



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/12840/2018

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 9 October 2019**

**Decision & Reasons Promulgated  
On 05 November 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**E A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J. Greer, counsel instructed by Ison Harrison Solicitors

For the Respondent: Ms H. Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Azerbaijan, born on 23.8.87. He arrived in the United Kingdom on 29 December 2017, accompanied by his wife and two children and claimed asylum on arrival. The basis of his claim is that he would be at risk on

return to Azerbaijan as he had published a number of anti-government blogs and articles and had been detained and ill-treated by the police in December 2017 because of his activities and the police had also attended his children's nursery in order to intimidate him.

2. The Appellant's asylum claim was refused in a decision dated 25 October 2018. He appealed against this decision and his appeal came before First tier Tribunal Judge Grimmett for hearing on 30 April 2019. In a decision and reasons promulgated on 13 May 2019, the Judge dismissed the appeal.

3. Permission to appeal was sought, in time, on the basis that the Judge erred materially in law:

(i) In making a mistake of fact in respect of the arrest of [IM] when there was clear evidence before the First tier Tribunal on this matter;

(ii) in making a mistake of fact in respect of the chronology of the Appellant's account by taking against the Appellant for not claiming asylum in October 2017 when his fear of the state did not begin until December 2017;

(iii) in displaying faulty reasoning in respect of the value of corroborative evidence issued by the Appellant's persecutors by (i) considering its reliability independently of the background evidence and (ii) relying on purported irregularities on the face of the document without having raised such matters with the Appellant or his advisors;

(iv) in displaying faulty reasoning in respect of the value of the corroborative medical evidence by appearing to take it in isolation, rather than in the round and by appearing to consider its value having already discounted the Appellant's credibility as a witness;

(v) in failing to resolve a material dispute between the parties by failing to consider whether the Appellant might be at risk upon return, should he continue engaging in political blogging.

4. Permission to appeal was granted by Upper Tribunal Stephen Smith in a decision dated 4 July 2019 on the basis that:

*"1. It is arguable that the Judge fell into the error identified in Mibanga v SSHD [2005] EWCA Civ 367 through reaching her conclusions on the credibility of the appellant's account before engaging with the medical evidence. See [10]-[14] in which the judge analyses the credibility of the Appellant's case before*

*finding that he had no involvement in exposing the scam involving high ranking officials (at [14]). She also [15] where the Judge dismisses the court judgment as a document of relevance. When turning to the medical report at [16] the Judge ascribes minimal weight to it "as the appellant has been inconsistent about the reasons for the judgment and there is nothing to show how his injuries were caused."*

*2. It is also arguable that the Judge's adverse credibility findings under section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 were infected by a misunderstanding of the chronology of the appellant's claim. The international travel predated the incidents which he says caused him to flee.*

*3. It is arguable that the Judge fundamentally misunderstood the appellant's reference at [8] of his witness statement to the website in question: he was refuting the respondent's reliance upon it, not attempting to cite it in positive support of his case. The quoted extract from the website did seem to support the appellant's case in any event."*

#### *Hearing*

5. At the hearing before the Upper Tribunal, Ms Aboni informed me that no rule 24 response had been lodged by the Respondent but the appeal was opposed.

6. Mr Greer provided copies of the original grounds of appeal dated 19 May 2019, which set out in more detail his challenges to the Judge's decision. In respect of the second ground of appeal at [6]-[7], he submitted that the Judge misunderstood the case before her at [17]. The Appellant's case was that he is a blogger who was critical of the government and it was wrong for the Judge to find that there had been no attempt to block his posts in light of the responses in interview in RB at F15, Q50 and Q82 at F22, which make clear that he stated that the State threatened him not to blog anymore. On another occasion they arrested him and deleted his posts whilst he was detained and thus clearly blocked him from posting. Thus the Judge's finding at [17] that "he does not suggest there has been any attempt to block his posts" is based on a misunderstanding of the Appellant's evidence. As to the Appellant's motives and travel history and the fact he had visited a number of countries in 2017, he was not in fear of his life at that time and everything that happened post dated this.

7. In respect of Ground 3 at [8]-[12] of the grounds, the Appellant sought to rely on a verdict of the Sabayil district court at AB A10-A11 which found his guilty of an offence under the Criminal Law Article 310.1 and imprisoned the Appellant for 7

days on the basis that he was said to have organised an illegal, anti-government rally in the centre of Baku. The Appellant's case was that this was a trumped up charge because of his blogging: see B71 and B73.

8. At this point in the proceedings, Ms Aboni stated that now that Mr Greer is going through the grounds of appeal and referring to specific items of evidence, she accepted that there were material errors of fact in the decision and reasons and the Judge did appear to have misunderstood the Appellant's case. She expressly accepted that grounds 1 and 2 were made out and with regard to ground 3 that the Judge has not engaged with the background evidence, thus the Judge's credibility findings are flawed.

*Decision and reasons*

9. In light of Ms Aboni's concession, which I accept was correctly made, I find material errors of law in the decision of First tier Tribunal Grimmett. I remit the appeal for a hearing *de novo* before the First tier Tribunal at Birmingham. I make the following directions:

DIRECTIONS

1. The appeal should be listed for 2 hours.
2. An Azerbaijani Azeri speaker (as opposed to an Iranian Azeri speaker) will be required.
3. Any further evidence upon which the parties wish to rely should be served 5 working days before the remitted hearing.

**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.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman  
2019

dated 3 November