



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

Appeal Number: PA054842016

THE IMMIGRATION ACTS

**Heard at Field House
On 24th April 2017**

**Decision & Reasons Promulgated
On 17th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head, Counsel instructed by Duncan Lewis and Co Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal, following permission granted upon a renewed application, from the decision of First-tier Tribunal Judge Page sitting at Newport. That decision, which was promulgated on 9th November 2016, was to dismiss the Appellant's protection claim.

2. The Appellant had previously made a protection claim based essentially upon the same claimed facts. That too had been refused. On that occasion she had appealed to Immigration Judge Goodrich (as she then was) sitting at Taylor House. That appeal was dismissed in a decision promulgated on 5th January 2010.
3. As I mentioned earlier, the essential features of the Appellant's protection claim had not changed between the time when it came before Judge Goodrich in 2010 and when it came before Judge Page in 2016. The reason the Secretary of State was ultimately prepared to entertain the appellant's second claim was because she had adduced fresh evidence in support of it. This had followed an application for judicial review in which she had challenged the Secretary of State's earlier refusal to treat it as a 'fresh claim'.
4. The essence of the appellant's protection claim can conveniently be summarised as follows.
5. The Appellant's husband in Georgia was one of the personal bodyguards of the then Prime Minister of that country. The Prime Minister died suddenly in 2005. The official explanation for his death had been that he died from accidental carbon monoxide poisoning. The reason the Appellant claimed that she had been subjected to hostile interest from the Georgian authorities was because her husband had told her that the official version of the Prime Minister's death was untrue. He said that he had witnessed the Prime Minister's death and that he had in fact been murdered. The authorities were very anxious to cover up the true circumstances of the Prime Minister's death, so they initially concentrated on silencing the appellant's husband. In due course, however, their attention turned to the appellant and she was duly detained by the police. Initially, she was simply questioned in a reasonably appropriate manner. However, she was subsequently detained, tortured, and raped. She then discovered that she was suffering from breast cancer for which she attempted to seek treatment in Georgia. The authorities, however, ensured that she did not receive that treatment in an effort to prevent her from disclosing information that would embarrass them concerning the death of the late Prime Minister. It was in these circumstances that she accepts using a false passport to enter Greece before making her way to the United Kingdom.
6. The claim was rejected by the Secretary of State on both occasions because her above account was not considered credible. Both appeals therefore turned primarily upon her credibility as a witness of truth. On both occasions, her claim was supported by medical evidence. On the first occasion, this was in the form of an expert report by Professor Katana. The appeal before Judge Page was also supported by a medical report from the Helen Bamber Foundation.
7. In 2010, Judge Goodrich highlighted a number of what she considered to be significant discrepancies in the account the appellant had given of the

events that I have summarised at paragraph 5 (above). She concluded that those discrepancies were not satisfactorily explained by the medical evidence that was before her. The appellant was refused permission to appeal against that decision and so it was that she brought a fresh claim. This time she was armed with a report from the Helen Bamber Foundation, dated 16th October 2013. The Secretary of State refused the fresh claim by placing substantial reliance upon the findings of Judge Goodrich. On appeal from that decision, everybody sensibly agreed that the starting point was the decision of Judge Goodrich and that the question for Judge Page was whether the report from the Helen Bamber Foundation merited a departure from the findings of Judge Goodrich. Judge Page concluded that it did not.

8. The grounds granting permission to appeal against Judge Page's decision come to this. The appellant had attended the hearing before Judge Goodrich and had given extensive evidence. Indeed, many of Judge Goodrich's adverse credibility findings were based upon replies that she had given during the course of giving her oral testimony. However, the appellant did not attend and thus did not give evidence when the matter came before Judge Page. The first ground essentially concerns what Judge Page made of her absence from that hearing. The second ground can broadly be described thus. Although Judge Page acknowledged that his attention had been drawn to various passages within the Helen Bamber Foundation report he nevertheless failed to engage with it, observing simply that, "[h]aving considered them, I do not believe that they justify a departure from the findings of Judge Goodrich." I will deal with the grounds in turn.
9. Judge Page faithfully recorded, at paragraph 9 of his decision, the reason that her representative had given for the appellant's absence from the hearing:

"The appellant did not attend the hearing. Mr Dieu [who was then appearing for the appellant] informed me that she had informed her solicitors that she "did not feel able to go through the process of an appeal as she did in January 2010 before Judge Goodrich". Mr Dieu said that he was not asking for an adjournment and the appeal should proceed by way of submissions only."

That was undoubtedly an accurate statement of the reason that had been given for the appellant's absence. However, at paragraph 12, Judge Page characterised it in the following way:

"I was being asked to make these findings [a reference to overturning the findings of Judge Goodrich] in circumstances where the Appellant had chosen not to attend the hearing because, as I understand it, she could not be bothered to attend the hearing and go through it all again."

Ms Isherwood suggested that this was a mere infelicity of language. However, in my judgement it amounted to a total misrepresentation of what the judge had been told. I find it impossible to reconcile being told that the appellant did not feel up to going through the process again with

being told that she “could not be bothered” to do so. Moreover (and to this extent the first ground overlaps with the second) the judge appears to have overlooked the very clear medical evidence contained within paragraph 242 of the Helen Bamber Foundation report, which states unequivocally that the appellant is, “... currently unfit to give evidence.” The finding that the appellant could not be bothered to attend the hearing was thus also contrary to the evidence. Moreover, the judge’s observation concerning the appellant’s absence from the hearing can reasonably be interpreted as having directly affected his view of her credibility. His decision must therefore be set aside on this ground alone.

10. There is also considerable merit in the second ground. Ms Isherwood drew my attention to those parts of the decision where the judge dwelt at some length upon the contents of the Helen Bamber Foundation report, particularly at paragraph 25, and to his statement that he had fully taken that report into account in arriving at his conclusions. However, there is one particular aspect of that report to which I am satisfied he cannot have had regard and which was moreover directly relevant to the reasons that Judge Goodrich had given for her earlier decision.
11. Paragraph 80 of Judge Goodrich’s decision reads as follows:

“The Appellant claims that she was rendered deaf in one ear due to the violence she suffered. Common sense tells me that this will be a relatively unusual injury to sustain. There is no medical evidence to support the Appellant’s case that blows to the head caused her deafness.”

What had concerned Judge Goodrich, therefore, was the absence of any medical evidence to support the claimed mechanism of injury to the appellant’s ear. However, by the time the matter came for hearing before Judge Page, this matter had been directly addressed at paragraph 165 of the Helen Bamber Foundation report:

“The right eardrum has a perforation (a hole in the eardrum, diagram 2). This is **highly consistent** with [the appellant’s] account of a blow to the right ear. It is recognised that blows to the ear may rupture the eardrum due to their pressure (*the author at this point cites medical authority for this analysis*). [The appellant’s] description of her symptoms following the blow is clinically plausible, since perforation of the ear drum can cause bleeding from the ear. It also makes the ear prone to infections, leading to symptoms such as intermittent discharge from the ear, as [the appellant] described.”

It was not therefore the case, as Judge Page suggested, that the entirety of the Helen Bamber Foundation report was simply “more of the same” [paragraph 30] or that it was based solely upon an acceptance of the appellant’s account of events without independent clinical assessment [paragraph 32].

12. In my judgment, the above errors of law are so fundamental that the entirety of the decision must be set aside with no findings preserved. For

the avoidance of doubt, I make it clear that the findings of Judge Goodrich will continue to stand subject only to them being reviewed in the light of the fresh evidence from the Helen Bamber Foundation and any other evidence upon which the appellant may choose to rely at the further oral hearing that must now take place. Given the extensive fact-finding that will be required at that hearing, the appropriate course is to remit this appeal to the First-tier Tribunal for complete re-hearing at Newport before any judge save Judge Page.

Notice of Decision

13. The appeal is allowed and the decision of Judge Page is set aside.
14. The appeal is remitted to the First-tier Tribunal, sitting at Newport, to be heard by any judge save Judge Page.
15. Any further directions concerning the conduct of the re-hearing are to be made by the Resident Judge at Newport.

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

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

Signed

Date: 12th May 2017

Deputy Upper Tribunal Judge Kelly