



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-001844**  
**UI-2021-001845**  
**First-tier Tribunal No:**  
**PA/51523/2020**  
**IA/01085/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 06 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Tech Kaur Bedi**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Patel, Counsel instructed by Legal Justice Solicitors  
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**Heard at Field House on 6 February 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and/or any member of her family is granted anonymity. No one publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. This is an appeal by both parties. For convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

## **Background**

2. The appellant is a Sikh national of Afghanistan born in 1949 who, along with her husband, has been in the UK since 2013. Prior to coming to the UK the appellant and her husband lived in India (between 2000 and 2013).
3. The appellant applied for asylum in 2014. The application was unsuccessful and her subsequent appeal in the First-tier Tribunal was dismissed (the decision was upheld on appeal to the Upper Tribunal). In April 2020 the appellant lodged further submissions. These were rejected by the respondent in a decision dated 1 September 2020. The appellant appealed to the First-tier Tribunal, where her appeal came before Judge of the First-tier Tribunal Moon (“the judge”). In a decision dated 30 June 2021, the judge dismissed the appellant’s protection claim but allowed the appeal on the basis that her removal to Afghanistan would breach article 8 ECHR. Both the appellant and respondent are now appealing, with permission, against the judge’s decision.

## **Decision of the First-tier Tribunal**

4. The judge observed that in the Country Guidance case on Sikhs in Afghanistan, *TG and others (Afghan Sikhs persecuted) Afghanistan* CG [2015] UKUT 00595 (IAC), it was found that in general members of the Sikh community in Afghanistan do not face a real risk of persecution. The appellant argued that since *TG and others* there had been a very significant decline in the number of Sikhs in Afghanistan, such that a departure *TG and others* was warranted. The judge rejected this argument on the basis that the appellant had not discharged the burden of establishing that there had been a decrease in the Sikh population since 2015.
5. The judge allowed the appeal under article 8 ECHR on the basis that the conditions of paragraph 276ADE(1)(vi) were satisfied. Amongst other things, the judge found that the appellant would be returning to a place where there is discrimination against and marginalisation of Sikhs, and where the Sikh community has diminished significantly since she last lived there. The judge concluded that it would not be possible for her to integrate into society.

## **The respondent’s appeal**

6. The respondent challenged the judge’s assessment of article 8 ECHR on the basis that consideration had not been given to whether the appellant and her husband could return to India where they had lived for many years before coming to the UK. The grounds quote from, and place reliance upon, the previous First-tier Tribunal decision (in January 2017) where it was found that the appellant could return to India. The grounds submit that the judge erred by not treating the previous findings about return to India as a starting point.
7. Ms Everett withdrew the respondent’s challenge to the decision. She was right to do so. Firstly, it was not submitted by the respondent, either in the refusal letter of 1 September 2020 or at the hearing before the judge, that the appellant could be removed to India. It is entirely improper to now raise this for the first time as a ground of appeal. Second, although in July 2017 the Upper Tribunal upheld the previous First-tier Tribunal decision, the Upper Tribunal stated categorically that the First-tier Tribunal was wrong to say that the appellant could be returned to India. It is a matter of some concern that the grounds rely on

previous findings in the First-tier Tribunal about return to India without making reference to the Upper Tribunal's stark criticism of those findings.

### **The appellant's appeal**

8. The primary argument advanced on behalf of the appellant is that it was legally erroneous for the judge to find that a decline in the Sikh population since *TG and others* had not been established given that the objective evidence before the judge showed a very significant decline. Ms Everett did not concede the point but stated that she was without instructions and did not advance any arguments to resist the submission.
9. The position at the time of *TG and others* was uncertain. The Upper Tribunal found that it was difficult to ascertain the number of Hindus and Sikhs in Afghanistan. However, the panel stated in paragraph 20 that "a working hypothesis of 3,000 was accepted by all parties".
10. The most authoritative evidence before the judge as to the position at the time of hearing was the respondent's Country Policy and Information Note on Hindus and Sikhs in Afghanistan dated March 2021 ("the 2021 CPIN"). The following three paragraphs concern the Sikh and Hindu population:
  - 2.4.1. The number of Hindus and Sikhs living in Afghanistan, which was approximately 220,000 in the 1980s, has declined considerably over the past 3 decades due to conflict, discrimination, the poor economic situation and lack of employment. Current population estimates vary considerably from between 44 to 100 families consisting of between 200 to 900 individuals (see Population and Reasons for migration), living primarily in urban areas of Kabul and Nangarhar, and often in temples due to lack of available or affordable housing
  - 4.1.7 In a report to the Country Policy and Information Team (CPIT), dated 9 November 2020, Dr Jagbir Jhutti-Johal, a senior lecturer in Sikh Studies in the Department of Theology and Religion, University of Birmingham, stated 'Whilst there may not be an exact figure of how many Sikhs and Hindus are left in Afghanistan, after speaking to Afghan Sikhs in the UK who are working with the community in Afghanistan one can estimate that there are probably between 600-800 Sikhs and less than 100 Hindus left (approximately 90-100 families) in Afghanistan
  - 4.1.8 In January 2021, an official from the Foreign, Commonwealth and Development Office (FCDO) met with Narinder Singh Khalsa, a Sikh Member of Parliament, to discuss the situation for the Afghan Sikh community in Kabul and elsewhere in Afghanistan. The FCDO provided a note to CPIT, dated 27 January 2021, with Mr Khalsa's responses, in which he stated that there were approximately 200 Sikhs (44 families) left in Afghanistan
11. The 2021 CPIN indicates that as of March 2021 there were under 900 Hindus and Sikhs. On any view, this is a substantial decline from 3,000 (the figure in *TG and others*). I therefore find that the judge erred by failing to recognise that the objective evidence before him established that there had been a substantial decline in the Sikh population. In the light of this error, the decision cannot stand.
12. With respect to the remaking of the decision, Ms Patel relied on the respondent's most recent Country Policy and Information Note on Afghanistan,

dated April 2022 (“the 2022 CPIN”). She referred to paragraphs 6.7.26-28 which concern the Sikh population. These state:

6.7.26 On 13 October 2021, The Telegraph reported on the ‘exodus’ of Sikhs following the Taliban takeover, stating ‘Decades of persecution and discrimination have since caused almost all to flee and the arrival of the Taliban and an uptick in violence from the Islamic State group have proved the final straw.’ One Sikh from Jalalabad, who had left Afghanistan for India, told The Telegraph:

‘The Taliban told me I should become a Muslim or be ready for death... They had threatened to blow up our Gurdwaras and houses if we stopped paying them protection money... Even before the Taliban took over Jalalabad, two men came to my shop and told me I should stop selling herbs as that business only belongs to Muslims... Then, they became more confident, breaking into my shop and stealing money. On the night of August 14, I received another death threat and so we decided to leave Afghanistan to a safe country.’

6.7.27 Former Afghan Sikh MP, Narendra Singh Khalsa was cited by The Telegraph, ‘For Sikhs, Afghanistan is no longer safe. There is no government to protect us and there is no peace. I began getting constant death threats from ISIS-K and I still have their letters, I still don’t know the reason they want to kill us.’

6.7.28 Canadian think tank, the International Forum for Right and Security (IFFAS), suggested in a report dated 17 October 2021 that Sikhs in Afghanistan ‘practically have to make a choice between options of converting to Sunni Islam or run away from Afghanistan’, as they did not follow the Taliban’s religious doctrine.[footnote 243] Some media sources relayed this message, as well as citing attacks against Sikhs that had occurred in the past

13. There must be very strong grounds supported by cogent evidence to justify a departure from a Country Guidance case. Applying this high standard, I am satisfied that a departure from *TG and others*, where it was found that in general Sikhs do not face a risk of persecution in Afghanistan, is warranted. This is because there has been a dramatic change in Afghanistan since the Taliban took control. The 2022 CPIN indicates that following the Taliban takeover of Afghanistan the situation for Sikhs has deteriorated and that there are now hardly any Sikhs remaining. After hearing Ms Patel summarise the relevant parts of the 2022 CPIN, Ms Everett did not advance any arguments to oppose her submission that the current circumstances in Kabul for Sikhs is such that it is reasonably likely that the appellant will face a real risk of persecution. Accordingly, I allow the appeal on the basis that removing the appellant would breach the U.K.’s obligations under the Refugee Convention.

### **Notice of Decision**

14. The decision of the First-tier Tribunal to allow the appellant’s article 8 ECHR human rights appeal did not involve the making of an error of law and stands.

15. The decision of the First-tier Tribunal to dismiss the appellant’s protection claim involved the making of an error of law and is set aside. I remake the decision

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and allow the appellant's appeal on the basis that her removal would breach the U.K.'s obligations under the Refugee Convention.

D. Sheridan  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
9 February 2023