



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03980/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22 May 2018

Decision & Reasons Promulgated
On 24 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR VLK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Blair, counsel instructed by Legal Justice Solicitors

For the Respondent: Miss J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, date of birth 11 April 1978, appealed against the Respondent's decision dated 11 April 2017 to refuse an asylum claim made on 15 October 2016. In addition the Appellant's wife, SKK, an Afghan national, date of birth 25 December 1977, was treated as a dependant of the Appellant and because the Appellant did not qualify for asylum or Humanitarian Protection, there was no right

of appeal. Similarly, in respect of SK, an Afghan national, date of birth 29 September 2002, was also treated as a dependant and for like reasons did not have a right of appeal. The Appellant's son, RK, an Afghan national, date of birth 16 August 2005, received a similar decision as did HK, an Afghan national, date of birth 7 January 2011. Finally, the Appellant's dependent child, AK, an Afghan national, date of birth 8 October 2012, received a similar decision.

2. The Appellant moved to Moscow in February 2001 to work. He returned to Kabul for a short time in 2001 before returning to Moscow where he stayed for less than two years before going back to Kabul. In 2006 the Appellant moved to Moscow with his family and that was the last time he was in Afghanistan. The Appellant and his family left Moscow in October 2016, arrived in the United Kingdom on 15 October 2016 and claimed asylum the same day. The Appellant claimed to be at risk of persecution on return to Afghanistan based on his religion as a Hindu. Similarly his wife claims as a Sikh to face discrimination and the real risk of ill-treatment so as to amount to persecution because she and her husband and children are not of the Islamic faith. It is not clear to me whether that embraces Shia and Sunni Muslims, but either way the problems that had been faced by Sikhs and Hindus in Afghanistan are long recorded and more particularly continuing with a diminishing number of Sikh and Hindus in Afghanistan.
3. The Appellant claims that the manifestations of such discrimination and serious ill-treatment are represented in a number of ways. First, as a fact his wife has been raped by two men, M and R, at a time when the Appellant was not present in Afghanistan, nor could he in any event have prevented it. Secondly, that that ill-treatment is consistent with general risks faced by Hindu and Sikh women in Afghanistan and a lack of sufficient protection to which they can have recourse. Thirdly, that there is general discrimination by the populace and the giving of abuse and ill-treatment including forced shaving of beards and requiring Sikh or Hindu women to dress as if they were Muslims. Fourthly, the dispossession of property including a chemist shop which the Appellant had inherited from his father. He sold the shop in order to leave

Afghanistan but only received part of the payment due. Fifthly, the availability of Sikh or Hindu communities now of any viable size in Afghanistan is very limited and no real protection. Sixthly, going out and about for women on their own is simply not an option and the requirements for clothing in accordance with Muslim mores is demanded. Thus going out and about for women represents real difficulties, whether accompanied or not by a man. Seventhly, the availability of protection is so limited in that even though the state purports to provide for Hindus and Sikhs, the fact is that the population at large vastly outnumbers them and the limitations on protection was manifest. Eighth, the Appellant's son has a medical condition which, whilst it is not sufficient to engage Articles 3 or 8 ECHR, raised issues as to the availability of treatment for Sikhs/Hindus. Ninth, the availability of education is extremely limited for Sikhs and Hindus and the education which the children have had in Russia and now in the United Kingdom is simply unobtainable in Afghanistan. All-in-all it is really said that quite simply, for Sikhs and Hindus in Afghanistan, a normal, reasonable life is impossible and that the dependent children would simply be not able to enjoy and exercise either their normal lives, or indeed, pursue education and their religious beliefs through attending a gurdwarah or a manir (temple).

4. The Appellant also sets out a history of past events which appear to me consistent with the general position that conditions for Hindu and Sikh families has been deteriorating over a significant level of time, either in terms of the availability of employment, or in terms of being able to own and operate their own businesses free of Muslim taxes, tariffs or intervention, and the operation of their temples and burial sites, bearing in mind both Hindus and Sikhs pursue public cremation of the dead.
5. The support of the claim's range of evidence from, amongst other things, the Khalsa Diwan Afghanistan, a UK registered charity, which contains a letter from the Chairman, Bhajan Singh Kapoor, dated 11 May 2018, which described the deteriorating condition for Sikhs and Hindus in Afghanistan. There is also an overview by Balpreet Singh of the World Sikh Organisation of Canada who wrote an overview on the current state of affairs for Sikhs and Hindus in Afghanistan. His

detailed remarks and footnotes are undated, but from the footnotes it was apparent that sources have arisen in 2014/15 and the middle of 2016. The general thrust of the remarks was at one with the other background material which was being produced, including extracts from Voice of America in 2018 reporting of events in November 2017, and general information particularly relating to the implications for refugees by displacement. In the Appellant's first bundle there are a number of reports relating to conditions in 2017 as well as reference to the important country guidance cases of *DSG* [2013] UKUT 00148, *TG and Others* [2015] UKUT 00595.

6. The Appellant's daughter, SK, gave evidence, as did his son, RK, essentially indicating how important education was to their futures, how they enjoyed going to school in the United Kingdom and the opportunities that it gave them. There was no substantive challenge to those points by Miss Isherwood. It seemed to me they were at one with the general wishes SK had in that she wished to go to university, did not wish to wear a burkha or be obliged to deny her religion, and she has no real experience of such discrimination as such. She knows of it through her parents and what others have said, from Afghanistan. RK is concerned about discrimination and wished to undertake education free of the disadvantages that self-evidently Sikhs and Hindus face in Afghanistan. There was for women, and indeed Sikhs and Hindus generally, the real risk of abduction. In the case of unmarried women, they faced forced marriage, conversion to Islam, and a requirement to live according to the mores of an Islamic society.
7. The background evidence showed the diminishing population of Sikhs and Hindus in Afghanistan. Some may remain because they have money or protection or both, or they have a settled pattern of protection against extortion, abduction and the like. The Appellant's family does not fall into that bracket. I find the evidence is overwhelming, that their family has essentially left Afghanistan and there are no relatives remaining. They have, by and large, gone to India, possibly Pakistan, and to the United Kingdom. I do not find they have any ongoing business they can return to and no demonstrable protectors have been present for many years. Rather, with the Appellant in Moscow,

his wife had been very vulnerable and as a result had not attended her temple as she might wish, or as often she might wish, other than when there has been someone to protect her.

8. In the circumstances I find that the Appellant faces the real risk on a return with his family to serious discrimination preventing them from living an ordinary life and amounting to persecution. I find that the two eldest children do hold their education as fundamental to part of their identities and their futures, and to that extent the case does seem to fall within the categories of those contemplated in *TG and Others*. I find the background evidence shows that the country situation has, if anything, deteriorated for Sikhs and Hindus. So far as the case of *AS (CG) [2018] UKUT 00118* is concerned, it does not materially change the position, vis-à-vis *TG and Others* which remains the current guidance. It is however sadly illustrative of the extent of the deterioration in the security system and the importance that social networks have gained.
9. Therefore it seemed to me there are gender-based risks for women that are worse than for men in terms of being able to exercise their identity through religious worship, education, socio-economic and cultural rights. The report and opinion of Dr Jasjit Singh helpfully illustrated and distinguished Sikh practises in respect of women from Sharia/Islamic social norms. It seemed to me the dependent children's interest in education is amply demonstrated by the school reports relating to SK and RK who have clearly, even though strangers to the United Kingdom, settled well into schools, are assiduously studying and achieving good results. Those are benefits of being in the United Kingdom, but they illustrate the genuineness of the children's interests in their education as part of their futures.
10. In a supplementary bundle the letter of 9 June 2016 from Dr Jasjit Singh was not substantively challenged by Miss Isherwood and his publications speak to his knowledge and experience. I have no reason before me on the evidence to doubt his remarks are founded on the evidence of his experience and knowledge, in particular

Sikh women, face particular problems because they look like women of the same racial/ethnic group as other Afghan women. Yet they refuse to comply with the general social norms. For Sikh women this is an issue of confidence for their clothing and behaviour is an overtly political issue in Afghanistan where the rights to free movement of women is restricted by legislation. In rejecting Islamic dress codes the Sikh tradition also rejects food prepared in accordance with the ritualistic traditions, including halal meat. The Sikh Rehat Maryada explicitly lists the eating of meat of an animal slaughtered the Muslim way as one of the four transgressions which must be avoided by Hindus/Sikhs. I find this is consistent with the Appellant's wife's concerns about being able to live her life and how her female children would be able to live their lives in Afghanistan.

11. Other material relating to violence against Sikhs was simply repetitive of identified problems.
12. In the light of the evidence that has been put forward and the submissions that have been made, I should mention that I do not accept the generality of Miss Isherwood's point that because the Appellant's brother in Russia has the title deeds to the former chemist shop which has been sold, the Appellant is able to return to Afghanistan and reclaim his property or his money. The issue of land 'grabs' recovery and restitution appear to be unlikely and fraught, at best but at worst dangerous and probably life threatening. Essentially the Appellant said it was too difficult to achieve, and of course it would put him at risk from the very people who raped his wife and who have wished essentially to resile from their obligations to pay the purchase price. I find there is no real prospect, seriously argued, that the Appellant can return and commence litigation to recover his monies. There was nothing to suggest that the police or state authorities would involve themselves to such ends.
13. In the circumstances I find the Appellant has discharged the burden of proof to that low standard, confirmed in *Karanakaran* [2000] EWCA Civ 140, to show that for him and his family there is the real risk as a particular social group as a family and/or on

the basis of their Hindu/Sikh faiths of persecution or such severe social discrimination and violence as to amount to persecution of which there is no real protection that they cannot return to Afghanistan. I do not find that internal relocation can be regarded as a reasonable option in their circumstances. I do not find there is sufficient domestic protection, in the Horvath sense, to which they can reasonably have recourse. It follows also that there is a real risk of proscribed ill-treatment contrary to Article 3 ECHR.

DECISION

14. The appeal is allowed on Refugee Convention and Article 3 ECHR grounds.

ANONYMITY

15. No anonymity direction was sought but it seems to me that a direction should be made.

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.

Signed

Date 4 July 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has been succeeded but it has done so on a great deal of after-arising material which was not before the original decision maker and I find a fee award is not appropriate in this case.

Signed

Date 4 July 2018

Deputy Upper Tribunal Judge Davey