



**Upper Tribunal  
(Immigration  
Chamber)**

**and**

**Asylum**

**Appeal number: PA/01339/2016**

**THE IMMIGRATION ACTS**

**Heard  
at:  
On**

**Field House  
21 June 2017**

**Decision & Reasons promulgated  
On 22 August 2017**

**Before**

**Deputy Upper Tribunal Judge Bagral**

**Between**

**Amrit Singh  
(Anonymity Order not made)**

**Appellant**

**And**

**The Secretary of State for the Home  
Department**

**Respondent**

**Representation:**

For the Appellant: Mr E Wilford, of Counsel, instructed by M & K Solicitors.  
For the Respondent: Mr P Nath, Senior Home Officer Presenting Officer.

**REMITTAL AND REASONS**

**Anonymity**

1. The First-tier Tribunal did not make an anonymity order. I have not been asked to make one and see no reason to do so.

**Introduction**

2. The Appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Twydell (hereafter "the judge") who, in a decision promulgated on 9 January 2017, dismissed his appeal against the Respondent's decision of 29 January 2016 to refuse his protection claim.

## **Background**

3. The Appellant is a national of Afghanistan. He claimed international protection on the ground that he will be at real risk of persecution and ill-treatment in Afghanistan on account of his Sikh religion. At the core of the Appellant's account is an incident in June 2015; he claims he was severely beaten by the Taliban and that both he and his father were threatened with death if they did not convert to Islam.
4. The judge rejected the credibility of the account and gave reasons for doing so [39]. The judge noted the evidence was inconsistent and concluded that the primary motive for the attack was a robbery. The judge did not accept the police failed to protect the Appellant following his report of the attack, but rather that he failed to pursue his complaint. The judge considered a letter from Mr Charan Singh (a family member), but noted he simply reiterated the Appellant's account and further noted the original had not been obtained and produced. The judge noted further discrepancies in the evidence of the Appellant and his sister and found that both were in contact with their parents. In her omnibus conclusion, the judge rejected the Appellant's evidence that he did not intend to come to the UK.
5. The judge was also satisfied that a sufficiency of protection was available and that the Appellant could internally relocate without undue hardship. The judge accepted the Appellant may face discrimination on return but found that he would be assisted by a number of factors. The judge referred to the number of Pashtuns living in Afghanistan and the respect for freedom of movement. The judge noted that the Appellant could utilise his skills on return and would be able to contact his parents. The family had assets that could provide financial support in addition to support being available from a trusted friend. The judge found the Appellant would be supported by the Sikh community and Mr Singh, and that he would be able to access places of worship on return. The judge noted the Appellant was an active member at his local Gurdwara in Afghanistan. The judge thus concluded that it would not be intolerable for the Appellant to return to Afghanistan.
6. Finally, the judge considered Article 8, which does not appear to have been advanced with any enthusiasm before her, and found that the Respondent's decision was proportionate. The appeal was dismissed on all grounds.

## **Permission to Appeal**

7. The grounds seeking permission attack the judge's credibility findings and criticise her assessment of risk on return. First-tier Tribunal Judge Hollingworth considered that the grounds were arguable and granted permission on 28 April 2017.
8. There is a Rule 24 response from the Respondent opposing the appeal.

## **Decision on Error of Law**

9. At the hearing both representatives made submissions. I indicated to Mr Wilford (who is not the author of the grounds) that I did not accept the judge materially erred in law by a single reference to Bangladesh during the course of her findings. While the reference is clearly unfortunate, on a holistic reading of the decision, it is also clear that the judge was aware that she was dealing with a Sikh from Afghanistan and assessed risk on that basis. Mr Wilford sensibly indicated that he did not pursue that ground or the ground arguing that there had been unfairness in the judge's consideration of the evidence of Mr Charan Singh. He was right not to do so.
10. However, after hearing the submissions of the representatives, I am satisfied that the judge, in an otherwise well-reasoned decision, erred in law in the following material respects.
11. The Appellant's claim for international protection was based on his historic account of harassment living as a Sikh in Afghanistan culminating in an attack in June 2015 by the Taliban. The judge noted the historical discrimination the Appellant claimed to have suffered living as a Sikh in a mainly Muslim community and acknowledged that Sikhs may have difficulty living in Afghanistan [39]. In relating his account of the attack at interview the Appellant stated that they told his father that if he wanted to stay in Afghanistan that he would have to convert to Islam. They told him that they would be coming soon for them, and that they would have to pay them money and accept the conversion otherwise they would kill them. The Appellant confirmed these events in his witness statement.
12. The judge gave several reasons for rejecting the credibility of the Appellant's account. The judge did not accept that he was attacked by the Taliban or at all. Central to the judge's finding is her reliance on the Appellant's response to a question at interview where he stated that the motivation for the attack was money [at 39 (ii)]. While the judge noted the Appellant also stated that his assailants asked his father to convert to Islam, she concluded nevertheless that the primary motive for the attack was for non-sectarian reasons. That, in my judgement, is an impermissible view reached on a narrow reading of the Appellant's evidence. I find that the Appellant's account has not been adequately assessed with the full historical context in mind. While that is a material error, the judge plainly fell into further error by distinguishing between primary and secondary considerations as motives for the attack. I find the cumulative effect of the Appellant's stated account militates against such a construction.
13. Further, I cannot be satisfied that the judge, in her assessment of the evidence, was not influenced by a mistaken over estimate of the number of Sikhs remaining in Afghanistan from whom she found the Appellant could draw some support. While the judge recorded that it was drawn to her attention that there were about 20,000 Sikhs left in Afghanistan, the judge's record of proceedings show that the figure stated to her was in fact 2,000. The tribunal in the country guidance case of **TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC)** also noted [at 84] that: "*the numbers left are unlikely to be above*

3,000. We accept that as numbers shrink, remaining members may be more vulnerable to exploitation, and have taken this into account when making our findings.” Further, the expert report that was before the judge suggested that there had been a further considerable decline in numbers. The judge’s assessment of credibility is not made with this context in mind and the expert evidence to this extent is not referred to at all.

14. Further, in assessing the credibility of the claim, the judge also considered that there had been no failure of state protection, but rather it was the Appellant who failed to pursue his complaint. I agree with Mr Wilford that this is contrary to the tribunal’s conclusion in **TG** that: *“it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.”* This evidence is not factored into the assessment.
15. In the circumstances, I am satisfied that the above errors are sufficient to render the credibility assessment unsafe. While I do not say that the judge’s decision to dismiss the appeal was not open to her, it is the manner and route by which that conclusion has been reached which is flawed.
16. Mr Nath agreed that if the judge’s credibility findings were infected then her findings in respect of sufficiency of protection and internal flight cannot stand. I agree.
17. For all the above reasons, I set aside the decision of the judge. The effect of my decision is that the Appellant's appeal will need to be determined on the merits on all issues.
18. In most cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
  - “(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”
19. In my judgment, this case falls within para 7.2 (b). Given that I have decided that the Appellant's case will need to be decided on the merits on all issues and having regard to the Court of Appeal’s judgment in **JD (Congo) & Others [2012] EWCA Civ 327**, I am of the view that a remittal to the First-tier Tribunal is the right course of action.

## **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Twydell.

Signed

Date: 15 August 2017

Deputy Upper Tribunal Judge Bagral