



IAC-FH-CK-V1

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

Appeal Number: PA/09050/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September 2020**

**Decision & Reasons Promulgated
On 22nd September 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**L S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Tufan, Home Office Presenting Officer

Interpreter: Mr Paul (Punjabi)

DECISION AND REASONS

1. The Appellant is a citizen of India born in 1990. He appeals against the decision of First-tier Tribunal Judge Gribble, promulgated on 9 December 2019, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Appellant came to the UK in 2009 with leave to enter as a student until January 2011. He applied for leave to remain as a student, which was granted until June 2014. His subsequent application for further leave to

remain as a student was rejected and his application for further leave to remain outside the Immigration Rules was refused in January 2015. The Appellant has remained in the UK without leave since June 2014. He claimed asylum on 26 September 2018 and his application was refused on 6 September 2019. His appeal was heard on 25 November 2019.

3. It is the Appellant's claim that if he is returned to India he is at risk on account of his political opinion. He is Sikh and a member of Akali Dal, the political wing of the Khalistan movement. The Appellant claimed he was attacked by the personal assistant of Bhupinder Singh Hooda and 25 thugs. They beat him with sticks and set fire to his office. The Appellant's father took him to hospital where he remained for 10 to 12 days. The Appellant tried to report the matter to the police, but they would not make a report. The police and Indian National Congress Party [Congress Party] officials visit his home asking about him.
4. The First-tier Tribunal dismissed the Appellant's appeal. It was accepted the Appellant was a member or supporter of Akali Dal. The judge considered the Appellant's claim within the framework of paragraph 339L of the Immigration Rules and found that paragraphs 399L (i) to (v) were not met. The judge concluded that membership of Akali Dal was not sufficient to establish a risk on return. She rejected the remainder of the Appellant's claim and found that he had fabricated his account.
5. The Appellant applied for permission to appeal on the ground that the judge failed to give reasons or any adequate reasons for findings on material matters. The Appellant submitted that the judge relied on an old CPIN from March 2017 and failed to take into account the CPIN of May 2018 which stated at paragraph 8.2.2:

"The USCIRF Annual Report 2017 noted: Hindu nationalists often harass Sikhs and pressure them to reject religious practices and beliefs that are distinct to Sikhism, such as wearing Sikh dress and unshorn hair and carrying mandatory religious items, including the kirpan, which is a right protected by the Indian constitution. Article 25 of the Indian constitution deems Sikhs to be Hindus. This creates an environment in which Hindu nationalists view Sikhs as having rejected Hinduism and as being enemies of India because some Sikhs support the Khalistan political movement, which seeks to create a new state in India for Sikhs and full legal recognition of Sikhism as an independent faith."

6. The Appellant submitted this report showed that Hindu nationalists view Sikhs as enemies and this animosity towards Sikhism is increased manifold once the issues of Khalistan political movement are involved. This was the core of the Appellant's case which the judge failed to consider.
7. First-tier Tribunal Judge Keane granted permission on 17 January 2020 on the following grounds:

“It was incumbent upon the judge to arrive at findings of fact in respect of the Appellant’s core claims. In fairness to the judge the judge did make findings of fact in respect of a number of matters if paragraphs 37 to 41 inclusive of the decision were read. However, the judge explicitly declined to make findings of fact in respect of the above-mentioned core claims of the Appellant [see paragraph 3 above] stating at paragraph 45 of the decision,

‘I do not go further than that in my findings because I do not think he was ever targeted personally by any political party in India. I do not find he was threatened by the police or that a warrant was ever issued. In short, I do not believe the rest of the account for the reasons set out above.’

The judge arguably erred in failing to provide any or any adequate reasons in support of findings as to the Appellant’s core claims. The application for permission is granted.”

Submissions

8. The Appellant appeared in person and relied on his written grounds of appeal. I explained the procedure and said I would assist him to respond to the Respondent’s submissions.
9. Mr Tufan submitted that permission was granted on the basis that the judge had failed to make findings of fact on the core issues of the Appellant’s claim. The core of the Appellant’s claim was that he was a member of Akali Dal and had been mistreated in India prior to coming to the UK. However, Akali Dal was not an illegal party and was now part of the BJP (Bharatiya Janata Party - Indian People’s Party).
10. The judge had correctly directed herself at [31] and had given reasons for why the Appellant had failed to substantiate his claim and for why she did not believe the Appellant’s account. She relied on several discrepancies. For example, the Appellant wrongly identified Bhupinder Singh Hooda as a BJP member when he is in the Congress Party. Further, the Appellant claimed to have canvassed with his uncle, but his uncle died before he was born. The Appellant claimed in his statement that his father was in hiding, but in his oral evidence he stated that his father remained in the village. The judge also relied on the delay in claiming asylum until the Appellant faced removal.
11. Mr Tufan submitted the judge considered the totality of the evidence and found the Appellant was not credible. The judge then concluded that the Appellant had not been targeted in India. Mr Tufan submitted that permission should not have been granted in this case because there were no errors of law in the decision, let alone any material errors of law.

12. I asked the Appellant if he accepted that Akali Dal was not an illegal party and was part of the political process. He explained that it was a very old party and was now a part of the BJP. Akali Dal had acted against the government in the past in association with the Khalistan movement. Politicians in India were corrupt and therefore membership of the party would put him at risk.
13. The Appellant accepted that he had not produced any evidence to substantiate his claim before the First-tier Tribunal because he did not think that evidence from members of his family would be taken seriously. I asked about the discrepancies in his account, namely that his uncle had died before he was born. He stated that this could have been an error by him or the interpreter. He confirmed that his uncle had died in 1980 and therefore it was may be an error on his part. In relation to the delay, he stated that he did not know anything about asylum and a friend had said to look into it and make an application. He went on the Internet to find out how to do the case and he did not have any money, so he made the application and represented himself.
14. I asked the Appellant to explain to me in his own words, if he wished to, why the judge was wrong and had made an error of law. He replied, "Because if I go to India we can provide evidence. Everything there is corrupt. All politicians are corrupt and I cannot go back because there is a danger to me."

Conclusions and reasons

15. It is not for me to review the grant of permission, but to consider with whether the judge has made a material error of law. It is submitted by the Appellant that the judge failed to take into account relevant evidence, which showed that he would be at risk from Hindu nationalists because of his membership of Akali Dal, which has associations with the Khalistan movement.
16. The judge concluded that the Appellant was a member of Akali Dal and had basic knowledge of the Khalistan movement, but being a supporter of that organisation was not enough to put the Appellant at risk on return to India. The background evidence relied on by the Appellant does not show otherwise. It is apparent from [17] of the decision that the judge considered the CPIN relied on by the Appellant.
17. I am satisfied, on reading the decision as a whole, that the judge made findings of fact in relation to the core of the Appellant's claim and she gave adequate reasons for coming to those conclusions at [31] to [43]. The judge did not find the Appellant to be a credible witness because his account was inconsistent and there was no other evidence to support it.

18. The judge found that the Appellant's account had not been coherent or consistent in several respects. She identified significant discrepancies in the Appellant's account at [38] to [41].
19. The Appellant stated that Bhupinder Singh Hooda was a member of the BJP when in fact he is a member of the Congress Party. The judge concluded that his credibility was damaged because he could not be clear about the party who attacked him.
20. In his asylum interview he said that he had canvassed with his uncle, but he accepted that his uncle died before he was born. He also stated that he was at a protest in Amritsar in 2010, but he accepted that he came to the UK in 2009. In his statement he stated he was attacked in 2009, but in his asylum interview he said that it was October 2008. The Appellant's statement was inconsistent with his asylum interview and his oral evidence contradicted his statement. The judge found the discrepancies damaged the Appellant's credibility.
21. The judge then considered the Appellant's explanation for the delay in claiming asylum and concluded at [43]:

"In terms of his general credibility it is damaged by his wholly inconsistent evidence which renders it unreliable. His credibility is also damaged by the delay in seeking protection."
22. At [44] the judge found:

"So looking at matters overall, he has a basic knowledge of the Khalistan movement and the Akali Dal, its political wing. It has been accepted as being reasonably likely to be true that Mr S was a supporter of that organisation. I agree. That is not enough to establish risk."
23. The judge concluded at [45]:

"I do not go further than that in my findings because I do not think he was ever targeted personally by any political party in India. I do not find he was threatened by the police or that a warrant was ever issued. In short, I did not believe the rest of the account for the reasons set out above. Mr S has made up the account of political risk. He can return safely to his family in Haryana state. He is not a refugee."
24. Accordingly, the judge clearly dealt with the core of the Appellant's claim. She found that other than being a member of Akali Dal, the Appellant had fabricated the remainder of his account. The judge rejected the Appellant's claim to have been attacked or threatened. When [45] is read in conjunction with [44] it is clear that the judge made findings on all

material matters and she gave adequate reasons for those findings at [31] to [43].

25. The judge made clear, reasoned findings in respect of the core elements of the Appellant's claim and those findings were open to her on the evidence before her. The Appellant has no political profile in India and would not be at risk on return. I find there was no material error of law in the judge's decision promulgated on 9 December 2019 and I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed
September 2020

Date: 18

Upper Tribunal Judge Frances

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
September 2020

Date: 18

Upper Tribunal Judge Frances