



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/07422/2017
PA/07433/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 19th April 2018

Decision & Reasons Promulgated
On 17th May 2018

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

HARPEE SINGH
MRS RAJ KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Sachdev, instructed by Bury Law Centre
For the Respondent: Mr A McVeety, a Home Office Presenting Officer

DECISION AND REASONS

1. The appellants and their dependants claim to be nationals of Afghanistan. As the First-tier Tribunal pointed out, this was not accepted by the respondent. The first named appellant was born on 1st January 1970 and is the son of the second named appellant who herself was born on 1st January 1941. The dependants in the appeal are the first appellant's wife who was born on 1st January 1980 and his two children by his wife. The first was born on 1st January 2004 and the second on 1st January 2007.
2. The appellants claimed to have arrived in the United Kingdom together on 22nd July 2016 and claimed asylum on this date. They indicated that they had travelled from Afghanistan to Pakistan by car as arranged by an agent. From Pakistan they claimed

to have travelled on two aeroplanes to two unknown countries and they believe that the last country they arrived in was France. They stayed in France for some thirteen days, living, they claimed, in "the jungle". They made application for recognition as refugees and in a decision of the respondent dated 24th July 2017 the respondent rejected their asylum claims. The appellants' appealed and their appeal was heard by First-tier Tribunal Judge C Mather, in Manchester, on 4th September 2017. In her determination the judge made a series of credibility findings and dismissed the appeals on asylum grounds, on humanitarian protection grounds and on human rights grounds. The judge did not find either of the appellants to be credible.

3. The first named appellant claimed to be fluent in Dari and Punjabi. His wife and two children were said to speak only Punjabi and not Dari. His children, he said, went to Punjab School and the Gurdwara every now and again and were taught scripture there, they did not speak English when they arrived in the United Kingdom. The judge did not accept as credible that the appellants' children would have been able to study and do so well, as the evidence presented to the Tribunal showed, if they had only ever been taught scripture in their Punjabi language before coming to the United Kingdom in July 2016 and having started school only in October 2016. The judge pointed out that one of the children was studying a complex range of subjects and the other studied a wide range of subjects.
4. The first named appellant described members of the Taliban coming into his shop when his father collapsed and died of a heart attack. However, the second appellant had stated in her witness statement that the appellant had told her this. In cross-examination the first named appellant claimed his father had been hit by the Taliban when he was being taken into a vehicle. He then stated that he did not know what had happened. The judge felt that if the appellant had been telling the truth then there would have been inconsistency in the accounts. At paragraph 30 of the determination the judge noted that the first named appellant's claim that he gave his house and shop to an agent in Jalalabad in payment for the family's journey, not knowing how much the agent would get for them and then he and his family were passed through different agents along the journey with no more monies passing hands. The judge did not accept it as credible that there would be such a loose financial arrangement when they were taking a relatively complex journey involving three adults, two of whom were infirm and two children. The judge noted the car journey to Pakistan, the two flights and a stay in the jungle and the boarding of a lorry to the United Kingdom. She noted the frailty of the second appellant and as confirmed in medical records and did not accept it as credible that she would have the ability to complete the journey described. She did not accept that the appellant would be able to travel in the back of a lorry, sitting on boxes, for some twelve hours.
5. The judge also noted that there was conflicting evidence as to who had possession of the passports. The first named appellant had said in oral evidence that the agent had the passports and he did not know if the agent had the passports for all the family. This was repeated by his wife, until she was asked the procedure for going through passport control, when she then stated that the agent had given a passport to each member of the family to go through passport control. Again, the judge felt that if the

parties were telling the truth there would not be such inconsistency. She did not accept it as credible that the appellants did not know that they were coming to the United Kingdom.

6. The judge criticised the first named appellant and his wife who both gave oral evidence that they were in “a jungle” for some eleven to twelve days before boarding a lorry to come to the United Kingdom and they gave a description of the jungle. The judge was satisfied that the appellant and his family had not been to the “Jungle” and it would only have been speculation as to how this claim became part of their evidence.
7. The judge noted that the First named appellant had been asked various questions about his knowledge of Jalalabad and Afghanistan and, notwithstanding his attempted corrections of answers in the substantive interview, she accepted the criticisms made by the respondent of his knowledge of Jalalabad and Afghanistan for the reasons set out in the refusal letter. She accepted that the first named appellant and his family were Sikhs as is the second appellant, but did not accept that they were Afghan nationals. She makes the point that she has not, therefore gone on to consider the country guidance case of *TG & Others (Afghans: Sikhs: persecuted) Afghanistan CG [2015] UKUT 00595 (IAC)*, since the respondent has only named Afghanistan in the removal directions and this was the country that they claimed to be nationals of.
8. The appellants challenged the determination, raising four challenges and on 2nd January last Upper Tribunal Judge Kebede granted permission to appeal saying this:

“Whilst the weight to be given to the evidence is a matter for the judge, there is arguable merit in the assertion in the first ground that the weight the judge accorded to the first appellant’s ability to speak Dari, was not adequately considered against the respondent’s adverse findings on nationality, in particular paragraph 14 of the refusal letter. Although there is less merit in the other grounds in themselves, it seems to me that they are nevertheless dependent to an extent upon the outcome of the challenge in the first ground and accordingly permission is granted on all grounds.”

It was confirmed to me in submissions by Ms Sachdev, that the second, third and fourth challenges are dependent on the first challenge which is to the credibility findings in respect of the appellants’ nationality. The approach to the Tribunal’s assessment was said to be flawed and irrational, because the judge accepted the criticisms made by the Secretary of State in the Secretary of State’s refusal letter.

9. At paragraph 34 the judge said this:

“The Appellant was asked various questions about his knowledge of Jalalabad/Afghanistan. Notwithstanding the Appellant’s attempted corrections of his answers in the substantive interview, I accept the criticisms made by the Respondent of his knowledge of Jalalabad/Afghanistan for the reasons given in the Reasons for Refusal Letter.”

10. However, the grounds assert that the refusal letter was wrong. It claimed that the appellant did not know the directions north, east, south and west and could not describe the Taskira and he also incorrectly stated that China bordered Afghanistan.

It was also claimed that his answers to Dari phrases were incorrect and he did not use the Afghan calendar. The respondent accepted some of the appellant's answers as being basic general knowledge-based questions about Afghanistan including names of former and current presidents and the airport in Jalalabad but the approach, it is said, of the Tribunal to the assessment of nationality was irrational. I am afraid I reject that submission.

11. A judge's determination has to be read in context and it is necessary to look carefully at the judge's conclusions in this determination. This judge clearly examined the background evidence before her, because she said so and her first finding in respect of the children's education and their apparent progress at school was something that she was entitled to note and criticise. It was being claimed by the appellant that his wife was not able to go out of the house and his children just simply went to the Punjab school at the Gurdwara every now and again. However, an examination of the school reports shows that it was claimed that level B was the average attainment level for children of the subjects' age and yet the children attained level B in some subjects and that, submitted Mr McVeety, was not credible and was something that the judge was entitled to note. They had only been at school since October 2016. The hearing before the judge was at the end of the school summer holiday in 2017 and effectively they had experienced less than a year at school. The judge was perfectly entitled to find that it was not credible that the appellant's children would be able to accept their current levels of education if they had only ever been taught scripture in the Punjab language before coming to the United Kingdom in July 2016.
12. At paragraph 28 of her determination, the judge said that while she accepted that the appellant speaks Punjab and Dari she did not accept that his ability to speak Dari was determinative of his claimed nationality, given the discrepancies in their evidence as a whole. She noted that the appellant's claim was that the Taliban came to his father's shop and during his interview he said that his father had collapsed and died of a heart attack. Yet in her witness statement the second appellant stated that the appellant had told her this. In cross-examination, however, the appellant stated that his father had been hit by the Taliban when he was being taken to a vehicle. He then stated he did not know what happened as he was not there. This, with very great respect, goes to the very core of the claim made by the appellant. It is their reason for having left their home in Afghanistan as they claim. The judge was entitled to find that if they were telling the truth then such an inconsistency would not occur.
13. The judge then considered their journey to the United Kingdom and it was the appellant's claim that he simply gave an agent his house and shop, not knowing how much would be raised on the sale of them and that was accepted as payment for his journey. The journey comprised a car journey to Pakistan, two flights on an aeroplane, a stay in the jungle and the bordering of a lorry to the United Kingdom. The judge was entitled to find as she did. She had evidence before her as to the second appellant's medical condition, she had copies of her doctor's reports, details of the medication that she is being prescribed. Apart from anything else it appears that she is suffering from diabetes. The judge also noted the conflicting evidence as to the passports, the appellant claiming that the agent held all the passports and he did not know whether

the agent held passports for all the family and the evidence of his wife who stated that the agent had given a passport to every member of the family to go through passport control. This may not be part of the core of the appellant's claim, but it is nonetheless an inconsistency which would not have occurred had the judge been told the truth. The judge did not accept that the appellants had been in the jungle, meaning the jungle in France, while they were in France, because of the description they gave. The challenges made to the determination are I fear nothing more than disagreements with the decision. The weight to be given to a particular piece of evidence is a matter for the judge and for the judge alone. It is not claimed that the determination is perverse.

14. So far as the fourth challenge is concerned, this suggests that the judge erred in failing to apply *TG*. The judge clearly was of the view that the appellants were not Afghan citizens and the decision of the respondent suggests that the appellants will be removed to Afghanistan or to a transit point in an EU member state or to Dubai, presumably being countries through which the appellants travelled. Ground 1 is simply not made out. It is not necessary for me to consider therefore grounds 2 or 3. As to the fourth ground, I am afraid I do not find it material that the judge did not consider *TG*, given that this is not an appeal against removal directions anyway and removal is not necessarily going to be to Afghanistan, given that the judge has now found that they are not Afghan citizens.
15. The making of the determination by First Tier Tribunal Judge C Mather did not involve the making of an error of law. I uphold her determination it shall stand.

Notice of Decision

The appeal is dismissed on all grounds.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT **FEE AWARD**

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

Richard Chalkley

Upper Tribunal Judge Chalkley

10 May 2018