



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04057/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 8th December 2017

Promulgated

On 4th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

KM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Brown, Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Russia born on 15th March 1978. The Appellant left Russia on 29th September 2016 with a passport in his mother's maiden name. He had a ticket to Brazil which transited through London. On 30th September he caught a plane to London and claimed asylum on arrival. The Appellant claimed to have a well-founded fear of persecution in the Russian Federation on the basis of his religion and that on return to Russia he feared that the Russian Special Forces and Dagestan Special Forces could kidnap or kill him. The Appellant's

application for asylum was refused by Notice of Refusal dated 17th February 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Walker sitting at Hatton Cross on 25th May 2017. In a Decision and Reasons promulgated on 2nd June 2017 the Appellant's appeal was dismissed on all grounds. The First-tier Tribunal Judge made an anonymity direction. No application is made to vary that direction and it remains in force.
3. On 13th June 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 15th September 2017 First-tier Tribunal Judge Saffer refused permission to appeal finding that the grounds amounted to nothing more than disagreement with findings the judge was entitled to make on the evidence of a lack of credibility of past problems and a lack of consequent risk on return.
4. On 29th September 2017 new Grounds of Appeal were lodged to the Upper Tribunal.
5. On 10th October 2017 Upper Tribunal Judge O'Connor granted permission to appeal contending that it was arguable that the First-tier Tribunal had erred for all the reasons identified in the grounds but in particular it was arguable that the First-tier Tribunal had erred in its consideration of the expert report both in relation to the assessment of the Appellant's credibility and the risk to the Appellant upon return.
6. On 9th November 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Miss Brown. The Secretary of State appears by her Home Office Presenting Officer Mr Duffy.

Submission/Discussion

7. Mr Duffy does no more than rely upon the Rule 24 response. He contends that in a detailed determination Judge Walker analysed the evidence and made a series of negative credibility findings at paragraph 25 and that those findings were open to the judge on the evidence presented and that it cannot be said that they are irrational findings. He further noted that Judge Walker also had concerns about Mr Chanciner's report and that at paragraph 13 the judge had referred to the fact that the expert had not met the Appellant and that the content of paragraph 1.2 of the report did not mirror the Appellant's account. Further he contends that at paragraph 15 the judge had referred to various assumptions made by Mr Chanciner and that the judge after further analysis concluded at paragraph 19 that the expert's report depends on the Appellant's account of events being correct.

8. In response Miss Brown relies on the grounds as identified by Upper Tribunal Judge O'Connor. She points out that the Appellant relies on detailed grounds for permission to appeal and that they were fivefold:
- (i) A misdirection in law/failure to take into account material evidence when determining credibility at paragraphs 12 to 15.
 - (ii) A mistake of fact or procedural unfairness in respect of the questions of passports and the use of the Appellant's mother's maiden name at paragraph 16 to 18.
 - (iii) A failure to take into account country evidence/an unreported decision of the Upper Tribunal specifically relied upon at paragraph 19 to 22.
 - (iv) The failure of the judge to take into account material assessments within the country expert report and that he made irrational conclusions – at paragraph 23 to 25.
 - (v) A failure to make findings on material facts at paragraph 26.

She asked me to find that there are material errors of law and to set aside the decision and to remit the matter to the First-tier Tribunal for rehearing.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. Miss Brown has taken me to the submissions made in the Grounds of Appeal. She asked me to go no further than to consider the grounds and not to go outside them and this approach I adopt. In essence all Mr Duffy seeks to do is to rely on the Rule 24 and the submission that the judge's findings were open to him and that the Grounds of Appeal amount to mere disagreement.
12. I am not persuaded that that is correct. The starting point involves the assessment of credibility. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claim relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. It is theoretically correct that a Claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. In nearly every case external information against which the claim could be checked will be available. In this case I acknowledge that a fair assessment of credibility could only be made once all the material evidence had been considered and that this would include Mr Chanciner's report. What the judge has done is to consider Mr Chanciner's report after making a conclusion that the Appellant's claim was incredible and that he was not at risk on return. That is not the correct approach and as such constitutes a material error of law. Thereafter the grounds challenged the findings of the First-tier Tribunal Judge, for example as to whether there was any inconsistency in the Appellant's evidence, and the failure to rely on the unreported decision of *Absalutdin Bennatov and Naida Daibova v the Secretary of State for the Home Department* (AA/09970/2013 and AA/09971/2013). This again takes into account whether the Appellant would or would not have benefited from reliance upon this.
13. All grounds effectively argue that the judge has failed to take into consideration in its entirety Mr Chanciner's evidence and bearing in mind the manner in which the judge has materially erred in his assessment of the expert's report the correct approach is to make a finding that there is a material error of law in the decision of the First-tier Tribunal Judge and to set the decision aside and to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand.

Decision and Directions

- (1) The decision of the First-tier Tribunal contains a material error of law and is set aside with none of the findings of fact to stand.
- (2) The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence with an ELH of three hours.
- (3) The appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Walker.

- (4) That there be leave to either party to file/or serve at the Tribunal and upon the other party to the appeal such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That in the event of the Appellant requiring an interpreter his instructing solicitors do notify the Tribunal within seven days of receipt of these 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 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 28th December 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris