



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

Appeal Number: PA/00491/2016
PA/02647/2015

THE IMMIGRATION ACTS

**Heard at Stoke
On May 18, 2017**

**Decision & Reasons Promulgated
On May 26, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR G K
MR S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dixon, Counsel, instructed by Duncan Lewis Solicitors

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

DECISION AND REASONS

1. The appellants are Albanian nationals. The first-named appellant entered the United Kingdom as a visitor on May 1, 2015. The second-named appellant entered the United Kingdom illegally with his mother and sibling on May 12, 2015. They claimed asylum on May 14, 2015. The respondent refused their applications on October 29, 2015.
2. The appellants appealed those decisions under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. Their appeals came before Judge of the First-tier Tribunal Chapman (hereinafter called the Judge) on September 16, 2016 and in a decision promulgated on October 19, 2016, the Judge dismissed their appeals. That decision was appealed and Judge of the First-tier Tribunal Grant granted permission to appeal on November 14, 2016 and the matter came before me on the above date for an error of law hearing.
4. I extend the anonymity order in this case.

SUBMISSIONS

5. Mr Dixon adopted the grounds of appeal that had been drafted by counsel who represented the appellants in the First-tier Tribunal. Mr Dixon submitted that corruption in Albania was endemic and deeply ingrained and he submitted the Judge failed to give this enough weight when considering the appellant's claim. He submitted five grounds:
 - (a) The first ground related to his claim that the appellants' home had been visited by witness PS, who used to work within the intelligence services, and this was unusual. The first-named appellant stated that such visits were carried out by junior members of staff and this visit was a blatant attempt to intimidate the appellants and demonstrate PS's power. The Judge failed to give this any consideration in his assessment of credibility and when he did consider this issue he applied the wrong standard of proof.
 - (b) The second ground related to the Judge's surprise the appellant had not retained text messages and he held this against the appellant despite there being no requirement for corroboration.
 - (c) The third ground concerned the adverse finding made by the Judge in respect of the failure by the appellant's wife and son to give evidence. The Judge failed to give the appellant any warning and he failed to raise it with counsel at the hearing which Mr Dixon submitted was unfair. The Judge relied on the decision of TK (Burundi) [2009] EWCA Civ 40 but this was an article 8 case where the standard of proof was different to that in an asylum case. The Judge erred in his application of TK and this went to the heart of the case because the Judge placed great weight on the failure of the witnesses to give evidence.
 - (d) The fourth ground related to the Judge's finding that the second-named appellant's failure to report the kidnapping to his father sooner was a reason to disbelieve the account. The Judge did not seek to clarify whether there were reasons for this and the Judge failed to raise this with the second-named appellant and afford him an opportunity to provide an explanation. This amounted to a further example of procedural unfairness. Reliance was placed on paragraph [7] of HA v Secretary of State for the Home Department [2010] CHIH 28.

- (e) The final ground concerned the Judge's failure to determine if a text message had been received.
6. Mr Dixon submitted that either the individual grounds or the grounds taken collectively amounted to an error in law.
 7. Mr Bates adopted the content of the Rule 24 letter dated December 22, 2016 and submitted the Judge made findings that were open to him and there had been no procedural unfairness especially as the appellant had been properly represented by counsel. Dealing with each ground he submitted:
 - (a) The Judge considered the issue relating to witness PS and clearly rejected the appellant's account. Full reasoning was contained in paragraph [62] of the Judge's decision.
 - (b) As regards the adverse finding on the appellant's failure to keep his text messages the Judge was entitled to make the findings he did. This was not a case in which an adverse finding was made because the appellants had not produced the evidence from Albania because the appellant had the phone in the United Kingdom and due to his job it was not unreasonable to expect him to have retained such evidence.
 - (c) The appellant's wife and other child did not give evidence even though they were present. The respondent's representative raised their failure to give evidence in closing submissions and it had been open to the appellants' counsel to address it when he responded. No witness statements had been signed and no challenge was made to the submissions. The Judge was entitled to make the findings he did.
 - (d) As regards the fourth and fifth grounds the Judge did not accept the second-named appellants' evidence and he made findings in paragraph [65] and [66] that were open to him.
 8. Mr Bates submitted all the findings were sustainable and open to him and the appeal should be dismissed.
 9. Mr Dixon submitted the Judge should have addressed witness PS's attendance as it went to the core of the appellants' claims. By failing to do so the Judge erred. As regards the first-named appellant's wife and child not giving evidence he accepted that previous counsel had not challenged the respondent's submission but he submitted that the Judge should have ensured that the appellants addressed any concerns.
 10. Having taken submissions I reserved my decision.

FINDINGS

11. The Judge was concerned with applications for asylum brought by a father and son. It is clear from the Judge's decision that he was fully aware of how the claim was being presented. This is evidenced by his summary of the appellants' claims between paragraphs [8] and [22] of the decision.
12. Mr Dixon raised five grounds of appeal before me. In giving permission to appeal Judge of the First-tier Tribunal Grant gave no reasons for finding there may be an error in law.
13. The first ground centred around the Judge's approach to witness PS. Mr Dixon submitted that the Judge failed to have regard to the fact witness PS personally visited and when assessing this aspect of the appellant's appeal he applied the wrong burden of proof.
14. The Judge clearly considered the significance of witness PS in his decision and in reviewing this ground of appeal I have reviewed paragraphs [18] and [19], [43], [48] and [63] of the Judge's decision. The arguments advanced both in writing and orally by Mr Dixon take issue with how the Judge assessed this witness. However, the Judge noted the appellant's claim and his response to questions put to him and at paragraph [63] made findings. It is those findings that Mr Dixon challenges because he submits more weight should have been attached to a personal visit by witness PS. The Judge found the issues raised to be speculative and not well-founded relying on the first-named appellant's own belief that it was possible witness PS might not have been involved in any of his subsequent problems. The Judge clearly did not accept what Mr Dixon advances and having given detailed reasons for his findings on this ground I find no merit to this aspect of his submissions.
15. Mr Dixon submitted the Judge applied the wrong standard of proof in paragraph [63] when he wrote "In the light of A1's resignation from his work it is not implausible to think of a more innocent approach for any such visits." The standard of proof in asylum cases is the lower standard of proof namely "a reasonable degree of likelihood." At paragraph [52] of his decision the Judge set out the correct standard of proof and I am satisfied that in considering the issue relating to witness PS he would have in mind the correct standard of proof. The use of the word implausible implies "not likely" and whilst the Judge's wording may have been clumsy I am satisfied there was no error.
16. Mr Dixon's second ground of appeal centred on the Judge's finding that the appellant could have produced text messages to support his claim. In SI (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119 the Tribunal said that it was a misdirection to imply that corroboration was necessary for a positive credibility finding. However, the fact that corroboration was not required did not mean that an Adjudicator was required to leave out of account the absence of documentary evidence, which could reasonably be expected: the Adjudicator was entitled to comment that it would not have

been difficult to provide the relevant documents in this case. In Gedow, Abdulkadir and Mohammed v SSHD 2006 EWCA 1342 the Immigration Judge noted that the Somali appellant claimed that an uncle had funded his journey and the Immigration Judge referred to “the absence of any corroborative evidence by letter or any other means from his paternal uncle”. The Immigration Judge was attacked on appeal for erroneously requiring corroboration, but the Court of Appeal said that he was not; he was merely drawing a conclusion from the absence of corroboration; and he was entitled to do so, so long as he bore in mind the difficulties faced by asylum seekers in producing corroborative evidence. In TK (Burundi) v SSHD (2009) EWCA Civ 40 the Court of Appeal said that where there were circumstances in which evidence corroborating the appellant’s evidence was easily obtainable, the lack of such evidence must affect the assessment of the appellant’s credibility. It followed that where a judge in assessing credibility relied on the fact that there was no independent supporting evidence where there should be and there was no credible account for its absence, he committed no error of law when he relied on that fact for rejecting the account of the appellant. In this case the evidence concerned a partner in the UK. In MST and others (Disclosure – restrictions – implied undertaking) Eritrea [2016] UKUT 00337 (IAC) it was held that where uncorroborated and/or anonymous evidence is received, the Tribunal’s task is to scrutinise it with caution and to attribute such weight as is considered appropriate.

17. The Judge considered the evidence regarding the text messages and found an inconsistency in the number of texts messages received. The Judge had regard to his the first-named appellant’s previous employment and found that this inconsistency undermined his account and he then went onto find it surprising that the appellant had not retained messages and he gave his reason for that finding noting the planning that went into his departure. This was a credibility finding rather than a requirement for corroboration and he was entitled to draw the inference he did.
18. The third ground of appeal centred around the adverse finding in respect of the first-named appellant’s wife’s failure to give evidence. Mr Dixon submitted the Judge misapplied the decision of TK (Burundi). The appellants were represented throughout these proceedings and at no time did the appellants’ solicitors indicate the wife would be a witness. How they presented the appellants’ cases was ultimately a matter for them and at the First-tier hearing the appellants were represented by a counsel who regularly appears in the Upper Tribunal. Mr Dixon submitted the Judge had acted unfairly by not raising the issue with Mr Holt but reading the record of proceedings and the decision I am satisfied that it was only in submissions was this issue raised by the presenting officer and Mr Holt did not raise any issue at that stage. The fact Mr Dixon would have dealt with the case differently is not the issue in hand. Whilst TK (Burundi) was an article 8 claim Mr Dixon accepted it could be applied in asylum cases and that appears to be a well-established principle. The first-named appellant’s wife was supposedly a witness to what happened but did not provide a

statement or give evidence. I am satisfied the Judge's approach on this issue was open to him.

19. The fourth ground of appeal related to the submission that the respondent had not relied on any failure by the second-named appellant to report matters to his father. Mr Dixon relies on the decision of at HA v SSHD [2011] CSIH 28 to support his submission. The assessment of the second-named appellant's credibility is not confined to paragraph [66]. The Judge had to consider the written and oral evidence given to him and then make findings. The Judge highlighted a material inconsistency between the evidence of the two appellants and he set this out in paragraph [65] of his decision and so whilst the Judge accepted kidnapping and intimidation did take place he rejected their account due to inconsistencies that arose in the evidence. The Judge made a number of findings on the evidence in paragraph [66] and these followed earlier findings he had made. Where inconsistencies are apparent in the evidence it is open to counsel to revisit those inconsistencies in re-examination. Clearly that was not done based on Mr Dixon's submissions but that does not negate the Judge's findings on matters that arose during the hearing. There was no error in his approach on this issue.
20. The final ground of appeal was based on the argument the Judge should have resolved the credibility of a text message being received. The Judge considered the messages in paragraph [64] and made findings that were open to him. Mr Dixon acknowledged this aspect of the claim was called into question by the Judge but taking the decision it is clear the Judge rejected all aspects of the asylum claim and having given clear reasons for rejecting the accounts it was not necessary to make specific findings on each and every point raised. The Judge did not accept the claim and any omission to make a specific finding is not material when the decision is read as a whole.

NOTICE OF DECISION

21. There was no error in law and I uphold the decision.

Signed

Date April 12, 2017

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

I make no fee award as I dismiss the appeal.

Signed

Date April 12, 2017

Deputy Upper Tribunal Judge Alis