



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07269/2017

THE IMMIGRATION ACTS

**Heard at Newport
On 16 November 2018**

**Decision & Reasons Promulgated
On 05 February 2019**

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

Between

**AY
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Williams, Counsel instructed by Asylum Justice

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Suffield-Thompson in which she dismissed the appeal of the Appellant, a citizen of Azerbaijan, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. We make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Appellant who claims asylum. This direction prohibits the disclosure

directly or indirectly (including by the parties) of the identity of the Appellant. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

3. The application under appeal was refused on 20 July 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Suffield-Thompson on 4 October 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Hollingsworth on 15 December 2017 in the following terms

At paragraph 38 of the decision the judge states that the Appellant has stated that he had problems in his Home Office interviews due to the interpreter speaking a different dialect. The judge accepted this was true. The judge then referred to appellants raising this issue time and time again at hearings.

The judge then referred to the detailed explanation given by the Appellant at this hearing about the regional differences being plausible and not having been challenged in cross examination. Despite the findings made by the judge in this context the judge diluted the impact of such findings by referring to the absence of the provision of transcripts by the Appellant's representatives of that which the Appellant said in interview to prove what their client really said. The judge found this to be significant in its absence.

It is arguable that having found that it was true that there were problems arising from the use by the interpreter of a different dialect that the credibility assessment carried out by the judge should have been done in the light of the findings set out at the opening of paragraph 38 of the decision and that such findings set out at the opening of paragraph 38, should not have been subjected to the dilution referred to at the conclusion of paragraph 38 before proceeding to carry out the credibility analysis therein after.

The judge has referred in relation to a number of pertinent credibility issues to the content of the interview evidence. It is arguable that the judge should have set out a full or fuller analysis in respect of any explanation offered by the Appellant in relation to the content of the interview and difficulty arising with interpretation before making a final credibility assessment.

It is arguable that the judge should have made it clear if the absence or lack of adequacy of any explanation by the Appellant in relation to the strands relied upon by the judge incorporating reference to the interview evidence affected the credibility assessment by setting out a full or fuller analysis in relation to such explanation or absence of such explanation on the part of the Appellant.

Background

4. The history of this appeal is detailed above. The Appellant is a citizen of Azerbaijan born on 1 July 1983. He arrived in the United Kingdom on 12 April 2017 with valid entry clearance and claimed asylum on arrival with his wife and two children as his dependents. The basis of his claim was that he had been persecuted in Azerbaijan due to his imputed political opinion and he feared persecution on return. The Appellant claimed to

have been the head of security for the Transport and Energy minister General Akif Chovdarov who reported to the Minister of National Security, Eldar Mahmudov. Mahmudov was sacked and those reporting to him including Chovdarov, his personal staff and more than a hundred other workers were also removed from their posts. Many, including the Appellant, were detained. In the course of these events the Appellant's house was raided and during the raid his wife was raped.

5. The Secretary of State refused the claim not accepting that the Appellant was employed as claimed or that he was detained or that his wife was abused and therefore that he had faced persecution in the past or would face persecution on return. At the appeal hearing the Appellant maintained his claim and he and his wife both gave oral evidence. The Judge found (paragraphs 47 and 48) that neither the Appellant nor his wife were credible witnesses and dismissed the appeal.

Submissions

6. For the Appellant Ms Williams submitted a skeleton argument and referred to the grounds of appeal. There are three grounds and the grant of permission concentrates on ground 1 but does not exclude grounds 2 and 3. The Judge accepted the Appellant's evidence of difficulties experienced at the asylum interviews. The screening interview was conducted in Azeri and the substantive interview in Russian. Despite accepting these difficulties the Judge went on to make adverse credibility findings on the basis of answers given in the interviews. The Judge was wrong to suggest that a transcript should have been provided by the Appellant's representatives and to take adverse inference from its absence. So far as ground 2 is concerned the Judge does not appear to have considered the Appellant's witness statement and oral evidence in which he explains his knowledge of the Makarov pistol. Ground 3 asserts that in finding that the Appellant's wife was not a credible witness the Judge has failed to take into account her oral evidence and witness statement and relied upon irrelevant issues.
7. For the Secretary of State Mr Howells said the Appellant's solicitors had only corrected three answers given at the substantive interview. The issue of the gun was raised at question 96 and not corrected. There is nothing in the grounds to suggest that the Judge's decision is irrational or perverse. Mr Howells had no comment to make on ground 3.
8. We said that the appeal would be allowed, and the decision of the First-tier Tribunal set aside. A new decision would be substituted allowing the appeal. We reserved our written decision.

Decision

9. The basis of the Appellant's claim is clearly set out in his written witness statement and supported by a written witness statement from the Appellant's wife. These statements purport to address the issues raised by the Respondent in the refusal letter. Both the Appellant and his wife gave oral evidence. The Judge dismissed the appeal on the basis of adverse credibility findings in respect of both witnesses. These findings are comprehensive with the exception of the Judge's acceptance that the Appellant had problems in his Home Office interviews due the interpreter speaking a different dialect. The three grounds of appeal refer to the basis for these adverse credibility findings asserting irrationality, failure to take account of material matters and failure to give adequate reasons for a finding of fact. The grounds are admirably concise and we will deal with each of them.
10. The first ground asserts that it was irrational of the Judge having found that the Appellant told the truth about the difficulties he faced at interview due to interpretation issues to go on and find that the answers he gave were inconsistent and to take adverse inference as a result.
11. In our judgement this ground is made out. The finding of problems at the interviews could not be clearer (at paragraph 38). The Judge then goes on to dilute the significance of these problems by adding

"Time and time again at hearings Appellants raise this issue ... However I do note that in cases such as this it is common practice for representatives to provide the Tribunals with their own transcripts of what the Appellant said in interview to prove what their client really said and I find this to be significant in its absence".

This addition creates a number of difficulties. Firstly the Appellant appears to be criticised on the basis of what other appellants or their representatives might do. Secondly it is difficult to understand how a separate transcript would assist when the difficulties are not of transposition but of interpretation. It is not suggested that the answers given were wrongly recorded rather that the questions were misunderstood, or the answers wrongly translated. Thirdly, and perhaps of the greatest importance, is that the Judge having explicitly accepted that the Appellant had problems as claimed finds the absence of a transcript significant without explaining how that (adverse) significance is factored into her acceptance of this truth. In our judgment this is irrational, and the irrationality is compounded by the findings detailed in paragraphs 39, 42, 43 and 44 that answers given at interview were inconsistent.

12. The second ground relates to the Makarov pistol. The Judge finds (at paragraph 42) that the Appellant did not know how many parts the weapon had and, given his claimed employment, it is implausible that he would not be familiar with *"guns, gun care and their parts and working"*. It is asserted that in making this finding the Judge failed to take into account material evidence; oral evidence in which the Appellant disputed the account in the interview transcript.

13. In our judgement this ground is also made out. There is no mention in the decision of the oral evidence given relating to the gun and the response given by the Appellant at interview only (at paragraph 42) a reference to the interview record. The reference is wrong. The decision records that at interview the Appellant

“did not know how many parts the weapon had”

whereas the interview record shows the question

“How many pieces does it break down into when you clean it?”

with the answer

“I didn’t do that personally, there was a special department at the ministry where we would take the weapons to be cleaned”.

Indeed, the Appellant’s witness statement goes into further detail explaining that the Appellant was not given the chance at interview to expand on his answer and that he did know how many parts the weapon had.

14. The third ground concerns the evidence of the Appellant’s wife found by the Judge not to be a credible witness. The complaint is that the Judge gave inadequate reasons for finding the Appellant’s wife not to be credible. The basis of this finding is the lack of medical evidence or confirmation of a medical appointment said to have been missed.
15. In our judgment this ground is also made out. The Appellant’s wife gives a detailed written witness statement in which she corroborates her husband’s account and gives her own account of being assaulted and raped after her husband had been taken away when their home was raided. The details of the rape and its aftermath are lengthy and without apparent inconsistency. A finding that she is not a credible witness based only on a lack of medical evidence and a missed appointment is not sufficiently reasoned.
16. The errors of law referred to above materially affected the Judge’s decision to dismiss the appeal and for that reason we allow the appeal and we set aside the decision of the First-tier Tribunal.

Remaking the decision

17. In remaking the decision, we repeat what we have said above. The Appellant is a person who has put forward a detailed and plausible claim for international protection. His account is corroborated by his wife. The objective evidence contained in the Appellant’s bundle shows that the events forming the backdrop to the Appellant’s claim took place and further that there has been international concern over these events and in particular the detention of individuals on politically motivated charges. Human Rights Watch refers to a ‘sustained crackdown’. The Foreign and

Commonwealth Office have issued a number of press releases expressing 'concern'.

18. The Judge made adverse findings in relation to the Appellant's wife's credibility which it is not possible to support. Having read her witness statement and having heard oral evidence the only reason for disbelieving her account is unsustainable. She talks about what happened to her at her own home immediately after her husband's detention. We can see no reason to doubt her evidence. The Appellant gave evidence at screening and asylum interviews and had difficulties at the screening interview. Apart from inconsistencies that the Appellant attributes to the accepted interpretation difficulties the only remaining issues about his account are that he does not know enough about guns and there are problems about the date his employment began. In fact there are very minor inconsistencies in the dates of his commencing employment and the difficulty concerning the Makarov for the reasons given above is not a difficulty at all.
19. We indicated having set aside the decision that we proposed to remake it allowing the Appellant's appeal. On behalf of the Home Office Mr Howells did not object to this course.
20. We therefore remake the decision of the First-tier Tribunal and allow the Appellant's appeal.

Summary of decision

21. The decision of the First-tier Tribunal is set aside.
22. We remake the decision of the First-tier Tribunal and allow the Appellant's appeal.

Signed

Date: 31 January 2019



J F W Phillips
Deputy Judge of the Upper Tribunal