



IAC-AH-V1

**Upper Tribunal
(Immigration and Asylum Chamber)
[UI-2021-000936]**

Appeal Number: PA/08708/2019

PA/08713/2019 [UI-2021-000937]

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2022**

**Decision & Reasons Promulgated
On the 25 April 2022**

Before

DEPUTY UPPER JUDGE TRIBUNAL HARIA

Between

**MS NATIA KUTASHVILI
MS ETERI NOZADZE
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood, Legal Representative

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First - tier Tribunal Judge Chana promulgated on the 30th September 2021, dismissing the appellants appeals.
2. Permission to appeal was granted by Upper Tribunal Judge Martin on 18th November 2021 on the following grounds:

“While the Judge does consider the expert evidence of Mr Boring (sic) in detail, there

is no assessment of the report of Mr Chencinor nor the country evidence provided by the appellant’s in support of their claim which is an arguable error of law.

The evidence clearly indicated the vulnerabilities of both appellants, particularly regarding their mental health. The Judge agreed they should be treated as vulnerable witnesses but has not factored their vulnerability into the adverse credibility findings especially where there was new evidence and inconsistencies. That is also an arguable error of law.”

3. An anonymity order was made previously and is reiterated below because the appellants have outstanding protection claims as well as mental health concerns.

Background

4. The appellants are nationals of Georgia. They both entered the UK on 7 November 2015 and claimed asylum on 10 November 2015. The second appellant is the mother of the first appellant and mother -in-law of the first appellant’s husband.
5. The appellants protection claim is on the basis of their imputed political opinions due to their relationship with Lieutenant Colonel George Kuparashvilli, the first appellant's husband who fled Georgia in 2013 after the presidential elections due to his association and close links to the ex president of Georgia, President Sakashvilli.
6. Their Article 8 claim is on the basis that they meet the requirements of 276ADE(1) (vi) as there would be very significant obstacles to their integration into Georgia in the light of their complex psychological issues and that of the three dependent children of the first appellant. In the alternative, it was submitted that the respondent’s decision would result in unjustifiably harsh consequences for the appellants and the there children resulting in a breach of Article 8 ECHR.
7. Their applications for asylum and humanitarian protection were refused by the respondent on 19 February 2016, and their appeals were dismissed by First - tier Tribunal Judge Greasley in a determination dated the 6th August 2016 and promulgated on 15 august 2016. The appellants made joint further submissions on 20 October 2017 with fresh evidence. It is the refusals by the respondent of those further submissions dated 28 August 2019 which were the subject of the appeals before Judge Chana.

The decision of the First - tier Tribunal

8. The hearing at the First - tier Tribunal before Judge Chana took place on 30 July 2021 and 26 August 2021. Judge Chana treated the appellants as

vulnerable witnesses on account of their mental health[56]. Both appellants gave evidence before the Tribunal. The First - tier Tribunal found the appellants lacked credibility due to inconsistencies in their evidence which affects the credibility of their claim [119- 145]. The Judge did not accept that the first appellant's delayed recollection of her rape was due to PTSD and loss of memory as the Judge did not consider this to be credible and there was no medical evidence in support.

The grounds of appeal

9. The grounds of appeal are threefold. Firstly, although the Judge agreed to treat the appellants as vulnerable witnesses, the Judge in making adverse credibility findings did not apply the guidance given in the Joint Presidential Guidance Note No 2 2010, Child, Vulnerable adult and sensitive appellant guidance and consider whether any of the inconsistencies in the appellants accounts could be explained by the appellants vulnerability.
10. Secondly, the Judge erred in failing to make findings of fact on material matters in particular the Judge failed to undertake an assessment of the country expert report by Robert Chenciner's report dated 19 June 2017. The Judge failed to make any findings and failed to indicate what (if any) weight was attributed to Mr Chenciner's report. The Judge also failed to make any findings as to the evidence of the second appellant.
11. Thirdly, although the Judge at [43] notes that the appellants had presented country evidence in their bundle which supported their case that they would be a risk upon return to Georgia due to the first appellant's husband's association with the former president. The Judge made no reasoned finding of fact as to these pieces of evidence and what weight (if any) is attributed to it.

Rule 24 response

12. The respondent filed a Rule 24 response dated 17 December 2021, which had been drafted solely on the basis of the grant of permission as the respondent did not have the appellants grounds of appeal. It suffices to say that the respondent opposed the appellants appeal on all grounds.

The Error of Law hearing

13. At the hearing, Mr Lindsay confirmed that he had seen the grounds seeking permission to appeal and confirmed that the respondent no longer maintained the position in the Rule 24 response. Mr Lindsay accepted that First - tier Tribunal Judge Chana had erred as set out in the grant of permission by Upper Tribunal Judge Martin.
14. In the circumstances, it was not necessary to hear from Mr Wood save that he confirmed that the expert evidence was material to the protection and human rights claims.

15. At the end of the hearing, I announced that I was satisfied that Judge Chana had made a clear error of law in failing to undertake an assessment and make findings in relation to the report of Robert Chenciner dated 19 June 2017 and further the Judge had erred as set out in the grant of permission when undertaking a credibility assessment of the appellants evidence such that her decision should be set aside. I now give my full reasons.

Decision and reasons

16. I am entirely satisfied that the decision of the First - tier Tribunal Judge Chana contains a material error of law.
17. Although permission was sought on three separate grounds of appeal, permission was granted on the basis of two of the three grounds. The grant of permission does not state that permission is granted on all grounds so I shall limit my consideration to the two grounds on which permission was granted.
18. The Judge correctly applies the principle in Devaseelan v SSHD [2002] UKAIT 702 and takes the first decision of Judge Greasley as the starting point Judge and as determinative of the facts on the basis of the evidence that was before Judge Greasley.
19. Turning to the first ground, the appellants representative acknowledges that the Judge in her decision [56] accepted the appellants as vulnerable witnesses on account of their mental health. Having read carefully the decision of Judge Chana, the decision does not record that in making findings [119-145] as to the credibility of the appellants the Judge considered the effect of the appellants vulnerabilities.
20. The Judge makes no mention of and there is no indication in the decision that the Judge applied the Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', issued by the Senior President on 30 October 2008 and the Joint Presidential Guidance Note No 2 of 2010 Child, vulnerable adult and sensitive appellant guidance which requires that Judges [14-15]:

“Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied

whether the appellant had established his or her case to the relevant standard of proof."

21. The Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department & Lord Chancellor [2017] EWCA Civ 1123, confirmed that where the Tribunal accepted an appellant as vulnerable, it should apply the Guidance Note, and a failure to do so will most likely be a material error of law.
22. I am satisfied that the Judge wholly ignored and failed to apply the Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', issued by the Senior President on 30 October 2008 and the Senior President of Tribunals' Practice Direction and the Joint Presidential Guidance Note No 2 of 2010. I find that this amounts to a material error of law.
23. In relation to the second ground upon which permission was granted, Wilson J in the Court of Appeal in Mibanga [2005] EWCA Civ 367, at [24] stated:

"It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence".
24. However, in HH (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164, the Upper Tribunal cautioned:

"The Tribunal considers that there is a danger of Mibanga being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's "cake" analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task."
25. Applying the principle and the caution set out above, I have looked carefully at the First - tier Tribunal decision.
26. The appellants skeleton argument prepared by Ms Panagiotopoulou dated 1st March 2021 was before Judge Chana and lists the expert report of Robert Chenciner as essential reading. The report is also referred to extensively at paragraphs 20-23 of the skeleton argument. The reports of Robert Chenciner and that of William Bowring were relied upon by the appellants in support of their claim that they are at real risk of persecution on account of their association with Lt Col Kupararshvilli. The expert

reports were relied upon by the appellants as corroborating that there exists a real risk of persecution faced by Lt Col Kupararshvilli were he to return to Georgia as a result of his close links to ex- President Sakashvilli and due to his participation in the conflict in Ukraine.

27. The respondent in the refusal decisions dated 28 August 2019, accepted that Mr Chenciner has some knowledge of the situation between Georgia and the Russian government. However the respondent did not consider Mr Chenciner's report to be objective or demonstrating that he had fully considered all the relevant factors and provided a balanced consideration. The respondent challenged the relevance of Mr Chenciner's report to the appellants claims as the vast majority of his previous reports relate to documentation and Judge Greasley had accepted the appellants documents were genuine. Furthermore the respondent noted that in preparing his report Mr Chenciner had not met the appellants in person or interviewed them over the phone.
28. In her decision [paragraph 34] the Judge notes that the appellants further submissions included the country expert report of Robert Chenciner, there are further references to a report of Mr Robert, Dr Roberts and a report dated 19 June 2017 [paragraphs 39, 46, 47,50 and 113] all of which I assume are further references to Mr Chenciner's report dated 19 June 2017 as there is no report by a Mr Robert or Dr Roberts and Mr Chenciner's report is the only report dated 19 June 2017. However the Judge in the section of the decision headed "*Findings of fact*" [113 -146] or elsewhere in her decision fails to engage with and assess the country expert report of Mr Robert Chenciner's report dated 19 June 2017 which deals not only with the genuineness of the appellants documents but also with material issues in the appeals such as the assessment of risk on return to Georgia for the appellants.
29. I acknowledge that the Judge [paragraphs 141-142] does engage with the report of Professor William Bowring albeit referring to him as Mr Boring.
30. Whilst the Judge was correct to apply the Devaseelan principle to take the decision of Judge Greasley as the starting point and as determinative of the facts on the basis of the evidence as it then was, I accept that Judge Chana should have acknowledged and taken into account that the expert evidence of Mr Chenciner which was not before the previous Tribunal Judge.
31. It was incumbent on the First - tier Tribunal to consider all the evidence in the round including the expert reports giving a reasoned explanation as to what weight (if any) is attributed to the findings in such a report and why the evidence was accepted or rejected. I find that the Judge adopted a piecemeal approach to the evidence in the appeals rather than a holistic approach. This amounted to a material error of law.

32. I am satisfied that the failings in the decision identified above amount to a material errors of law, requiring the decision to be set aside to be remade in its entirety
33. I have given careful consideration as to whether the decisions in these appeals ought to be remade in the Upper Tribunal or in the alternative remitted to the First-tier Tribunal, taking into account the submissions of the two representatives on the point. Mr Wood contended for a remittal to the First-tier Tribunal with the decision to be made de novo. Mr Lindsay did not resist his submission on this point.
34. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal vitiate all findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal. The effect of the error has been to deprive the appellants of a fair hearing of their case.
35. In all the circumstances, with the acquiescence of both parties, I relist these appeals for a fresh hearing in the First-tier Tribunal, on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be remade is such that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh with no findings preserved.

Decision

36. The making of the decision of the First - tier Tribunal did involve the making of an error of law such that the decision should be set aside.

I set aside the decision of the First - tier Tribunal.

The appeal is remitted, de novo, to the First - tier Tribunal to be reheard at Hatton Cross in accordance with the attached directions.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant's are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

N Haria

Deputy Upper Tribunal Judge Haria
2022

Dated 14 March

Directions

- 1. The appeal is remitted to the First - tier Tribunal sitting at Hatton Cross;**
- 2. The appeal is to be decided afresh with no findings of fact preserved;**
- 3. The estimated time of hearing in 6 hours ;**
- 4. The appeal may be listed before any First - tier Tribunal Judge with the exception of Judges Greasley and Chana ;**
- 5. The appellants are to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;**
- 6. The First - tier Tribunal is encouraged to arrange an oral Case Management hearing in these appeals and to give such further or alternative directions as are deemed appropriate.**

Signed

N Haria

Deputy Upper Tribunal Judge Haria
2022

Dated 14 March