



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005215
First-tier Tribunal No: PA/00743/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th February 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

I V (GEORGIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timpson, Counsel, instructed by Siddique Solicitors
For the Respondent: Mr C Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 5 February 2024

ANONYMITY ORDER

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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.

Failure to comply with this Order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Farrelly) dismissing his international protection and human rights appeal. The decision was sent to the parties on 3 August 2023.

Anonymity

2. The Judge issued an anonymity order and no party before me requested that it be set aside. I confirm the order above.

Ground of Appeal

3. The appellant advances two grounds of appeal: (1) flawed credibility assessment, and (2) non-existent human rights (article 8 ECHR private life) assessment.
4. The appellant contends by the first ground that the Judge did not adequately consider his stated personal history, failed entirely to consider elements of the respondent's CPIN that were favourable to him and, additionally, failed entirely to address submissions addressing the respondent's adverse reliance upon answers given in interview secured using a translation app.
5. In granting permission to appeal by a decision dated 26 October 2023, Judge of the First-tier Tribunal Burnett reasoned:

“2. The grounds assert that the Judge erred by not addressing the submission about the reliance which could be placed upon the appellant's answers at interview, as the respondent used Google translate as opposed to a certified translator. This is not addressed in the decision by the Judge. The Judge did place reliance upon the “various contradictions” (see paragraph 31). I consider it is arguable that there is a material error here.

3. Although the reasons given for the dismissal of the article 8 claim are extremely brief, I consider they are adequate and there is no error of law disclosed in the grounds of appeal in this respect.
4. However I grant permission to appeal as it is arguable that the credibility assessment was flawed.”

Decision and Reasons

6. At the outset of the hearing, Mr Bates conceded the appeal on behalf of the respondent to the extent that the decision in relation to the appellant’s asylum, humanitarian protection and human rights (articles 2 and 3) appeals be set aside. The respondent does not concede the underlying claim.
7. Mr Bates accepted that several material errors of law were identifiable in the Judge’s assessment at [35] of his decision:

“35. While I am cautious about making adverse findings in relation to plausibility given the different cultural context, I nonetheless consider that there are plausibility issues with each account. It is not apparent to me why he would have been kidnapped or what his captors sought to obtain from him. The motivation is unclear. As I understand his account he believes it was members of the party he supported who are behind this. However, I cannot divine any real reason. In his interview he said the military were behind the kidnapping of November 2019. In his substantive interview he said he feared the government.”
8. It was accepted on behalf of the respondent that when considering plausibility, the Judge failed to adequately consider the appellant’s case as presented. The appellant clearly explained the reasons for his kidnapping. Mr Bates accepted the Judge’s understanding that the appellant was unclear as to why he was kidnapped and what his captors sought to obtain from him was not rational on the face of the appellant’s claim as detailed in interview, witness statement and in oral evidence. A core assessment for the Judge was that of credibility in respect of the account provided, applying the requisite standard.
9. Additionally, though both parties relied, for different reasons, upon paragraph 4.3.3 of the respondent’s CPIN “*Georgia: Political Parties and Affiliation*” version 1.0 (May 2021) the Judge’s reasoning is silent in

respect of the competing submissions. I detail the paragraph of the CPIN in full:

“4.3.3 New Europe published the following in February 2021:

‘The steady support that the UNM has received in every election since 2012 indicates that the party continues to have electoral support, generally at the voters’ expense, mainly from the UNM’s strong party identification, which stems from the positive changes that the UNM brought to the country from 2004 to 2006, the first two years that the party and its leader, Mikheil Saakashvili, were in power.

‘Since being defeated by the Georgian Dream nine years ago, ... however, the UNM has never been able to capture enough votes or widespread public back [sic] to catapult the party back into power. The main reason why the UNM has relatively low popular support can be traced back to cases where it was accused of abuse of power while it was still in office.

‘The UNM, particularly during the second of its time as the ruling party, was regularly accused of and tied to human and property rights violations, mass incarcerations, crackdowns on protestors and opposition groups, and widespread illegal surveillance. These major transgressions significantly neutralized the significant social and economic reforms of the UNM’s early years, many of which can still be felt in present-day Georgia. However, the authoritarian and lawless behaviour of the UNM’s leader in recent years, the increasingly erratic Saakashvili, makes the party’s future less credible for voters when it comes to a de-facto implementation of a balance of power and general democratic rule.’”

10. Mr Bates properly accepted the silence in reasoning in the context of the claim advanced was a material error.
11. I observe that it is unfortunate that in a reasoned decision the Judge referenced being directed to a CPIN but failed to identify the document by name or detail its version or date of publication.
12. Further, though the Judge set out the discrepancies and inconsistencies identified by the respondent in his decision letter dated 25 March 2021 as to the appellant’s initial contact and asylum registration questionnaire, dated 8 January 2020, and his statement of evidence from asylum interview held on 9 February 2021, the Judge made no express finding upon the appellant’s submissions, advanced both in

the skeleton argument filed on his behalf, dated 24 May 2023, and at the hearing that weight should not be placed upon inconsistencies arising from the use of a translation app. At his interview in February 2021 the appellant clearly raised at questions 3 and 4 his concern as to the accuracy of his recorded responses in his initial contact interview. The judicial conclusion that the appellant was not credible because of inconsistency is materially erroneous in circumstances where there was no assessment of the appellant's complaint as to the use of a translation app.

13. I consider that the respondent, through Mr Bates, acted properly in conceding these identified material errors of law.
14. As to the second ground of appeal, Mr Timpson was not instructed to concede the challenge, but advanced no oral submission. I am satisfied that there is no merit to this ground. The height of the appellant's case is that having arrived in the United Kingdom in January 2020 he has made friends, speaks English and has not had recourse to public funds.
15. Though concise, the Judge's reasoning at [41] of his decision identifies an assessment of private life rights outside of the Immigration Rules, with implicit reference to section 117B of the Nationality, Immigration and Asylum Act 2002. The conclusion reached was reasonably open to the Judge. On the very limited personal circumstances advanced by the appellant, I am satisfied that no reasonable judge properly directing themselves could allow the appellant's appeal on article 8 private life grounds. The Judge's article 8 assessment is not subject to material error of law.

Resumed Hearing

16. Both representatives requested that the matter be remitted to the First-tier Tribunal consequent to the Judge having failed to adequately consider core elements of the appellant's case.
17. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC)
18. Being mindful of the duty to act fairly, and additionally that this appeal is concerned with an application for international protection with the attendant likelihood of detailed cross-examination, I consider it appropriate and just to remit this matter to the First-tier Tribunal.

19. I observe that if the respondent intends to rely upon paragraphs of her decision letter that rest upon discrepancies arising upon consideration of content within the initial contact interview, the First-tier Tribunal can properly expect evidence to be produced addressing the reliability of the translation app used during the interview.

Notice of Decision

20. The decision of the First-tier Tribunal sent to the parties on 3 August 2023 in respect of the appellant's asylum, humanitarian protection and human rights (articles 2 and 3 ECHR) appeal is subject to material error of law and is set aside.
21. No findings of fact are preserved in respect of these matters.
22. The decision of the First-tier Tribunal sent to the parties on 3 August 2023 in respect of the appellant's human rights (article 8 ECHR) appeal is not subject to material error of law and stands.
23. The findings at [41] of the decision sent to the parties on 3 August 2023 are preserved.
24. The appeal is remitted to the First-tier Tribunal sitting in Manchester to be heard by any Judge other than Judge of the First-tier Tribunal Farrelly.
25. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 February 2024