenged.
10. Permission to appeal was initially refused by the First-tier Tribunal but granted by the Upper Tribunal (UTJ Lindsley) on 6 July 2015.
11. Thus, the appeals came before me.

Discussion

12. On behalf of the appellant, Mr Ali made a number of submissions challenging the judge's reasoning in para 43 of his determination based upon the appellant's grounds and Mr Ali's written skeleton argument.
13. First, Mr Ali raised a number of points in respect of para 43(v) where the judge reached the conclusion that the appellants' National ID Cards (at pages 42 - 52) were not genuine documents supporting the appellants' claims to be Afghan nationals. Paragraph 43(v) is in the following terms:

“(v) The Appellant produced within his bundle documents purporting to be National ID Cards (pgs.42-52(A)) produced by the Interior Ministry. I have approached this evidence in accordance with the principles derived from **Tanveer Ahmed (Starred) 2002 UKIAT 00439**. Whilst I am told that the documents were obtained in September 2014, the originals had not been produced until the morning of the hearing. Having considered the documents very carefully, I have been driven to the conclusion that it is very clear that they are not genuine documents in the manner described by the Appellant. I reach this conclusion for 5 reasons.

a. The Appellant stated at Screening Interview that he had never had a national identity card, which the documents clearly purport to be. At no stage in the full interview was reference made to these documents. Had these existed at the time and been held by Gudwara for safe keeping as the Appellant suggests, I would have expected some reference to them at one of the interviews at some stage. I would not expect him likely to forget ownership of something as important as an identity card which he claims to have obtained in person, legitimately in April 2013.

b. The Appellant claimed that he attended at a building to acquire all 4 documents at the same time. There is no explanation as to why he might do so in April 2013 as opposed to acquiring the documents as and when needs required over his lifetime.

c. The Appellant and his wife each told me that the documents were acquired at a time when their youngest son was 6 months old, yet his age is given as 2 years old on the document. Given that the Appellant claims to have been present at the time the document was created and in company with his family and a member of the Gurdwara, the error is inexplicable.

d. None of this family claim to speak Pushtu, yet each of the documents states that that is their mother tongue. None of the documents make reference to their ability to speak Punjabi, yet there is clearly a means by which to do so under "Language: Foreign".

e. The original documents are in pristine condition, not having seemingly been folded or marked in any way. This seems an unlikely feature for documents which have the history claimed by the Appellant."

14. Mr Ali initially submitted that the judge had been wrong in para 43(v)(a) to doubt the authenticity of the ID cards on the basis that the first appellant had said at his screening interview that he had never been issued with one. Mr Ali submitted that at question 2.2 (A3 of the bundle) the first appellant had said that he had "never been issued a passport". He had said nothing about an ID card. However, when I drew Mr Ali's attention to the first appellant's answer to question 2.6 in his screening interview when he had been asked whether he had ever owned a national ID card and had replied "no", Mr Ali accepted that he could no longer rely upon this point.

15. Mr Ali then submitted that the judge had been wrong in para 43(v)(d) to doubt the authenticity of the ID document on the basis that they wrongly stated that Pushtu was the appellants' "mother tongue" when in fact none of the family claimed to speak Pushtu. Mr Ali relied upon the *Country of Origin Report* (15 February 2013) in relation to Afghanistan where it is stated:

"...the relevant authorities are negligent and inattentive in recording applicants' data in national ID cards and there are mistakes when writing names, father's names, age, and other data of applicants on cards. This will cause many problems for the applicants in the future. Authenticity and accuracy are necessary in the issuance of national ID cards and the authorities should pay due attention to it."

16. Mr Ali submitted that the judge had failed to take this background evidence into account which provided an explanation for the inconsistency in what is said to be the appellants' first language.

17. Mr Ali also submitted that the judge was wrong in para 43(v)(e) to take into account the "pristine condition" of the documents when there was no expert evidence before the judge as to how the documents should look.

Mr Ali submitted that it was not right to draw the conclusion that the judge did based on the state of the documents in the absence of expert evidence.

18. Mr Ali links those specific submissions with a more general one based upon fairness. He submitted that the appellant had not been aware that the genuineness of these documents would be called into question at the hearing. Had that been known, Mr Ali submitted, he would have been in a position to seek an adjournment in order to obtain supporting evidence as to the document's authenticity including the possibility of obtaining expert evidence. He referred me to pages 20 - 25 of the appellants' supplementary bundle containing a birth certificate for each of the appellants showing their Afghan nationality and a supporting letter from the Society of Afghan Residents in South Wales confirming that the first appellant is part of the Afghan community in South Wales.
19. Dealing first with the issue of fairness, I see no basis upon which it can be said that the appellants, who were legally represented by Counsel, were in any way taken by surprise at the hearing that the authenticity or reliability of the documents was in issue. These documents were only produced, in their original form, on the day of the hearing. Although, having consulted the judge's Record of Proceedings and the note of the two representatives at the hearing, the Presenting Officer does not appear to have made any or, at least, any detailed submissions on the authenticity or reliability of the documents, the refusal letter clearly and unequivocally put in issue the appellants' credibility. That, in effect, put in issue the reliability and/or authenticity of the documents submitted by the appellant to establish the very case that the respondent had rejected in the refusal letter. Putting it shortly, it must have been plain and obvious unless the Presenting Officer conceded they were genuine and reliable that their evidential value was both challenged and in issue before the judge.
20. The appellants had, in my judgment, ample opportunity to provide such evidence as they chose both to support the reliability of the documents but also their general case that they were Afghan nationals. Although Mr Ali pointed to supporting documents provided in the supplementary bundle since the hearing before the First-tier Tribunal, there was no expert report in relation to the ID cards and the other documents related to the appellants' nationality but did not speak directly to the reliability of the documents themselves. Their nationality was, of course, always in issue. It is not clear to me, therefore, precisely what opportunity to produce further evidence at the First-tier Tribunal's hearing relating directly to the reliability/authenticity of the ID cards it is said the appellants have in fact been denied.
21. There is no substance in Mr Ali's submission which sought to distinguish between the reliability of a document, applying Tanveer Ahmed [2002] UKIAT 00439) and whether the documents were genuine. The judge both

refers to Tanveer Ahmed but also he is not satisfied that the documents were genuine. Whilst that is a potential confusion, the upshot of the judge's reasoning is plain, namely he considered that the documents had no evidential value in respect of the appellants' claims to be Afghan nationals.

22. Turning to the two specific points made by Mr Ali, it would undoubtedly have been better had the judge referred to the *COI* Report as part of his reasoning in para 43(v)(d). Even if it is correct to assume, and I am not wholly persuaded that it is, that the judge did not have the appellant's arguments including the reliance on the *COI* in mind (see for example para 39 of the determination), this only formed one of a number of reasons given by the judge for doubting the evidential value of the ID cards. Likewise, the judge was entitled to take a common sense approach to the state of the original documents and their "pristine condition" even in the absence of expert evidence. It had been, as I have already pointed out, always open to the appellant to produce supporting expert evidence in relation to the authenticity of the ID documents. None was produced at the hearing and none has been produced since the hearing. There was no obligation on the respondent to verify the documents.
23. Consequently, I reject Mr Ali's submissions that the judge's reasoning in para 43(v) in doubting the evidential value of the ID document disclosed any material error of law.
24. Secondly, Mr Ali challenged the judge's reasoning in para 43(i) in which the judge doubted the first appellant's claimed nationality on the basis of the his lack of knowledge or vagueness about Afghanistan. The judge said this:

"43(i) When he was interviewed though the appellant did answer a number of questions accurately, he appeared to have only a vague and non-specific knowledge of Jalalabad, Afghanistan and ordinary incidences of life there. He did not know for example an idea of the population size of the country, when the Russians left the country, who was the President in 1993, the name of any newspapers, the district the airport is in or an indication of the distance between the hospital and university. In other areas, he gave wrong answers to questions relating to the features upon the 100 Afghani note, who was in the running to be President, the same of the lower house of the National Assembly, when there was large Earthquake in the country and the name of the dam in the north west of Jalalabad. He sought to explain his lack of knowledge by stating that he was not formally educated and did not often leave the house. This however, was not consistent with claims to have been working with his father in the shop and to have attended the Gurdwara regularly, where he was educated as a youngster and later a volunteer who attended for much of his days. I would not expect him to answer each and every question asked accurately. However, even accounting for his claimed circumstances, I consider that he has displayed a lack of knowledge of the area he claims to have lived, which is not consistent with is account to have been an Afghan national who was raised and lived in

Jalalabad for his entire life. Taken with my other concerns as to his credibility, I am not satisfied that he is from Afghanistan.”

25. That finding is to be contrasted with the judge’s finding in para 43(ii), in part based upon the first appellant’s religious knowledge, that he and his family are of the Sikh faith.
26. Mr Ali submitted that the first appellant had answered a number of questions correctly at question 78–113 of his asylum interview (at B18 – B22 of the respondent’s bundle). The Judge had not properly taken that into account.
27. Whilst Mr Ali is undoubtedly correct that the first appellant answered some question correctly, the judge was, in my view, fully entitled to take into account the first appellant’s lack of knowledge in respect of a number of matters relating to Afghanistan. The judge took into account the first appellant’s claim not to have been formally educated or to leave the house often but noted that he worked in his father’s shop and attended the Gurdwara regularly. I see no error of law in the judge’s assessment of the first appellant’s evidence and the reasons he gave in para 43(i) for doubting his claimed nationality based upon an obvious lack of knowledge in respect of a number of matters which the first appellant might well be expected to know given that he had lived his entire life in Jalalabad in Afghanistan.
28. Consequently, I reject the appellant’s challenge to para 43(i) of the judge’s determination.
29. Thirdly, Mr Ali challenged the judge’s reasoning in para 43(iv) in which, he submitted, the judge had wrongly failed to take into account properly the supporting evidence of other witnesses supporting the appellants’ claimed nationality. At para 43(iv), the judge said this:

“(iv) Within his appeal bundle, the Appellant produced a number of documents, each of which I gave careful scrutiny. In the subsequent paragraphs I shall outline my significant concerns in respect of two of them, however at this juncture I wish to consider specifically a number of letters and statements from family members and friends supporting the Appellant’s claims. There was a witness statement from JSN who is said to be the Appellant’s cousin and states that he grew up in Afghanistan with the Appellant. Annexed to the document is a copy of his British passport. Additionally, similar information is provided by GSN, who is said to be the Appellant’s uncle, KSN, HSN, Mr BSL and another (whose document is so poorly copied I cannot make out the name). Each claims to have known the Appellant from time living in Afghanistan. Of the 6, none were called to give evidence. Whilst there was an explanation as to 2 being unable to attend, the reality is that his evidence, which goes to the heart of the claim could not be challenged by the Respondent. I have given this matter anxious consideration and have reached the conclusion that in the circumstances I can only give the statement and letters limited weight. Having considered all of the evidence in the round, the weight I could attribute to these documents was not

such that the evidence contained within them, unchallenged as it was, could outweigh my overwhelming concerns about the Appellant's credibility."

30. Mr Ali submitted that in relation to two of the witnesses there was an explanation for their absence. In particular, he referred me to the evidence in respect of Mr N who was unable to attend because he was looking after his terminally ill uncle (see letter at page 12 of the supplementary bundle). Mr Ali pointed out that the witness' uncle had subsequently died and there was a death certificate in the supplementary bundle to support that. Mr Ali submitted that the judge had been wrong to discount the evidence of the witnesses given in their statements and also that they had produced ID documents showing that they were, themselves, Afghan nationals.
31. What weight is properly to be given to a witness' evidence is quintessentially a matter for a First-tier Tribunal Judge and the judge's conclusion on that will rarely be challengeable on the basis of error of law unless the weight given is irrational. Here, the witnesses were not cross-examined. Even though two of the witnesses gave an explanation as to why they could not attend, including Mr N, the fact remained that their evidence was not tested in cross-examination. Mr Ali did not suggest that he sought an adjournment in order that any of the witnesses could attend. The judge, therefore, had to assess their evidence in written form only. I agree with Mr Richards' submission that in para 43(iv) the judge did not find against the first appellant simply because his uncle did not come to the hearing in order to give evidence. What the judge did was to conclude that the written evidence could only be given limited weight given that it was in written form and not subject to cross-examination. In any event, as the judge makes plain in the final sentence of para 43(iv), he did take the evidence into account but, in the light of his other reasons for doubting the appellant's credibility, did not consider that in themselves they led him to a different conclusion on the appellants' claim. That reasoning was neither irrational nor in any other way legally impermissible. Consequently, I reject Mr Ali's submission in this regard also.
32. Standing back and looking at the judge's reasons at paras 37-44, I am satisfied that the judge carefully considered all the evidence and his reasons were adequate and legally sustained his factual findings that the appellants had not established their Afghan nationality or the basis of their claim for international protection.

Decision

33. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellants' appeals did not involve the making of a material error of law. The First-tier Tribunal's decisions stand.
34. Accordingly, the appellants' appeals to the Upper Tribunal are dismissed.

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Signed

A Grubb
Judge of the Upper Tribunal