



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13278/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18th January 2018

Decision & Reasons Promulgated
On 5th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

A O I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Tobin of Counsel instructed by Atlas Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Andonian of the First-tier Tribunal (the FTT) promulgated on 18th July 2017.
2. The Appellant is a Russian citizen born in 1984. His asylum and human rights claim was refused on 15th November 2016.
3. The Appellant feared being returned to Russia because the head of the FSB complaints department made a false allegation against him for which he had been sentenced to eighteen months' imprisonment. Although the Appellant was

sentenced on 19th January 2016, he was not detained at that time, and he was able to leave Russia on 23rd January 2016.

4. The FTT heard the Appellant's appeal against refusal of his asylum and human rights claim on 22nd June 2017. The FTT did not find that the Appellant's claim for asylum engaged a Convention reason in that he did not fear persecution by reason of race, religion, nationality, membership of a particular social group or political opinion. The FTT found that the Appellant had not discharged the burden of proof and did not accept that he would be at risk if returned to Russia. The FTT did not accept that the Appellant was of any adverse interest to the Russian authorities, noting that he had been able to leave Russia on his own passport without any difficulty. The FTT also found, at paragraph 27, that harsh prison conditions in Russia have been held by the British courts not to be a sufficient reason to give protection in the UK. The FTT found that this was not an extradition case. In addition the FTT found that the Appellant had legal representation in Russia, and could rely upon the Russian courts to have the false allegation against him set aside. The FTT indicated at paragraph 24 that;

"I must be satisfied that the Appellant's life would be at risk and he would not have recourse to the law. I cannot be satisfied about these matters on the lower standard of proof."

5. Following dismissal of his appeal on all grounds, the Appellant applied for permission to appeal to the Upper Tribunal relying upon six grounds which are summarised below.
6. Ground 1 contends that the FTT erred in considering Dzgoev [2017] EWHC 735 (Admin). At paragraph 27 the FTT had stated that harsh prison conditions in Russia were not a sufficient reason to give protection in the UK. The FTT also found that in an extradition case, the fact that prison conditions in Russia are harsh, and there is "torture in prisons and unsafe for an Appellant to be returned to" the High Court in Dzgoev held that extradition could still take place. It was submitted that the FTT had erred in considering the case law, as in Dzgoev and all cases involving Russia, extradition is only effective when specific assurances have been provided by the Russian authorities that returnees will not be subjected to treatment which would breach Article 3 of the 1950 European Convention on Human Rights. No such assurance is in place in this case, and therefore the FTT erred in law in finding that return to face prison in Russia would be acceptable. The FTT had therefore misapplied Dzgoev.
7. The second ground contends that the FTT erred by failing to take into account a material consideration and erred in finding that the Russian authorities would have no interest in the Appellant. The FTT noted at paragraphs 21 - 22 that there was no dispute about the genuineness of documents submitted by the Appellant, and the Respondent had accepted that court documents were genuine. The documents prove that there was an outstanding warrant for the Appellant's arrest which had not been considered by the FTT in finding that the Appellant would not be of interest to the authorities and would not be at risk.

8. It was contended that the FTT had not taken into account the Appellant's explanation that he had pre-booked his departure from Russia, and flew after sentence was confirmed, and claimed asylum on arrival in the UK. The FTT had not taken into account that explanation, and the Appellant's claim that the Appellant feared what extrajudicial treatment he would be subjected to by the FSB, once detained when he returned to Russia.
9. The third ground contends that the FTT erred by placing reliance on an immaterial matter. The FTT had placed reliance upon the fact that the Appellant was not subject to extradition proceedings and made reference to this at paragraphs 26 and 27. It was submitted that the absence of extradition proceedings is irrelevant, there is no evidence that the Russian authorities are aware that the Appellant is currently in the UK. The fact that extradition proceedings have not yet been instigated cannot be regarded as confirmation that such proceedings will not be initiated in the future.
10. Ground 4 contends the FTT erred by failing to give adequate reasons for findings at paragraphs 21 and 24. The FTT does not accept the Appellant's evidence regarding the false allegations and manipulated proceedings which the Appellant maintains had been lodged by the head of the FSB office in Volgograd, but gives no reasons for rejecting that aspect of the Appellant's claim, even though it is acknowledged that there is no overall aspersion cast on the Appellant's credibility. The FTT fails to set out clear reasons for findings on this core issue.
11. It is also contended that the FTT applies the incorrect legal test at paragraph 24 in that the Appellant does not need to demonstrate that "his life would be at risk and he would have no recourse to the law" in order to succeed in his appeal.
12. Ground 5 contends that the FTT erred by failing to set out clear reasons for finding that the Appellant could seek adequate redress through the court system in Russia at paragraphs 22 - 25. The Appellant's case is that his insistence on pursuing earlier cases through the courts caused public humiliation and angered the FSB, and the false conviction which led to the sentence of eighteen months' imprisonment, resulted from the FSB taking revenge upon him. The Appellant therefore fears being imprisoned as a result of being convicted on false charges, and fears that a much worse fate awaits him in custody. Given the evidence before the FTT, and as a matter of public record regarding the influence and power that the FSB exerts in Russia, it is unclear why the FTT finds that recourse to the judicial system would provide an adequate remedy to the Appellant in such circumstances.
13. Ground 6 contends the FTT erred by making an erroneous finding regarding engagement of the Refugee Convention. It is contended that the Refugee Convention is engaged on the basis of political or imputed political opinion, as the false case pursued against the Appellant by senior members of the local FSB is politically motivated because of the public humiliation it caused to their department and the inefficiencies which he exposed. It is submitted that the FTT erred by failing to recognise this.
14. Permission to appeal was granted by Judge Pickup of the FTT in the following terms;

“2. It is arguable that the judge misdirected himself and wrongly applied the law. More significantly, it appears that some key findings were inadequately reasoned, including those at [21]. The judge may also have applied the incorrect legal test. All grounds may be argued.”

15. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

16. Mr Walker conceded that the FTT had materially erred in law for the reasons given in the grounds contained within the application for permission to appeal. I was invited by Miss Tobin to set aside the decision of the FTT and remit the appeal back to the FTT to be heard again with no findings preserved. Mr Walker agreed with that proposed course of action.

My Conclusions and Reasons

17. I find that the FTT erred in law. The decision is set aside with no findings preserved. I accept, as conceded by the Respondent, that the grounds contained within the application for permission to appeal demonstrate a material error of law.

18. The decision needs to be re-made. I have considered paragraph 7.2 of the Senior President’s Practice statements, which is reproduced below;

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. I am satisfied that the extent of judicial fact finding is such that it is more appropriate for the appeal to be re-made by the FTT, rather than the Upper Tribunal.

20. The appeal will therefore be reheard by the FTT. The parties will be advised of the date in due course.

Notice of Decision

The appeal is allowed to the extent that it is remitted to the FTT to be heard afresh with no findings preserved. The appeal is to be heard by an FTT Judge other than Judge Andonian.

Anonymity

Because this is claim for international protection I make an anonymity direction. No report or other publication of these proceedings shall name or directly or indirectly identify the Appellant. Failure to comply with this direction may lead to a contempt of court. This direction shall continue in force until the Upper Tribunal, the FTT, or an appropriate court shall lift or vary it. The direction is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 18th January 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The Upper Tribunal makes no fee award. This must be decided by the FTT.

Signed

Date 18th January 2018

Deputy Upper Tribunal Judge M A Hall