



IAC-FH-NL-V1

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

Appeal Number: AA/04102/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. N. Bramble, Home Office Presenting Officer

For the Respondent: Mr. S. Chelvan of Counsel, instructed by Asylum Aid

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Cooper promulgated on 3 September 2015 in which he allowed BK's appeal against the Secretary of State's decision to refuse to grant asylum.
2. For the purposes of this decision I shall refer to the Secretary of State as the Respondent and to BK as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted, and while not restricted, stated that it was arguable that the judge only had evidence of discrimination of homosexuals in Russia, not evidence of persecution.
4. At the hearing Mr. Bramble produced a copy of a minute made by Harriet Murphy, the HOPO at the hearing in the First-tier Tribunal, dated 5 August 2015 which set out her notes of what had occurred at the hearing.
5. Mr. Bramble stated that he was relying only on paragraphs 3, 4 and 6 of the grounds of appeal. He had not had the opportunity to consider the Rule 24 Response provided by the Appellant's representative. I gave him some time to consider this in relation to paragraphs 3, 4 and 6 of the grounds of appeal. Following this, he was referred by Mr. Chelvan to the letters sent by the Appellant's UK representatives to his Belgian representatives. He was also referred to the asylum interview (pages 8 to 10 of Tab A of the Appellant's bundle). On consideration of these documents, Mr. Bramble conceded that paragraphs 3 and 4 of the grounds of appeal fell away and that he was no longer relying on these grounds.
6. In the light of this, Mr. Chelvan submitted that ground 6, which related to the evidence of the treatment of homosexuals in Russia, could not be material. The concession by Mr. Bramble that he was no longer relying on grounds 3 and 4 meant that there was no challenge to the decision that the Appellant fell to be regarded as a refugee on the grounds of his imputed political opinion, as found by the judge at paragraph [47]. Therefore any finding in relation to the further ground on which the Appellant was claiming asylum was immaterial.
7. Paragraph [47] of the decision states:

"I therefore conclude that there is a real risk that on return to Russia/Chechnya the Appellant will be persecuted on the grounds of imputed political opinion. Given that the risk would arise at the airport, the question of internal relocation does not arise."
8. Given the confirmation by Mr. Bramble that he was no longer relying on paragraphs 3 and 4 of the grounds such that the finding in paragraph [47] stood, even if there were to be an error of law in the judge's consideration of the Appellant's treatment in Russia on account of his homosexuality, I find that this could not be material given that the Appellant had already been found to be a refugee on account of his imputed political opinion.

Error of law decision

The decision does not involve the making of an error on a point of law and I do not set it aside. The decision of the First-tier Tribunal stands.

Directions

The Rule 24 Response contains an application for a wasted costs order made under rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008. There was a brief discussion of this at the hearing. Mr. Bramble confirmed at the

hearing that he had not had any communication with the draftsman of the grounds of appeal and, as he had only seen the Rule 24 Response on the day of the hearing, he had not prepared any response to this application. I therefore make a direction that the Respondent file within 14 days any response to the wasted costs order application.

Signed

Date 14 January 2016

Deputy Upper Tribunal Judge Chamberlain