



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-  
001787

First-tier Tribunal No: PA/53066/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AOI**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussain via Microsoft Teams.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 15 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Row ('the Judge'), promulgated following a hearing at Newcastle upon Tyne on 14

March 2023, in which the Judge dismissed the appellant's appeal against his application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The appellant is a citizen of Azerbaijan born on 13 January 1990. He arrived in the UK on 3 July 2021 accompanied by his wife, ALQ born on 10 September 1989, and their child YAI born on 25 May 2017. His application for international protection, made on the basis of an alleged risk as a result of his political activities and his failure to respond to a conscription summons, was refused on 15 July 2022. The Secretary of State did not find either of his claims were true.

3. After analysing the evidence the Judge sets out findings on credibility from [37] of the decision under challenge by reference to paragraph 339L of the Immigration Rules. Between [37 - 46] the Judge sets out a number of matters that he did not accept damaged the appellant's credibility. He finds, however, between [48 - 57] that there are matters that did damage the credibility. These are:

48. One of the points which the respondent made was the appellant appears to have been able to leave Azerbaijan on a commercial airliner using his own passport even though there were warrants for his arrest.

49. The appellant explains this by saying that he did not go through the usual channels at the airport. He did not have a ticket. Someone else arranged for his luggage to be put on the aircraft. He did not go through security. He did not go through check-in. He did not have his documents checked when he got on the plane. When he got on the plane that was no one else on it.

50. Azerbaijan was on a war footing at that time. I do not find it credible that the appellant would have been able to board an aircraft in this way. Too many people, including check-in staff, luggage handlers, air crew, and cabin staff would have had to be involved.

51. He says that he came to the United Kingdom and did not know his destination before he, his wife, and child, got on the plane. He does not know the name of the airline which he flew on. He only found out his destination when it was announced on the plane.

52. The appellant is an educated man. I do not find it credible that he would get on a plane without knowing where it was bound or the not know with which airline he was travelling.

53. When the appellant arrived in the United Kingdom he was asked in the screening interview whether he had ever been arrested before. He said that he had not, page 195, question 5.4. He was asked whether he had ever been accused of any crime. He said that he had not, page 193, question 5.3. This contradicts his case now.

54. He was asked what the basis of his claim was. He said that he had fled Azerbaijan because he did not wish to be conscripted. He made no mention of this being for any political motive, page 192 question 4.1.

55. I accept that the screening interview is not expected to set out the appellant's claim in full. However as his case is that he was picked on because of his political views, had gone into hiding for seven months in Azerbaijan, had previously been arrested because of his political views, and had then travelled a substantial way round the world in order to claim asylum, it might be expected that he would mention this point on arrival. He did not.

56. The earliest time it was mentioned appears to be in his statement of 17 February 2022. By that time he is likely to have become aware that conscription in a time of war was unlikely to found basis for an asylum claim.

57. There are matters which damage the appellant's credibility by virtue of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. On arrival in the United Kingdom it was discovered by the authorities that the biometric page had been removed from the passport of the child accompanying the appellant and his wife. Their explanation is that the agent who arranged their flight took it out of the passport without their knowledge. I find that difficult to believe. The appellant was not able to give any other explanation as to why this information had been removed. An obvious explanation is that it had been removed to prevent the

identification of the holder of the passport. This does damage the appellant's credibility.

4. The Judge found the appellant did not meet all requirements of paragraph 399L of the Immigration Rules.
5. At [59] the Judge did not believe what the appellant was claiming, even when applying the lower standard of proof.
6. In relation to human rights, it was not found there were very significant obstacles to integration into Azerbaijan, pursuant to paragraph 276ADE, and that the public interest in removing the appellant far outweighed any interference with his family or private life.
7. The appellant sought permission to appeal. In summary, Ground 1 asserts the Judge erred in law in seeking corroboration and/or the verification of documents. Ground 2 placing to great a reliance upon the answers given by the appellant during his screening interview, Ground 3 the Judge erred in the assessment of credibility by reference to section 8 as he does not give any reason why he did not believe the explanation provided by the appellant and his wife.
8. The Grounds are more fully set out in the pleadings dated 27<sup>th</sup> March 2023.
9. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Kamara on 23 June 2023, the operative part of the grant being in the following terms:
  2. Notwithstanding the judge's self-direction at [37], it is arguable that the judge erred in several comments made between elsewhere in the decision and reasons which indicate that negative credibility findings were arrived at based on a failure to provide corroboration.
  3. There is also arguable merit in the second and third grounds.
10. The application is opposed by the Secretary of State who in a Rule 24 response dated 2 August 2023 writes:
  2. The Respondent opposes the Appellant's appeal. With respect to ground 1, whilst it is correct to say that corroboration is not strictly necessary in an asylum appeal, the Tribunal was perfectly entitled to take into account the adequacy/paucity of the evidence that the Appellant should have been able to adduce to support his claim (SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160 §46). The Judge's selfdirection at §37 reflects that.
  3. In this case, the Appellant had sought to corroborate his claim with a number of documents. The Tribunal was entitled to consider the reliability of that evidence as well as some of its limitations. For example, it is perfectly fair for the Tribunal to note at §29 that the two summonses "do not state that they are in connection with a failure to respond to conscription". Given they do not, that is a limitation with that evidence. As the Judge goes onto note, there may have been methods by which the Appellant could have verified that they were.
  4. The Respondent further submits that the points raised at §§11-13 of the grounds amount to little more than a disagreement. The Respondent had pointed out the limitations of the summonses in her RFRL at §86. The Appellant was plainly on notice that the Respondent took issue with his documentation and is not now entitled to reargue the case before the UT.
  5. The Respondent similarly submits that ground 2 does not disclose a material error of law. The Judge was perfectly entitled to place weight on the inconsistencies between the Appellant's initial claim as recorded in his screening interview and what he said after. The Judge further takes into account at §55 that a person is not expected to set out their entire claim in full at a screening interview. Whilst it is acknowledged that the Appellant refers to a dialect issue with the interpreter in his witness statement (A/2 §8), he only identifies one mistranslation resulting from that

- regarding his health. It does not appear to have been the Appellant's evidence that the inconsistencies referred to by the Judge were the result of an interpreter issue.
6. In relation to ground 3, the Judge gave adequate reasons for rejecting the Appellant's claim as to why the biometric page of a passport was removed. It's not immediately obvious why the Appellant's agent would, without his knowledge, remove a biometric page. As the Judge explains at §57, no other explanation was put forward and the Appellant had a clear motive for removing the biometric page. In any event, this was a case in which the Tribunal had rejected the Appellant's claim for a number of reasons and even if one of those reasons does not bear scrutiny, that is not a basis for setting aside the Judge's decision: *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037 §45. 7. In summary, the Respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

### Discussion and analysis

11. It is not disputed that it will be a misdirection of law to find that corroboration was necessary for a positive credibility finding. There have been a number of relevant decisions addressing this issue.
12. In ST (corroboration - Kasolo) Ethiopia [2004] UKIAT 00119 the Tribunal said that it was a misdirection to imply that corroboration was necessary for a positive credibility finding. However, the fact that corroboration was not required did not mean that an Adjudicator was required to leave out of account the absence of documentary evidence, which could reasonably be expected: the Adjudicator was entitled to comment that it would not have been difficult to provide the relevant documents in this case. In particular, the Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess. The Tribunal noted that the Adjudicator had taken into account the fact that claimants could well have difficulty in presenting documentation and the provisions of the UNHCR handbook on giving claimants the benefit of the doubt. In the circumstances, the Tribunal declined to intervene and said that an appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.
13. In TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40 the Court of Appeal said that where there were circumstances in which evidence corroborating the appellant's evidence was easily obtainable, the lack of such evidence must affect the assessment of the appellant's credibility. It followed that where a judge in assessing credibility relied on the fact that there was no independent supporting evidence where there should be and there was no credible account for its absence, he committed no error of law when he relied on that fact for rejecting the account of the appellant. In this case the evidence concerned a partner in the UK.
14. The Judge is criticised in the current appeal by the appellant for (i) finding at [30] that documents relied upon by the appellant, such as a summons to attend the Serious Crimes Investigation Department or documents in relation to the courts, are documents for which there were straightforward methods of proving they are what they purport to be, by approaching the police or prosecutors offices in Azerbaijan, (ii) for finding at [31] that even if the appellant may not wish to approach the authorities himself an Azerbaijan lawyer could have made enquiries on his behalf, (iii) at [32] that if the conscription summonses was genuine the authorities could have been approached in a similar way to obtain clarification, (vi) at [33], that if the membership card from the Future Azerbaijan Party is what

it purports to be the organisation could have been approached by the appellant's solicitors to ask them to confirm if the documents were genuine, (v) at [34] for finding that if such confirmation had been obtained that the documents were genuine it would have resolved the issue and that whilst it may not have been possible to obtain the evidence it would have been reasonable to try, and, (vi) at [40] the finding the Judge was not satisfied all material factors at the appellant's disposal had been produced or a satisfactory explanation given for why not no attempts had been made to authenticate the key documents in the case when reasonably straightforward steps could have been taken to do so.

15. The Judge acknowledges that it may not have been possible for the appellant himself to undertake enquiries and refers to the ability of a lawyer in Azerbaijan to have done so. There was nothing before the Judge to show that that was an unreasonable request or something that had been attempted and failed.
16. The Judge was entitled to make such a finding as a result of issues raised in the refusal letter. In relation to the appellant's claim relating to conscription reference is made to the country information in relation to those exempt from military service and conscription which includes those ineligible for health reasons. The appellant provided evidence that he has a serious kidney problem that required a transplant. It is noted in the refusal that a letter provided from the renal centre outpatients facility stated he saw a nephrologist in Iran approximately one year ago from the date of 19 November 2021, which would have been 19 November 2020, which coincided with the date the appellant was claiming he was hiding conscription. The account was rejected as being internally and externally inconsistent for sustainable reasons giving in the refusal notice.
17. The Judge's comment is simply that there was insufficient evidence provided to counter that material which the appellant could, arguably, have obtained. That is not the Judge dismissing the appellant's claim for want of corroboration.
18. The appellant's claim of having been arrested at elections, of having been detained at a police station, and having received a summons to conscription to the court was found to be internally and externally inconsistent in the refusal letter. Reasons are given which, again, is the foundation of the Judge's finding that other material may reasonably have been available to support the appellant's claim that conscription and court documents were genuine. That is an observation open to judge when the evidence is considered as a whole.
19. I do not find the appellant has established legal error material to the decision to dismiss the appeal on the basis of Ground one.
20. In relation to Ground two, I find no legal error made out. It is accepted that in assessing replies provided in a screening interview, especially if conducted after a long journey for example, allowance has to be made for the fact answers given may not be complete. The questions are limited, and opportunity arises at the subsequent asylum interview to provide more detail, if required. It is, however, settled law that a person is expected to tell the truth during the screening interview.
21. The Judge found that some of the alleged concerns raised in the reasons for refusal letter were not significant but does find the appellant's credibility damaged for the reasons set out at [48 - 57]. References made to the screening interview at [53]. The appellant was asked whether he had been arrested before but claimed he had not. When asked whether he had been accused of any crime, he claimed he had not. The Judge noted these answers contradicted the case he subsequently put forward on appeal. The Judge has not erred in the weight he gave to straightforward questions for which the appellant gave straightforward answers. The fact those answers completely undermined and contradicted his later case does not mean the Judges erred in law when noticing a clear anomaly in the appellant's evidence.

22. Ground three asserts error in the assessment of credibility by reference to section 8, alleging the Judge failed to give any reasons why did not believe the explanation provided by the appellant and his wife for the finding at [57]. The Judge deals with section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 at [59]. The point being made by the Judge is that it had been discovered when the appellant and his family entered the UK that the biometric pages of the passports of the appellant's wife and the child accompanying them had been removed. The explanation that the agent who arranged the flight took the passports without their knowledge was rejected by the Judge. The Judge did not accept that explanation which the Judge found difficult to believe. No other explanation having been provided as to why such details should be removed, the Judge finds what he considers to be an obvious explanation, that the pages had been removed to prevent the identification of the holder of the passport. That is the reason why the Judge did not accept the explanation. Adequate reasons have been provided and the grounds appeared to be seeking reasons for reasons.
23. The Judge clearly considered the evidence with the required degree of anxious scrutiny. Having done so the Judge sets out findings in relation to relevant issues. The findings are supported by adequate reasons. The emphasis is upon the reasons being adequate rather than perfect, as the Judge was not required to provide anything other than an adequate explanation. The grounds, whilst complaining about the findings, fail to establish that the Judge's conclusions are outside the range of those reasonably available to the Judge on the evidence. It is not made out the finding made are irrational, unreasonable, or contrary to the evidence.
24. Accordingly, I find the appellant has failed to establish legal error material to the decision to dismiss the appeal.

### **Notice of Decision**

25. No material legal error has been made out in the decision of the First-tier Tribunal. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**16 November 2023**

