



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

Appeal Number: PA/13577/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2020**

**Decision & Reasons Promulgated
On 24 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MS
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Anderson, instructed by Justice and Rights Law Firm Ltd

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Georgia born on 25 January 1989. He has been given permission to appeal against the decision of First-tier Tribunal Judge O'Garro dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.
2. The appellant arrived in the UK on 1 July 2014 with a visa valid until 16 December 2014, together with his wife, and thereafter overstayed. On 26 May 2017 he was served with removal papers as an overstayer and he

then claimed asylum on 30 May 2017. His claim was refused on 19 November 2018.

3. The appellant's asylum claim was made on the basis that he feared being detained and tortured by the authorities on return to Georgia. He claimed to have been a member of the United National Movement (UNM) since 2010, working in the Ministry of Internal Affairs. Following a change in government in 2012, when the Georgian Dream Party took over, former UNM members were persecuted. He continued to work for the Ministry of Internal Affairs between 2012 and 2014, as a call centre operative responsible for dispatching police patrol cars to the scenes of crimes and then entering the calls into a crime database. He claimed that in December 2013 a Senior Investigator of Serious Crime within the office of the Ministry of Interior (MOI), VS, asked him to give false evidence in court against his cousin LS, a high ranking member of the UNM, relating to claimed abuses of inmates in a Georgian prison which he was said to have ordered. The appellant refused. He was offered a highly ranked position within the MOI if he agreed to do it. On 12 February 2014 he was taken by car and was assaulted and had to receive medical treatment. In April 2014 he was summoned to the MOI building where he was made to watch footage of prison inmates being raped and tortured. He gave VS a false promise that he would testify against his cousin. He requested two to three months to sort out his affairs, including his upcoming marriage, which was agreed, and he left Georgia and travelled to the UK under the pretence of going on honeymoon. His family have continued to receive threats from VC. His cousin LS remained on a wanted list in Georgia and fled the country in August 2014.
4. In the decision refusing the appellant's claim, the respondent accepted that the appellant had been employed by the Georgian Ministry of Internal Affairs, as that had been accepted when he was granted a visa. The respondent did not accept that the appellant had been persecuted by the authorities in Georgia as a member of the UNM. The respondent noted that the appellant had given an inconsistent account of his cousin's position within Georgia and did not accept that he had ever come to the adverse attention of the Georgian authorities or that he had been threatened by VC after refusing to cooperate with his demands. The respondent did not accept that the appellant had a genuine, subjective fear of return to Georgia and did not accept that he was at risk on return, or that his removal would breach his human rights. The respondent considered the medical concerns of the appellant and his wife but concluded that neither engaged Article 3 or 8.
5. The appellant appealed against that decision. His appeal was initially heard on 31 January 2019 by First-tier Tribunal Judge Grant, who did not believe his claim and dismissed the appeal. Judge Grant's decision was found to be materially flawed and was set aside by the Upper Tribunal in its entirety. The appeal was then remitted to the First-tier Tribunal to be heard de novo. The appeal was then heard by First-tier Tribunal Judge O'Garro on 8 November 2019.

6. Judge O'Garro heard from the appellant and his wife. She also had before her an expert report on the political situation in Georgia, from Nika Chitadze. The judge noted that the appellant had provided no evidence that his cousin LS was a member of the UNM or had a senior role in the government and considered that even if he was, the Georgian authorities would have charged him and put him in detention if they wanted to rather than let him move around and then leave the country. She found that, likewise, the appellant would have been picked up before he was able to leave the country if there was any interest in him and that, in that respect, the appellant's claim was undermined by the expert report. The judge accordingly rejected the appellant's claim in its entirety and did not accept that his family was receiving any threats. She accorded no weight to a letter from Sociometry or to the other documentary evidence and concluded that the appellant was of no interest to the Georgian authorities and at no risk on return.
7. The appellant sought permission to appeal on the grounds that the judge had failed to consider vital evidence when assessing credibility: namely the evidence of the appellant's wife, a UNM Certificate of Guarantee confirming his cousin's dismissal from his employment due to his political affiliation, and a UNM Certificate of Guarantee for the appellant confirming that he was a member of the UNM; that the judge had erred by making no finding on risk on return to the appellant due to his political opinion as a member of the UNM; and that the judge had erred by speculating as to the plausibility of aspects of the appellant's account.
8. Permission to appeal to the Upper Tribunal was granted in the First-tier Tribunal on all grounds.
9. At the hearing, both parties made submissions.
10. Mr Anderson submitted that the judge had erred by failing to undertake any assessment of the evidence of the appellant's wife who had attended the hearing and had provided valuable evidence about the manner of their departure from Georgia and the situation in which they had found themselves. The judge had failed to consider the confirmation from UNM that the appellant's cousin had been dismissed from the government and had wrongly found at [45] that there had been no evidence in that regard. The expert Ms Chitadze had, in her report, referred to the significance of that evidence, which was consistent with the situation in Georgia, but that had not been considered by the judge. The judge had also failed to consider the letter from the UNM confirming that the appellant was a member. Despite the respondent having accepted the matter in the refusal decision, it was unclear from the judge's findings whether she had accepted that the appellant was a member of the UNM. The appellant had never claimed to be a senior active member of the UNM, just that he had come to the attention of the authorities because his cousin was a senior member. The judge rejected the claim in its entirety at [48] and it was therefore unclear of that included a rejection of the appellant's claim to have been a member of the UNM. The judge had also erred at [53] by

considering the documentary evidence after having rejected the appellant's oral evidence as lacking in credibility, rather than assessing all the evidence in the round.

11. Mr Anderson submitted further that the judge had made no finding on risk on return to the appellant simply on the basis of his UNM membership, despite the expert report saying that all members were at risk, not just senior members. The judge had also erred by speculating and making findings on plausibility which were in contradiction to the expert report. Contrary to the judge's findings, it was entirely plausible that the appellant had been able to leave the country in spite of being of interest as a result of his cousin's activities, given that he had told the authorities that he was going on his honeymoon and had been granted a visa on that basis. There were no inconsistencies in the appellant's evidence, which was in fact on all fours with the expert report.
12. Ms Fijiwala submitted in response that the judge had not made any material errors. The appellant's wife had simply adopted her statement and had not been cross-examined. Even though the judge had not referred to the statement, it could not have had any material impact as her evidence was just a record of what the appellant had told her. It was irrelevant that the judge had found there to be no evidence of the appellant's cousin's membership of the UNM, when the judge made findings in the alternative on the basis that he was a UNM member. The judge's findings were consistent with the expert report. With regard to the appellant's UNM membership, the judge found in any event that he was at no risk as a low-level member. The judge was fully entitled to find that the appellant was at no risk as a low-level member and there was nothing in the background material or the expert report to support the appellant's claim that low-level members were at risk. The expert report only referred to the risks to senior members. The judge's findings were not speculative but were based on the evidence before her.
13. Mr Anderson, in response, reiterated the points previously made and submitted that the judge's decision had to be set aside and the matter reheard in the First-tier Tribunal.

Discussion and conclusions

14. Whilst it is the case, as the grounds assert, that the judge did not make any specific findings on the appellant's wife's evidence or the two certificates at pages A42 and A45 of the appellant's appeal bundle, I do not consider it to be the case that the judge ignored or omitted consideration of that evidence or overlooked material evidence which could have impacted upon the outcome of the appeal. There was nothing controversial in that evidence which required particular and specific consideration and it is clear that, having assessed the evidence as a whole, including those pieces of evidence, the judge made specific reference only to those parts of the evidence with which she had particular concerns or particular reason to explicitly address. The judge referred to

the evidence of the appellant's wife at [27] and confirmed that she would consider it as part of her decision and at [35] she confirmed that she had looked at the evidence in the round. At [49] the judge confirmed that she had taken into account the documents relied upon by the appellant and she went on to make specific findings on the document which raised specific issues, namely the letter from Sociometry which she found to be inconsistent with the appellant's own account of his level of involvement with the UNM.

15. As Ms Fijiwala submitted, the extent of the appellant's wife's oral evidence was to adopt her written statement and she was not questioned further. The evidence within her statement was simply a confirmation of what the appellant had told her after their marriage and made no reference to any direct knowledge of the problems and abuse he claimed to have experienced prior to the marriage. Indeed, no details were provided within the statement of what the appellant had told her after their marriage, other than that he had problems with high ranking officers in the Ministry of Interior. I cannot see, therefore, how a specific analysis of the appellant's wife's evidence could have taken the appellant's case any further: on the contrary, the absence of any knowledge on her part of any of the claimed events serves only to undermine his case. Accordingly, I do not agree with Mr Anderson that the absence of any specific findings on the appellant's wife's evidence is a material matter.
16. Likewise, I agree with Ms Fijiwala that the certificates do not add to the appellant's case such that an absence of any specific reference to them would amount to a material error of law. The certificate at page A42, taken at its highest, serves only to confirm that the appellant was a member of the UNM at the time the letter was written, in September 2019. It makes no reference to him being a member since 2010 and, in any event, that was not a matter of dispute. At [43] the judge recorded that the respondent accepted that the appellant was a member of the UNM and noted that he had never claimed to be a senior or active member. That was also her finding at [50]. The certificate did not suggest that the appellant was anything other than a simple member of the UNM and it therefore added nothing to the appellant's case. It was Mr Anderson's submission that the certificate was of evidential value since it was unclear whether the judge accepted that the appellant was a UNM member, and that her finding at [48], that she rejected his claim in its entirety, suggested that she did not. However, it seems to me quite clear that the judge accepted that the appellant was a member of the UNM and in the circumstances the certificate took his case no further. Accordingly, nothing material arises from the absence of any specific reference to it by the judge.
17. As for the certificate at A45, Mr Anderson submitted that the judge's finding at [45], that there was no evidence that the appellant's cousin was dismissed from the government, was contradicted by that evidence, and that the judge had erred by not addressing it. However, that was not the judge's finding at [45]. The judge's finding was that "the appellant has

provided no evidence which I accept, that his cousin was a member of UNM, was an activist in the UNM or had a senior role in the former Government.” The indication in that finding was not that there was no evidence that his cousin held the role claimed, but that there was no *acceptable* evidence and, furthermore, the certificate confirmed none of those matters in any event. At its highest, the certificate is a confirmation from the UNM that the appellant’s cousin was dismissed from the Ministry of Corrections on 27 November 2013 on the basis of his political affiliation, which was a matter considered by the judge in the alternative at [46], where she found that, even if the appellant’s cousin was a UNM member and had a senior role in the former Government, the fact that the Georgian authorities had not charged him with a criminal offence and put him in detention indicated that they had no intention to charge him. Accordingly, again, the absence of any specific finding on the certificate was not a material matter and did not take the appellant’s case any further.

18. Accordingly, I find no merit in the assertion in the grounds, and in Mr Anderson’s submission that the judge failed to consider all the evidence when assessing the appellant’s credibility. As I have said, there was nothing controversial in the three pieces of evidence which the grounds assert that the judge failed to consider and the judge plainly had regard to the evidence as a whole, in so far as it was relevant to the appellant’s claim, and specifically addressed and made findings on the evidence in so far as it was controversial. The judge noted inconsistencies between the account given in the letter from Sociometry and the appellant’s own evidence of his role with the UNM, finding that the appellant was nothing more than a simple member of the UNM. She did not accept his account of being pursued by the authorities to give evidence against his cousin because she found his account to be contrary to the background evidence and the expert evidence, as set out at [46]. Those findings were entirely open to the judge on the evidence before her.
19. As for the challenge in the second ground, that the judge failed to make findings on risk on return to the appellant as a UNM member, again I consider that to be contrary to the decision made. At [43] the judge specifically observed that, other than claiming to be at risk from the Georgian authorities because he refused to make a false statement against his cousin (a claim that she rejected, as discussed above), he had provided no evidence to show that he had been targeted because of his political activities. The judge went on to consider the risk to ordinary UNM members and had regard to the expert report in so doing, at [44] and [47], finding that he was not at risk on that basis. The appellant’s grounds at [8] assert that the judge was wrong so to conclude, because the background evidence and the expert report confirmed that any member of the UNM was at risk of persecution. However, as Ms Fijiwala submitted, there is nothing in the evidence which was before the judge to indicate that ordinary members of the UNM were being systematically persecuted. The analysis in the expert report of the risk on return to the appellant, at page A76 of the appeal bundle, makes no such finding, addressing risk only on the basis of a prior interest in him due to his link to his cousin, a matter

rejected by the judge. Accordingly, the challenge in the second ground has no merit.

20. As for the third ground, I reject the suggestion that the judge made her findings on the basis of speculation as to plausibility. It is clear that the judge's findings were based on the evidence before her and with full consideration of the expert report and background evidence. Mr Anderson referred in particular to the judge's findings at [46] and [47], submitting that the judge was basing her findings on plausibility. However, I disagree. The judge's findings were clearly based upon the evidence and the information provided in the expert report and were entirely open to her.
21. Accordingly the judge, in my view, gave detailed consideration to all relevant matters and to all the evidence in the round and provided clear and cogent reasons for reaching the conclusions that she did. She was fully entitled to make the adverse credibility findings that she did, to reach the conclusions that she did on risk on return to Georgia and to dismiss the appeal on the basis that she did. She did not make any errors of law in doing so.


DECISION

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed



Upper Tribunal Judge Kebede

Dated: 16 March 2020