



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00155/2018

THE IMMIGRATION ACTS

Heard at Bradford  
On 20<sup>th</sup> August 2018 and 1<sup>st</sup> April 2019

Decision & Reasons Promulgated  
On 24<sup>th</sup> April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

J K S

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan of Counsel instructed by Legal Justice Solicitors  
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer on 20<sup>th</sup> August 2018, Mr Diwnycz, Home Office Presenting Officer on 1<sup>st</sup> April 2019

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Smith made following a hearing at Bradford on 6<sup>th</sup> February 2018.

Background

2. The appellant is a citizen of Afghanistan born on 1<sup>st</sup> January 1992. She arrived clandestinely in the UK on 17<sup>th</sup> July 2014 accompanied by her husband who claimed asylum. She was his dependant. The appellant's husband's asylum claim was refused, his subsequent appeal was dismissed and he became appeal rights

exhausted on 15<sup>th</sup> July 2016. Further submissions were refused on 10<sup>th</sup> May 2017 and on 11<sup>th</sup> July 2017 the appellant made her own asylum claim.

3. The appellant claimed that in February or March 2013 three or four men attempted to kidnap her and she believed that they were from the Taliban.
4. The judge did not accept the appellant's account of the attempted kidnap. He dismissed the appeal on that basis.
5. He also stated that the mere fact that he had found the appellant not to be credible did not necessarily mean that she was not at risk on return. He addressed the country guidance case of TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595. He recognised that a consideration of whether an individual member of the Sikh community is at real risk of persecution upon Afghanistan is fact-sensitive and financial circumstances and the ability to access basic accommodation must be considered, bearing in mind that Muslims are unlikely to employ a member of the Sikh community. He said that the central issue was that of financial support and the ability to earn a living.
6. The judge concluded that the appellant's husband could return to Afghanistan and resume working in his father's shop. He noted that it was claimed that the appellant's father-in-law was now in the UK but because there was no record of his being here he believed that the father-in-law remained in Afghanistan. The appellant had not satisfied him to the lower standard that there was not a source of income there for her husband.
7. The appellant sought permission to appeal on the grounds that the judge had made a material error of fact relating to whether the appellant's father-in-law had made a protection claim.
8. Permission to appeal was granted by Judge Pedro on 3<sup>rd</sup> April 2018.
9. At the hearing Ms Khan said that the father-in-law was not only in the UK but had won his asylum appeal, although that decision was the subject of challenge by the Secretary of State. Mrs Pettersen said that permission to appeal the decision had been granted but the appeal had not yet been listed for hearing. She submitted that in any event any error in relation to the father-in-law was not material because the primary findings of fact in relation to the appellant's alleged kidnap were not challenged and the judge had found that in any event the couple could obtain shelter in gurdwaras and would have the advantage of a resettlement grant.

### **Consideration as to Whether there is Material Error of Law**

10. I am satisfied that the judge's mistake in concluding that the appellant's father-in-law was still in Afghanistan and had the ability to support the appellant on return is material.
11. The appellant's financial circumstances on return are clearly not going to be those as found by the judge. He dismissed the appeal on the basis that there was no need for the appellant and her husband to set up a new business because there was already one in existence which would provide a living for them.

12. The circumstances which she would in fact face on return needs to be reassessed.
13. After some discussion it was agreed that the sensible way forward is for this matter to be listed after the appeal of the father in law has been heard in the Upper Tribunal.

### **Notice of Decision**

The original judge erred in law. He made a relevant mistake of fact capable of altering the decision. His decision is set aside.

### **Resumed Hearing**

14. At the resumed hearing the appellant produced two further bundles of documents, including supplementary statements from the appellant and from her father-in-law, grants of status for the father-in-law and sister-in-law and copies of the determination in the Upper Tribunal.
15. Mr Diwnycz said that he did not wish to cross-examine any of the witnesses. Until he had seen the paperwork confirming the father-in-law's status he was obliged to pursue his opposition to the appellant's case, but having seen it, he had no further submissions to make.
16. Ms Khan submitted that the appellant's father-in-law was not in a position to offer any financial support at all to the appellant upon return to Afghanistan. She and her husband would be in a very precarious situation without access to any support there or the ability to earn their living. Accordingly, in line with the decision in TG and Others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 the appeal ought to be allowed.

### **Findings and Conclusions**

17. Judge Smith stated at paragraph 47 of his determination that the mere fact that he had found the appellant not to be credible did not necessarily mean that she would not be at risk on return. He then considered the principles which could be drawn from the case of TG and said that in his judgment the central issue was that of financial support and the appellant's ability to earn a living. He accepted that, traditionally, Sikhs were self-employed, running their own businesses and there were virtually no employment opportunities in the Muslim community. Existing Sikh families were likely to prioritise their own relatives when job opportunities occurred. Unless capital existed to purchase a property, renting was likely to be difficult as the landlord would almost invariably be a Muslim who could come under pressure from religious zealots to end the agreement.
18. Determining whether the appellant and her husband had capital depended upon his findings as to whether the appellant's father-in-law remained in Kabul in active business and trading. The judge concluded that the appellant's father-in-law remained in Afghanistan and on that basis he found that there would be a source of income for the appellant's husband.
19. In fact the judge was wrong about that. Designated Judge Murray heard the appellant's father and sister-in-law's appeals. Her decision was subsequently upheld

by Upper Tribunal Judge Macleman. She noted the evidence that all of his assets had been handed over to the agents who arranged for his departure from Afghanistan his two shops. Whilst she recorded that she had minor doubts about the credibility of the accounts, she was prepared to accept that they would be at risk on return on the basis of their religion.

20. The alternative source of support for this appellant could possibly be the gurdwaras. The gurdwaras themselves are now struggling financially and now only two remain functioning in Kabul. At her interview the appellant said that she had been living there for a time before she came to the UK, but it is clear that although the gurdwaras provided some free food even there, there were expenses which the appellant could now not meet. Her father-in-law is on NASS support with no spare funds to send her.
21. According to the now unchallenged evidence, the family have no assets either in Afghanistan or in the UK.
22. The appellant's father in law has been granted refugee status. It was accepted in his appeal that he was a member of a minority religious group perceived as contravening Sharia law. The appellant in this case is in exactly the same position. It was also accepted in his case that those without access to independent income were unlikely to be able to relocate because of depleted support mechanisms. Again, the same is true for this appellant. Mr Diwnycz did not seek to argue that this appeal ought not to be allowed.

### **Decision**

23. The original judge erred in law and his decision has been set aside. It is remade as follows. The appellant's appeal is allowed.

### **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 their 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.

Deborah Taylor

Signed

Date 19 April 2019

Deputy Upper Tribunal Judge Taylor