

Appeal No: HX/41461/2001

RG (Risk - Return - Sikh) Afghanistan CG [2002] UKIAT02130

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 21st May 2002

Date Determination notified:

24th June 2002.....

Before:

Mr C M G Ockelton (Deputy President)

Mr J Barnes

Between:

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant, a citizen of Afghanistan, appeals, with leave, against the determination of an Adjudicator, Mr A W Khan, dismissing his appeal against the decision of the Respondent on 3rd March 2000 refusing him leave to enter having refused asylum. Before us, the Appellant is represented by Ms Gill, instructed by Gupta & Partners, and the Respondent is represented by Mr Blundell.
2. As his name suggests, the Appellant is a Sikh. He claims a well-founded fear of persecution on the basis that, as a Sikh, he is at risk from the present situation in Afghanistan under a government which, in Ms Gill's submission, is, at any rate partly, in the control of the Mujahideen. The evidence suggesting that, as a Sikh, the Appellant is at risk is confined to material derived from reports of the early 1990s

when the Mujahideen were in control in Afghanistan as the government of that country.

3. In three passages from Amnesty International Reports, which have been put before us in a somewhat defective form, there are indications of occasional attacks on both Hindu and Sikh houses in Afghanistan and there is a clear indication in the 1994 Amnesty International Report that "*almost all Sikh and Hindu families*" have left Afghanistan for Pakistan and some have moved on to India. The source of their difficulties is the subject of a hint in the 1993 US State Department Report. The relevant passage from that report, which has also been put before us by Ms Gill, reads as follows:

"The country's small Sikh and Hindu communities, once totalling some 50,000, continued to dwindle as their members emigrated or became refugees in the wake of the intense religious violence to which they were subjected in some urban areas following the destruction of the Iodia Mosque in India in December 1992."

4. That was the position before the Taliban came to power. When the Appellant made his claim, he was asked the basis of it and he said this:

"Although the Mudareen wished us to convert religion, we could still practice our religion, but since the Taliban took control 3½ years ago, matters worsened."

Since then, he has expanded on his claim. He says that he was subject to treatment which amounted to persecution on grounds of his religion, both in December 1992 and December 1993. He has also given an account of his experiences under the Taliban, but it is right to say that he did not arrive in the United Kingdom until some time apparently shortly before 13th January 2000.

5. There cannot be any doubt that the situation in Afghanistan at the present time is different from what it has been in the past. Although we accept that the situation is not stable, it is not a Taliban government or, despite what Ms Gill has pressed upon us, a Mujahideen government. The government is that which has been set up under the Bonn agreement and we accept Mr Blundell's submission that it has a wide geographic and ethnic base.
6. There is a further matter which we must set out before reaching our conclusions on this appeal. It is this. The Secretary of State is said, in a letter which we have seen, to take the view that enforced returns to Afghanistan are not appropriate at the present time. That indication is contained in a letter of today's date from Kate Pooler, a Protection Assistant in the UNHCR office in London. We set that letter out in full.

“Re: Sikhs in Afghanistan

We are in receipt of your facsimile of 21 May in which you request information on the return of unsuccessful asylum applicants of the Sikh minority in Afghanistan.

At the outset, it should be stated that UNHCR advocates a case-by-case approach to asylum applications and to questions of return, with due weight being given to the individuals merits of each case.

UNHCR is closely observing the developments in Afghanistan. The situation remains complex and several factors need to be taken into account in assessing the safety of returns. As Afghanistan, after so many decades of conflict, takes its first steps towards peace under the interim government, the security situation remains unstable and it is not readily apparent whether the international community along with international organisations are able to satisfactorily guarantee the protection of those returning to Afghanistan. Nor is it certain, the extent to which tribal affiliations and ethnic affinities that have been a prime cause for discord in Afghanistan, will impact upon issues of return. In light of the situation on the ground, UNHCR takes the view that there should be no enforced returns to Afghanistan at the present time. It is our understanding at this stage that the Home Office holds the same view.

We hope that you find this of assistance.”

7. We have to say, with regret, that if Ms Gill finds that letter of assistance, her experience is not shared by us. We read the letter as referring to those who are not refugees under the Convention, despite its source in the UNHCR. The reason for that reading is firstly, that in the case of a person who was a refugee, the UNHCR would, we assume, remind the reader that return would be prohibited rather than not advised. Secondly, we note that the letter was written specifically on the basis of being about an *unsuccessful* asylum applicant. Of course, we do not know why Ms Gill was asking about such a person, but the letter appears to be predicated on the situation of a Sikh who is not a refugee. What is said there is that even if a person is not a refugee, if he is an Afghan citizen, he should not be returned.
8. That may or may not be a justifiable view, but it is of no assistance in this appeal because, following the decision of the Court of Appeal in Saad and given that the decision in this case predates the coming into force of the Human Rights Act and of the 1999 Act, we are concerned simply with the following question: Has the Appellant a well-founded fear of persecution for a Convention reason in Afghanistan at the present time?
9. The basis for any fear that he has, insofar as related to a Convention reason, would be his membership of the Sikh community, a minority community in Afghanistan, and indeed if Ms Gill’s submissions are to be accepted, a tiny minority. We have today pressed Ms Gill to show

us evidence relating to the persecution of Sikhs in Afghanistan. She has readily acknowledged that there is no evidence relating to the persecution of Sikhs at present. She attributes the lack of such evidence to the tininess of the minority. We, of course, accept that where a group is tiny, there may be little evidence of its welfare. But, given that the burden of proof is on the Appellant, we see no justification for assuming that the lack of evidence of persecution of Sikhs means that Sikhs are or would be persecuted.

10. Ms Gill further asks us to assume that the situation as it was in the early 1990s, when the Mujahideen were in power, would continue now that the government established under the Bonn agreement is in power. She was unable to tell us why we should assume that the Mujahideen, or any similarly intolerant faction, is likely to have responsibility for the affairs and welfare of the Appellant. The situation is simply that there is no reason to suppose that the Appellant would, or might, be treated, in the way that he claims to have been treated in the early 1990s under the Mujahideen government.
11. Indeed, the only contemporary evidence that we have seen relating to Sikhs is to the opposite effect. Mr Blundell produced some late evidence to which Ms Gill, very properly, did not raise any objection. Amongst that evidence are news reports from the Tribune of India and also from, perhaps rather surprisingly, the Detroit Free Press. Those articles relate, in part, to the attitude of the current government in Afghanistan to Sikhs and, in particular, to matters discussed during a visit by the interim Head of Government in Afghanistan to Washington and New York in February. We will set out the relevant parts of those reports.
12. In the Tribune of India is a report dated December 11, 2001, as follows:

“Afghanistan’s Interior Minister designate Younus Qanooni in the post-Taliban interim government scheduled to assume office in Kabul on December 22 has impressed upon the displaced Sikh and Hindu community to return to their hearth and homes assuring *‘equal rights to all non-Muslims’*.”

Mr Qanooni told a delegation of the Sikh community, which had fled to India from Kabul and other parts of Afghanistan because of the troubled and unsettled conditions in that country, that they would have proper representation of at least two members in the Loha Jirga or the Grand Council.

Mr Qanooni, who spent considerable time here yesterday with a deputation of the displaced Sikh community in the presence of the Afghanistan Ambassador to India Masood Khalili before departing for Kabul, emphasised that *‘things will be put back on the rails’*.

He had some good tidings for the uprooted Sikh community that the interim government in Kabul would move expeditiously in returning the property owned by them. Simultaneously, it would consider providing necessary financial assistance to them in the wake of the foreign inflow for the reconstruction of war-ravaged Afghanistan.

Aware of the industriousness of the Sikh community, Mr Qanooni said it was imperative to restart business and trade along with other industrial activity to kickstart the battered economy of Afghanistan. In this context he said the Sikh community could play the role of a catalyst and the interim administration would not be found wanting as a facilitator."

13. In the Detroit Free Press, a report dated 24 December 2001 reads, in part, as follows:

"The ouster of the Taliban already has brought signs of a more tolerant brand of Islam entering Afghan society.

Two weeks ago, a government official told Singh [that is to say a person around whom the article is based] that Sikhs, who believe in one God and reject the caste system, would have an office of their own in the Bureau of Islamic Affairs."

And later:

"In his inauguration speech, Prime Minister Hamid Karzai pledged to protect the laws of Islam, but he also backed the freedom to practice all religions in Afghanistan and supported the rights of women, who were oppressed under Taliban rule."

14. Finally, in the Tribune of India, in a report dated February 1 2002 from New York, we find this:

"Afghanistan's interim Head of Government Hamid Karzai found time to assure a group representing the Hindus and Sikhs of Kabul that they would be restored their religious and civic rights and the properties seized from them by the former Taliban regime would be returned.

The group met the Afghan leader at a reception hosted by the Afghans, one of a series of engagements on a tight nine-hour schedule here after arrival from Washington."

15. That is the evidence currently relating to Sikhs. Of course, it is not evidence of the presence of Sikhs in the country and of their welfare. It is evidence that the interim government (which is, it has to be said, under the spotlight of international reporting and international supervision) is prepared to make public statements about its attitude to religious minorities including Sikhs.
16. It does not appear to us that, despite the general lack of security in Afghanistan, and despite the occasional reports of activities by autonomous groups of Mujahideen, that there is any basis for

supposing that the Appellant, as a Sikh, has a well-founded fear of persecution in Afghanistan at the present time. Whether he is returned there or not is, of course, an entirely separate issue, but our finding is that he is not entitled to status as a refugee. We therefore affirm the determination of the Adjudicator and dismiss this appeal.

C M G OCKELTON
DEPUTY PRESIDENT