Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00553/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 October 2017	**On 12 October 2017**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

SS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J. Fisher, instructed by Malik & Co solicitors
For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

DECISION

1. The appellant, arrived in the United Kingdom on 5 July 2016, concealed in the back of a lorry. On being discovered at Dover Docks he claimed asylum, his wife and two adult sons being dependent upon his claim. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Isaacs who, by a determination promulgated on 8 March 2017, dismissed his appeal against refusal of his asylum and human rights claim.

2. The nature of that claim is, of course, well known to the parties and, for present purposes, it is sufficient to reproduce the summary of the

appellant's protection claim set out by the judge at paragraph 9 of his determination:

> "The appellant is a Sikh. His claim is based on his fear that if he is returned to Afghanistan he will be killed by the Taliban or other Muslims on account of his religion. The appellant says that approximately eight or nine months before he arrived in the United Kingdom he was kidnapped by members of the Taliban. He was released after about three hours only after the intervention of a Muslim neighbour. Two months later he was threatened by a man telling him that if he did not leave Afghanistan he would be killed. Whilst in the UK at the Southall temple, the appellant said he was given a letter from the Taliban threatening him."

The respondent refused the application for asylum because it was not accepted that the appellant and his family were nationals of Afghanistan or that they had been living in that country and so the account of their experiences could not be true. In the alternative, the respondent rejected the claim as lacking in credibility and not likely to be true, even if the appellant were from Afghanistan. The respondent noted also that the appellant and his family had travelled through other safe countries on their journey to the United Kingdom, including Austria and France, and so their failure to claim asylum before arriving in the United Kingdom further damaged the appellant's credibility.

3. Although the judge accepted that the appellant and his family were nationals of Afghanistan and that they had been residing in the area of Kabul, he did not accept to be true any part of the appellant's account of his experiences in Afghanistan or of the reasons for travelling to the United Kingdom, save that the appellant had said, both in interview and in oral evidence at the hearing, that the availability of NHS medical treatment for the whole of his family, particularly for his disabled son, was an important consideration in his choice of the United Kingdom as a destination. At paragraph 36 of his determination the judge recorded that the appellant, in giving oral evidence:

> "…was asked whether medical help was the only reason he came to the United Kingdom and he said yes it was the only reason. He was then asked further whether it was safe for him to return to Afghanistan. He said no, because the Muslims would kill him there. He repeated that the reason his family came to the United Kingdom was so that they, and in particular his son, could get the necessary medical treatment."

4. The judge heard oral evidence from the appellant and from one of his adult sons. The appellant's wife was unable to give evidence as she was, at the date of the hearing, receiving in-patient treatment in hospital. In closing submissions, Mr Oyemike, who appeared for the appellant, relied upon the current country guidance in *TG and others (Afghan Sikhs*

persecuted) Afghanistan CG [2015] UKUT 00595 (IAC) and submitted that the appellant should be found to be credible in his account and so the appeal should be allowed. In respect of the letter the appellant said had been given to him at the Sikh temple in Southall, the judge recorded, at paragraph 34 of his determination, that:

> "Mr Oyekie said he would not be relying on the letter and therefore it had not been translated."

5. The judge gave extensive reasons for his conclusion that the appellant and his son were not credible witnesses and that he did not accept their account to be true. These are set out between paragraphs 60-80 of the determination. The judge found that the appellant, in particular, had given a contradictory and inconsistent account of events at the core of his claim.

6. The appellant had given conflicting accounts of his work situation. In his screening interview he said he was a servant. In his asylum interview he said that he worked for a clothing company. In his witness statement, he said he worked in a fabric shop "for some Hindus" and that he was unable to pay a ransom to those who had kidnapped him because he was an employee. Contradicting that, in oral evidence he said that he owned a family shop and that he was the sole owner of the shop which was in his name. He had said also that he had given the shop away to fund the journey to the United Kingdom which, of course, would not have been possible had he been an employee or servant. This led the judge to conclude that the appellant "has not been honest" about his circumstances in Afghanistan.

7. In the asylum interview the appellant said that his son's disability was due to him having been tortured by the Taliban, saying later in the interview, when reminded that his account had been that no other member of his family had experienced problems with the Taliban, that his son had been tortured not by the Taliban but by "normal Muslims". However, when that son gave evidence, he did not claim to have been tortured by anyone.

8. This led the judge to conclude that the evidence of the appellant in this regard was also "not honest". The judge found that the appellant's son had not been attacked or injured by anyone, but that his deteriorating health is due to a genetic condition.

9. The credibility of the appellant as a witness was damaged further by his claim that he had never left Afghanistan before travelling to the United Kingdom because in interview he had said that he had previously taken his son to Delhi for medical treatment.

10. The judge next explained why he found lacking in credibility the appellant's account of being kidnapped. The judge did not accept that all the events that occurred during the asserted abduction and his negotiated release at the demand of his Muslim neighbour could have taken place during the short period clamed, and nor did the judge find credible that, if the appellant had been kidnapped for ransom by the Taliban that they would give him up and release him at the request of a neighbour, there being no asserted Taliban standing of authority vested in that neighbour according to the appellant's account in oral evidence, who was said simply to have pleaded on the appellant's behalf. Elsewhere, during the interview, contradicting that account, the appellant had said that this neighbour was "a well known figure and has influence" and that this neighbour "threatened them that if they did not release me because of his high chair and position he would get all the Taliban wiped out". The judge rejected the appellant's claim in evidence not to have given this answer, recorded in the transcript of the interview.

11. The judge observed that if the Taliban had yielded to this threat from the neighbour so that the appellant was released unharmed and without the payment of any ransom, then it was unlikely that further threats would be made by the Taliban to the appellant just two months later.

12. As for the evidence given by the appellant's son, the judge found this gave rise to yet further credibility difficulties. Whilst the appellant himself had said that his fear of violence in Afghanistan had begun 8 or 9 months earlier, his son said that the family had lived in fear for a long time and that was the reason he had stopped attending school when just 9 years old. This witness said also that because of the fear of being killed, the family had never left the Kabul area before coming to the United Kingdom but, as has already been noted, the appellant said that he took his son to Delhi for medical treatment whilst they were living in Afghanistan.

13. Drawing all of this together, the judge said:

> "It was clear from various aspects of the appellant's evidence that a major driving force for the family to come to the United Kingdom was to seek help for their son [M] who is wheelchair bound…

> ...
>
> Taking into account the appellant's credibility generally, the implausibility in his account of threats received from the Taliban (or Afghani Muslims generally) and his clear evidence that he was very keen to come to the UK for medical treatment for his son, I do not find it is reasonably likely that the appellant has suffered any of the violence or threats that he has claimed."

The judge was referred to the guidance in *TG & Ors* but, unsurprisingly given his findings of fact, had regard to the guidance set out in the headnote:

> "A consideration of whether an individual member of the Sikh or Hindu communities is at real risk of persecution upon return to Afghanistan is fact-sensitive."

and concluded that there was no real risk of the appellant and his family facing persecutory ill-treatment or treatment contrary to articles 2 or 3 ECHR on return to Afghanistan.

14. Upper Tribunal Judge Canavan granted permission to appeal for two reasons. First, she considered it to be arguable that:

> "… the judge may have failed to consider the credibility and plausibility of the claim in the context of the background evidence and with sufficient reference t the country guidance. It is arguable that the judge failed to consider whether, despite his credibility findings relating to the specific event outlines by the appellant, there would be a risk on return in light of the background evidence relating to the treatment of Afghan Sikhs and the deteriorating security situation in Afghanistan."

Secondly, even though the appellant, who had been legally represented throughout, did not advance a claim under article 8 ECHR, Judge Canavan considered such a claim to be "*Robinson* obvious" such that the judge "had a duty to consider any relevant human rights issues…"

15. I address the second of those concerns first. Ms Fisher, who is instructed by fresh solicitors and not those who drafted the grounds of appeal, submitted that this was a *Robinson* obvious point that should have been addressed by the judge. The judge, however, had to determine the appeal on the basis of the evidence that was before him and in the light of submissions advanced by the appellant's legal representative. With respect, it is hard to see how there was any duty upon the judge to determine an article 8 claim that had not been advanced. Indeed, although the grounds for seeking permission to appeal extend to 9 closely typed pages, there is no mention there of any asserted infringement of rights protected by article 8. In the light of the evidence then being relied upon, it is not hard to see why. This family had, on their account, lived in Afghanistan for the whole of their lives and had been in the United Kingdom only 7 months at the date of the hearing. They faced being returned to their country of nationality

together, as a complete family unit, the judge having rejected as untrue their account of the only difficulties they had claimed to have faced while living in Afghanistan. Although there was evidence in the appellant's bundle concerning the disability of one of the appellant's sons, the evidence was that while living in Afghanistan the appellant had secured medical treatment for him, including taking him for treatment in Delhi. In not addressing a ground of appeal that was not advanced before him, the judge made no error of law.

16. Ms Fisher pursued a similar challenge articulated in terms of the immigration rules, although there is in that, as she recognised, some overlap. She submitted that the judge fell into legal error in failing to consider whether the appellant and his family should have succeeded under para 276ADE(1)(vi) because, given the characteristics of the family, they would face very significant obstacles to integration. Once again, this point was not taken before the judge, either in the grounds of appeal or in oral submissions and it was not an error of law for the judge not to raise it himself.

17. The grounds complain that before making adverse credibility findings on the basis of perceived contradictions or inconsistencies in the evidence, the judge should first have put those contradictions to the appellant and his witness for them to deal with. But both parties were represented and fully aware of all the evidence that had been given, including that which did not sit happily with what had been said previously, so that there was no duty upon the judge to raise with a witness something that the appellant's representative had chosen not to. The task of the judge was to explain in his determination the reasons for reaching the conclusions he did and he was under no obligation to rehearse his reasoning before the parties before setting that out in his written determination.

18. The rejection by the judge of the appellant's evidence that his son's disability was a result of violence was a finding founded upon sound credibility findings and evidence of diagnosis in the United Kingdom of the cause of the condition. This conclusion was plainly open to the judge and is one that discloses no legal error.

19. There is to be found in the grounds an expression of disagreement with a number of findings made by the judge but none of those identify any error of law by the judge. The tasks of the judge was to make what he could of the evidence and to make clear his reasons for so doing. This is precisely what the judge has done.

20. The closest the grounds come to the reasons for permission to appeal being granted is to be found at paragraph 23 of the grounds. There it is said that:

> "… the judge should have been aware from as far back as the late 90's Sikhs have been leaving on mass (*sic*) and are in fear because of what happened to them so to state this narrative is not credible is one that shows the judge has erred in law…"

This was a main focus of the submissions advanced by Ms Fisher. She submitted that the judge made an error of law in failing to make findings on credibility in the context of the country evidence and, even if he were correct to make those adverse credibility findings, he should still have found that this family would be at risk on return because of the characteristics disclosed. It was, she submitted, established by the country guidance that the appellant's wife would be particularly vulnerable as a woman, having given up his business the appellant would have no independent means of support and would be unlikely to secure employment, he would be unlikely to secure adequate support from the Gurdwara because of dwindling contributions from a much reduced Sikh community, and he would find it very difficult to find accommodation.

21. However, as is recognised by the current country guidance, whilst some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots, not all will. That is why a fact-based assessment is needed. In this case the appellant had not set out a credible account of having experienced persecutory ill-treatment and his account of the specific experiences of difficulties had been rejected by the judge as untrue, for the clear and legally sufficient reasons given. The judge had to determine the appeal on the basis of the evidence the parties chose to put before him. In this case, that evidence, to the extent that it was accepted as credible, established only that the appellant had for many years operated his own shop in the Kabul area without experiencing any difficulties other than that of his sons' disability, which was not the consequence of any ill-treatment by any third party, and that he had brought his family to the United Kingdom not to escape persecution but to have access to medical treatment for his family that they could not secure in Afghanistan. At paragraph 29 of the grounds upon which permission to appeal was secured, it is said that *TG & Ors* is authority for the proposition that Sikhs will have difficulty in obtaining an independent living in Afghanistan and the appellant would have to pay for the medical treatment required by his son. But the appellant is a person who has demonstrated that he does have the ability to secure an independent income in Afghanistan and has not set out any sustainable explanation as to why he could not do so again upon return to Afghanistan. Indeed, the fact that his own account, rejected as untrue, was that a Muslim neighbour intervened on his behalf to secure his

release from the Taliban abduction without and cost and without suffering any injury is, perhaps, a good indication of how this particular appellant perceives his relationship with the Muslim community he engages with in Kabul.

22. The findings of fact made were plainly open to the judge and he made no error of law in arriving at them.

23. It may be that, given the nature of the disability of the appellant's son and the need for the appellant's wife to have in-patient treatment after her arrival in the United Kingdom there was more that could and should have been said about those matters. But if there is more to say, even if that may make appropriate the advancing of further submissions to the respondent that cannot be a basis to identify any arguable error of law by a judge before whom that information was not advanced.

Summary of decision:

24. First-tier Tribunal Judge Issacs made no material error of law and his decision to dismiss the appeal shall stand.

25. The appeal to the Upper Tribunal is dismissed

Signed 

Upper Tribunal Judge Southern

Date: 12 October 2017