Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/08059/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 January 2020	**On 24 January 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

R S B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Tramboo, Counsel instructed by MT UK Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and is entitled to privacy.

2. This is an appeal against the decision of the First-tier Tribunal promulgated on 9 October 2019 dismissing the Appellant's appeal against the decision of the Respondent on 26 July 2019 that he was not entitled to asylum or other form of international protection.

3. It is a feature of the case that the Appellant has previously claimed asylum unsuccessfully. It is accepted now that the Appellant is a national of Afghanistan who follows the Sikh religion. He said he was born in 1952 and he arrived in the United Kingdom with members of his family in June 2014 and claimed asylum on arrival. As indicated, his application was unsuccessful and an appeal against that decision was dismissed and his appeal rights were exhausted on 11 April 2016. In the decision of the First-tier Tribunal dismissing his appeal against the first application it was found that he had not established that he follows the Sikh religion or that he has been ill-treated in Afghanistan.

4. At the hearing of the appeal against the "2019 decision" it was accepted that the Appellant is a national of Afghanistan and established that he is Sikh. This was based on important and plausible evidence that was not before the First-tier Tribunal in the earlier appeal and the finding has not been challenged.

5. However, the First-tier Tribunal dealing with the 2019 decision followed the finding in the earlier decision that the Appellant had not been subject to attacks Afghanistan. The judge did not accept that the earlier decision that the Appellant had not been attacked was in any way tainted by the now known to be wrong finding that he was not a Sikh and, although the judge noted the diminishing opportunities for Sikhs in Afghanistan, the judge found nothing to dislodge the finding that the appellant had not been ill-treated whilst living there.

6. It was established at the earlier hearing that the appellant is a citizen of Afghanistan but not that he is Sikh. He had produced an identity document describing him as "Hindu". I recognise that I have the benefit of information not available in 2016 but it does seem to me surprising that a person from Afghanistan who followed the Hindu religion and claimed to be persecuted on that account would see any advantage in claiming untruthfully to follow the Sikh religion. The background evidence tends to show that the two communities in Afghanistan have a degree of harmony not found throughout the world because they are both too small to ignore each other.

7. I cannot accept that the finding that the Appellant had not been truthful about his experiences in Afghanistan can be separated from the finding that he was not a follower of the Sikh religion. The two are clearly connected and one of those findings is now accepted to be wrong. I find that the other finding should have been doubted and given little or no weight in the starting point because they were no longer reliable. In failing to appreciate this I am satisfied that the First-tier Tribunal has now erred.

8. In the present case the Appellant relied on his own account. The judge said at paragraph 29 that "in the absence of any further evidence from the appellant on this matter, I endorse Judge Sweeney's finding that the appellant was not subject to persecution before he left Afghanistan".

9. I am satisfied that this finding is the result of an erroneous approach in law. The judge should have found that Judge Sweeney's finding was no longer reliable because it relied at least in part on a finding of fact which may well have been entirely sensible when Judge Sweeney made it but is now known to be wrong. The judge should have started again and looked at the evidence in isolation. Given the finding that the Appellant is a Sikh there is no good reason to disbelieve his evidence. The claims are not extravagant in themselves or unlikely given the background material.

10. There is another point. The Appellant's children have been recognised as refugees. Mr Tufan went out of his way to tell me that a reason for the Appellant's sons being given refugee status is that they gave an account about violence against their father, the present Appellant, which was believed.

11. Whilst it may be strictly permissible because each case has to be decided on its own facts there would something profoundly unsatisfactory in the Secretary of State believing a witness in an administrative context and then maintaining that the same incident did not happen in submissions in a hearing. Mr Tufan very carefully did not do that.

12. The standard of proof in asylum cases is low. The background evidence shows that although Sikhs and Hindus in Afghanistan are not refugees per se discrimination is commonplace and discrimination is, by its very nature, often very closely allied to persecution. Even relatively minor discriminatory acts can become persecution if they are unrelenting. Rather than follow in the earlier decision the judge should have applied the low standard of proof to the evidence including the background material and should have allowed the appeal.

13. I find the First-tier Tribunal erred in law in following findings of fact that should not have been followed rather than assessing the evidence. I set aside its decision.

14. I also find, given the low standard of proof and the fact that there is no proper basis for challenging the important evidence which is inherently believable, the appeal should have been allowed.

Notice of Decision

15. I set aside the decision of the First-tier Tribunal because it erred in law and I substitute the decision allowing the Appellant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 January 2020