



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

Appeal Number: PA/00270/2017

THE IMMIGRATION ACTS

Head at Newport

On 05 September 2017

**Decision & Reasons
Promulgated**

On 31 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**BSW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Fenney, NLS Solicitors

For the Respondent: Mr S Kotas, Senior Home Presenting Officer

DECISION AND REASONS

Introduction

- 1. Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**
- The Respondent is 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 Respondent and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

- 3.** The appellant is a Sikh national of Afghanistan, born in January 1971, his wife born in 1974, also seek national Afghanistan is dependent upon his appeal. He arrived in the United Kingdom on 20 June 2016. He applied for asylum on the same day. On 28 December 2016, the application was refused. He appealed to the First-tier Tribunal
- 4.** On 27 February 2017, the appeal was dismissed. The judge made adverse credibility findings. The judge concluded that flight had not been predicated upon their having suffered persecutory treatment. In assessing risk on return currently the judge concluded that the appellant could return to his home area of Jalalabad in line with the country guidance case of TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 and DSG and others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148.
- 5.** The appellant was granted permission to appeal by the First-tier Tribunal on the basis that although the challenge to the factual and credibility findings were without merit because they were adequately supported by reasons, it was arguable that there had been no assessment of risk to the appellant on return to Afghanistan as a Sikh: that there has been no assessment whether he would face a real risk of persecution or would manifest such individual risk factors might increase risk to him of serious harm for the purposes of humanitarian protection.
- 6.** The respondent filed rule 24 response defending the judge's decision pointing out that at paragraphs 24 and 25 the judge expressly takes into account the country guidance case of TG, noting that the assessment of risk is fact specific pursuant to the country guidance and credibility assessment has been done within the context of this background evidence. The judge goes on to find the appellant's account of attacks and extortion by the Taliban was not credible at paragraph 26 to 34. Between 34 to 36 the judge accepts that the appellant is seek and again invokes TG and finds that the appellant can return to his home area without risk.
- 7.** In submissions Ms Fenney asserted that in the country guidance case of TG the individual risk factors which might increase risk were identified and the judge in her decision had failed to go through those factors, such as their likely financial circumstances, access to accommodation, and availability of support of the Gurdwara, and consider how they applied to the appellant.
- 8.** I invited clarification as to the evidence on those points and the submissions before the First-tier Tribunal.
- 9.** Ms Fenney was not the representative below, but had the skeleton argument of counsel on the day. She took me through the appellant's bundle of evidence including witness statements and the skeleton

argument but conceded that no individualised risk factors had been argued before the court.

- 10.** Mr Kotas relied the absence of evidence and submissions going to the individualised risk factors and referred me to the rules 24 response.

Discussion

- 11.** The appellant's historical account in summary is of his having suffered a violent incident some 8 years' prior. The couple said they had wanted to leave then but did not have enough money. They had continued working, required to pay a levy to the Taliban for the last 2 years, until they could afford to come to the United Kingdom, and had sold all their assets to pay for their trip. The judge rejected their account of the incident, of the levy, and of their financial circumstances including how they came to fund the trip. As identified by the judge granting permission there is no merit in the grounds' challenges to the judge's adverse credibility findings.
- 12.** At the First-tier Tribunal the case was argued on the basis of the credibility of the historical account. As far as humanitarian protection is concerned the skeleton argument reveals that the articles 2 and 3 points were argued on the same basis as the asylum ground, to the point that the persecutory treatment suffered also met the test of inhuman or degrading treatment, so that they stood or fell together. The only argument in the alternative was a request for a recommendation for discretionary leave to remain, due to the risk of the appellant and his wife being detained at the airport for being Sikh. That relied on a newspaper article from 3 July 2012, i.e. predating the country guidance case, which found that that was not a risk.
- 13.** The head note of TG at (ii) is that
- (a) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general which is the threshold of persecution.*
- 14.** The grounds correctly point out that TG at (iii) identifies the need for a fact specific assessment, and refers to factors, including likely financial circumstances and ability to access basic accommodation and the availability of support from the gurdwara.
- 15.** Ms Fenney's submission that the judge needed to give express consideration of the matters listed in TG (iii) lacks merit because, as revealed by the skeleton argument of Counsel on the day and the appellant's documentary bundle including the witness statement, there was no evidence of difficulties of the type referred to as being matters that might give rise to individualised risk. There was no reliance on anticipated

difficulty in terms of the appellant's likely financial circumstances or accommodation, or their ability to rely on the gurdwara, or of other matters that would bring the appellant within the criterion set out in the country guidance of TG. In addition, the appellant had the hurdle of the adverse credibility findings in the context of the appellant's financial position in Afghanistan. The judge correctly self- directs in respect of the relevant cases, and specifically mentions the need for a fact specific approach. No submissions were directed to the criterion now relied upon. I also note Counsel's point in the skeleton argument that internal relocation to Kabul would give difficulty because the appellant would be deprived of the local support of his gurdwara. In those circumstances for the judge to list the relevant factors so as to point out the lack of reliance on them and of any evidence to substantiate any claim based upon them, is formulaic rather than substantive.

- 16.** Even though the standard of proof is low, the burden nonetheless remains on the appellant to bring forward their evidence and to put the case. The judge was entitled to deal with the case on the basis it was argued and the evidence submitted. The judge correctly self-directed in respect of the country guidance case and did not overlook any of the appellant's evidence but dealt with it all. The judge reached conclusions which were open on the evidence.

Decision

- 17.** The decision of the First-tier Tribunal dismissing the appeal reveals no material error of law and stands.

Signed
Deputy Upper Tribunal Judge Davidge

Date 27 October 2017