



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00042/2014

Appeal Numbers:

AA/00048/2014
AA/00051/2014
AA/00052/2014
AA/00053/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25th June 2014**

**Determination
Promulgated
On 10th July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

BS, NR, RS, MR, AMS

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, instructed by Solicitors
For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellants

1. The Appellants are citizens of Georgia. They are husband, wife and three children. Their appeals are dependant on the First Appellant and therefore I shall refer to him as the Appellant in this appeal against the First-tier Tribunal's determination dated 12th February 2014 dismissing his appeal, against the Respondent's decision of 12th December 2013 to

remove him, on asylum, humanitarian protection and human rights grounds.

2. Permission to appeal was granted by Upper Tribunal Judge Kekic on 20th February 2014 on the grounds that it was arguable that the Appellant should have been able to have an interpreter of choice as far as language was concerned. Further, it was arguable that, in finding that the Appellant could internally relocate, the Judge did not have regard to the fact that he had been able to live elsewhere because he was in hiding. The Judge failed to deal with the difficulty for the family as a whole, particularly the children, if they were required to spend their lives in hiding in order to remain safe.
3. At the hearing before me, Ms Yong relied on the grounds of appeal and submitted that the Judge's finding that there was no interest in the Appellant, after he relocated to Rustavi, was wrong in law because it would be unduly harsh for the whole family to relocate. The Judge found that the Appellant had been persecuted in the past and there was no reason to think that he would not be targeted on return. The police had failed to protect him and he could not seek the protection of the authorities because of his ethnicity. Internal relocation was not viable as the Appellant could not deny his ethnicity and remain in hiding (SA (political activist - internal relocation) Pakistan [2011 UKUT 30]).
4. In addition, the Judge failed to consider whether the Appellant could work in Georgia given his mental condition and suicidal tendencies. The Judge failed to consider the medical evidence before him, in particular his daughter's asthma, and failed to make a clear finding on whether the Appellant and his family could relocate.
5. Mr Jack submitted that the Judge had taken into account the expert report which included all relevant sources. At paragraphs 45 to 50, the Judge found that the background material did not show a consistent pattern of persecution. The Appellant would not be targeted because of his ethnicity and discrimination was faced by many different groups. The Judge's failure to mention a specific report was not material since the evidence did not show widespread persecution on ethnic grounds in any event. The Judge made findings on the expert report which was sufficient.
6. The Judge was aware that the Appellant was in hiding in Rustavi, but there was no suggestion that anyone came looking for him. If the police had any interest in the Appellant they would have gone to look for him whether he was in hiding or not. He had failed to show that the police had an ongoing interest in him. He was persecuted by three rogue police officers in the local market in which he was trading. There was no evidence before the Judge to show that these police officers had tried to track him down when he was no longer running his market stall. The Judge's findings at paragraph 53 were well reasoned and not perverse.

7. Mr Jack submitted that the Judge accepted that the Appellant had been in hiding prior to coming to the UK, but found that there was no evidence that anyone had come looking for him. There was no need for the Appellant to live in hiding and he could internally relocate and re-establish his business elsewhere.
8. This case could be distinguished from SA: The Appellant was not a political activist and would not be required to change an innate characteristic. There was no suggestion he would have to hide his ethnicity. The Appellant could safely relocate as a Yezidi. He could avoid persecution from the three rogue individuals by relocation. The conduct of the police officers did not form part of a wider systematic attack according to the addendum to the expert report. The Appellant had not shown that the three police officers were still operating policemen who were capable of tracing him. There was sufficiency of protection and the Judge's findings were open to him.
9. Mr Jack submitted that the Judge had considered section 55; the children were young and their nuclear ties were within the family unit. Disruption to their education would only be temporary and there was little adverse effect on them; asthma was not a fundamental issue. There was no reference to the Appellant's suicidal tendencies in any of the documents and he had failed to show that he or his wife could not re-establish themselves because of his PTSD. The Judge's overall conclusion was not perverse and there was no material error of law in the determination.
10. Ms Yong submitted that the Judge should have considered the most up to date background evidence dated 2014 in addition to the expert report. The police officers had the power to locate the Appellant and he could not seek protection from the police if they did so. Ms Yong accepted that there was no evidence before the Judge to show that anyone was looking for the Appellant outside Tbilisi or since he came to the UK. However, the police officers had the capability to find him and the Judge had failed to make a finding on this issue and on whether he would have to live in hiding. Police corruption was widespread and the Appellant would not be safe anywhere in Georgia.

Discussion and conclusions

11. Ms Yong did not rely on Ground 1 and stated that she was not relying on interpreter difficulties as the Judge found the Appellant to be credible

and accepted his account. There was no indication that the Judge got any of the facts wrong.

12. The Judge found that the Appellant ran a market stall in Tbilisi selling clothes and shoes and that he was targeted for extortion by three police officers, at least in part on grounds of his ethnicity as a Yezidi. The Appellant was abducted, beaten and stabbed by these police officers. He would be at risk of further persecution by these three officers if returned to Tbilisi.
13. The Judge was not satisfied on the evidence before him (the expert report and background material) that Yezidis suffered persecution because of their ethnicity throughout Georgia. Ms Yong submitted that the Judge had failed to take into account the latest ECOI network report and the Human Rights Watch [HRW] report on Georgia 2014. However, the Judge specifically quoted from the ECOI report at paragraph 47 of his determination and there was nothing in the ECOI or HRW report to contradict his findings. The extracts relied on in the grounds of appeal did not establish that Yezidi's were persecuted by the police as a whole and there was systematic abuse, so as to render the contrary finding perverse.
14. The Judge found that the Appellant had lived with relatives in Rustavi for 6 to 7 months, during which time he came to no harm. There was no suggestion that anyone came looking for him. It was accepted that there was no evidence before the Judge to show that the three police officers had tried to locate the Appellant after he left Tbilisi or since he left Georgia in 2007. The Appellant may well have been in hiding in Rustavi, but that did not alter the fact that the authorities had no interest in the Appellant after he left Tbilisi.
15. The Appellant's wife remained in Georgia living with relatives until 2010. She did not have any problems with the authorities. She stated in oral evidence that she had not left the house and her mother did the shopping. There was no evidence that the police had come looking for the Appellant. The oral evidence of the Appellant's wife was consistent with the Judge's finding that the police officers had no interest in the Appellant after he left Tbilisi.
16. The Judge found that the Appellant was not a political figure who might be sought out by the government or security forces as a potential 'enemy of the state.' SA was distinguishable on its facts. I find that the Judge's conclusion that the Appellant would not be at real risk of persecution or other ill treatment if he returned to a different part of Georgia was open to him on the evidence before him.

17. The Judge took into account section 55 of the Borders, Immigration and Citizenship Act 2009 and considered the best interests of the children as a primary consideration. They came to the UK with their mother in 2010. The Judge acknowledged the disruption to the education of the older children and found that there was nothing to show that they could not re-adjust to life in Georgia. The daughter's asthma was treatable and there was no evidence before the Judge to show that she could not obtain treatment in Georgia.

18. The Judge also acknowledged that it would be difficult for the Appellant to re-establish himself in business or employment, but the evidence did not indicate that it was unreasonable. The Judge took into account the medical evidence at paragraph 61. His overall conclusion that the Appellant and his family could safely relocate in Georgia and their removal would not breach Article 8 was open to him on the evidence.

19. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 12th February 2014 shall stand.

Deputy Upper Tribunal Judge Frances
4th July 2014