



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2024-
000595**

**FTT No: PA/52968/2023
LP/02935/2023**

THE IMMIGRATION ACTS

**Decision and Reasons
Promulgated
On 11 September 2024**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr KL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Heard at FIELD HOUSE
on 30 August 2024**

Representation:

For the Appellant: Mr R Layne, Counsel
(instructed by Visa 24/7)

For the Respondent: Mr M Parvar, Senior Home Office Presenting
Officer

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Saffer on 28 February 2024 against the decision of First-tier Tribunal Judge O’Garro who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 14 January 2024.
2. The Appellant is a national of Russia, born in Georgia but who had acquired Russian nationality. He claimed in summary that he was at risk on return because of his political opinion, which was against President Putin and the war on Ukraine. This was the Appellant’s third asylum claim. Previous similar appeals had been dismissed by First-tier Tribunal Judge Kimnell and by First-tier Tribunal Judge Khan. Permission to appeal had been refused in both of those appeals but the Appellant had not left the United Kingdom.
3. After reviewing the evidence the Appellant presented and the account he provided, including his immigration history, Judge O’Garro made the following findings:

“33. There is no question that Devaseelan*, requires Judge Khan’s decision to be my starting point . I will therefore start with Judge’s Khan finding at [41] of his decision . I have extracted the same for ease of reference:-

‘41. The Appellant has not attended any demonstration or protests since 2 August 2017. I find that after the dismissal of his appeal on 28 July 2016 the Appellant opportunistically attended three more events to add to and bolster his asylum claim once again. I do not accept that these attendances by the Appellant at these various events add anything to his claim or in any way change his situation from the findings of Judge Kimnell in his decision promulgated on 28 July 2016.’

“34. In fact Judge Khan maintained the findings of Judge Kimnell found at [55] of Judge’s Kimnell’s decision which I will also extract here for ease of reference:-

‘55. I do not accept that the Appellant is at all likely to espouse any political view should he return to Russia. He has simply involved himself in a small number of protests in the UK in the hope of bolstering his case.’”

4. Judge O’Garro continued:-

“35. The Appellant’s fresh submissions to the Respondent relate to his mainly one-man protests outside the Russian Embassy in London following Russia’s war against Ukraine which started in February 2022. The Appellant has submitted a few photographs showing himself standing with others supposedly outside the Russian Embassy and he was holding a placard...

37. The issue for me to determine is whether the Appellant’s ant-war protest outside the Russian Embassy will put him at risk if he is returned to Russia.

38. In his oral evidence the Appellant said that since his last appeal he attended 60 plus anti-war protests outside the Russian Embassy and out of the 60 or so protests he attended, only 15 were with other antiwar or anti-Putin protestors, the rest of his antiwar protests were on his own.

39. I have seen photographs of the Appellant in a crowd of people which looked like a demonstration. I have seen photographs of the Appellant standing on his own holding a placard. There was nothing in the photographs that told me where the anti-war protests were taking place and the dates of the protests and without more and taking into account the first judges’ findings that the appellant attended anti-war protests to bolster his asylum claim, I am not prepared to accept his oral evidence that he attended 60 or more anti-war protests.

40. In any event, even if the Appellant did attend anti-war protests, whether on his own or with others, there is no evidence before me that he had a significant role at these anti-war protests or that his attendance at these demonstrations would result in harm to him or all those who attended if they returned to Russia , regardless of the significance or not of the role they played at the antiwar protests.

41. There is also no evidence before me how Russian authorities would identify the Appellant or know, who the individual attendees are at the antiwar protests, particularly if the individuals, like the Appellant, do not have a political profile.

42. Further, as there is no evidence before me that the authorities in Russia monitors dissent in countries abroad, I will place no weight on those photographs.

43. The Appellant before me has submitted no evidence of significant political activity in the United Kingdom which I find would bring him to the attention of the Russian authorities if they were monitoring overseas political activities.

44. However, even if the Russian authorities did have in place some form of monitoring of political activities abroad, I bear in mind the case of YB (Eritrea) [2008] EWCA Civ 360, where Sedley LJ had stressed the likelihood that totalitarian regimes would keep tabs on opposition activities abroad, but that they might also recognize when such activities were insincere and opportunistic.

45. In EM (Zimbabwe) [2009] EWCA Civ 1294, this point was dealt with in considering the many Zimbabweans who had attended vigils in the Strand or gone to MDC meetings in Milton Keynes. In dealing with the question of whether the Central Intelligence Organisation (CIO) have monitored such activities. Patten LJ summarized the conclusion in EM thus:

‘The more significant the political activity, the more likely that it will become apparent and therefore be of interest to those monitoring it.’

46. If the appellant holds deeply held political opinion, critical of the Russian government, then I accept that he could be at real risk of serious ill-treatment on return. The case depends entirely on whether or not I believe the Appellant’s claim about his political convictions.

47. I am required to consider all the evidence in the round and in doing so I bear in mind that the Appellant only has to prove his case to the low “real risk” standard. The Appellant’s credibility is a factor I must take into account and I did not find the Appellant to be a credible witness. The Appellant had no political profile that brought him to the interest of the authorities before he left Russia and he will be returning to Russia with no political profile that would bring him to the interest of the Russian authorities.

48. To conclude, I find nothing in this Appellant's personal circumstances which gives me any reason to believe his claim. I have reminded myself of the seriousness of my decision and the adverse consequences that are likely to follow if I am wrong but the burden is on the Appellant to prove his case, albeit to a low standard, and he has not persuaded me that he is telling the truth about his fear of harm if he is returned to Russia."

5. When granting permission to appeal, First-tier Tribunal Judge Saffer stated that it was arguable that the Judge may have materially erred in stating that there was no evidence of the Russian authorities monitoring dissident activity abroad as it appears there was some at page 84 of the stitched bundle. He continued that the rest of the grounds appear to me to have less relevance but I do not limit the grounds.

Submissions

6. Mr Layne for the Appellant relied on the grounds of appeal, which he had not settled. The grounds presented a general litany of complaints but the only ground specifically identified as of potential merit in the grant of permission to appeal was the Judge's statement that no evidence had been presented to show that the Russian authorities monitored the activities of dissidents abroad. The Judge had failed to take into account or to consider a report published in *The Observer* newspaper, a reputable source, where it was stated that a demonstration outside the Russian Embassy had been filmed and the footage had been sent to the Kremlin. That was likely to include the Appellant and would enable him to be identified. That omission was a material error of law which marred the Judge's assessment of the risk faced by the Appellant on return. The decision should be set aside and remitted to the First-tier Tribunal for rehearing before another judge.
7. Mr Parvar for the Respondent submitted that there was no error of law, merely disagreement with a decision properly open to the Judge. The *Observer* article for what it was covered one demonstration which had included a high profile opposition activist, the widow of a man poisoned by Russian spies. It was not objective evidence as such.

There was no suggestion that the Appellant had been a prominent participant at the event in question. The Judge had correctly applied Devaseelan* when finding that the Appellant had no political profile. The Appellant's claim had no substance. The remainder of the grounds had no force at all. The Article 8 ECHR assessment was detailed and thorough. The appeal should be dismissed.

8. There was no reply.

No material error of law finding

9. The Tribunal reserved its decision, which now follows. The Tribunal is far from persuaded by the submissions as to material error of law made on behalf of the Appellant. In the Tribunal's view, the errors asserted to exist in the decision are based on a failure to read the decision and reasons with proper attention.
10. As Mr Layne rightly recognised, the grounds were little more than a generalised litany of complaint and the only point raised which was properly arguable was whether the Judge's statement that there was no evidence before the First-tier Tribunal which showed that the Russian authorities monitored dissidents abroad. Mr Layne confined his submissions accordingly.
11. In the first place, Devaseelan* plainly applied, as the Judge found. The previous adverse credibility findings as to the genuineness of the Appellant's claimed political opinion were necessarily the Judge's starting point. The Judge found that there was no reason for her to depart from the previous findings of fact. That finding was unimpeachable, and indicated the fundamental weakness of the Appellant's so-called fresh claim.
12. Whilst some may indeed be surprised that the Home Office saw fit to entertain yet a third similar asylum claim from the same appellant, Russia's full scale invasion of Ukraine was an arguable change in the Russian political scene and has undoubtedly led to a clampdown on opposition political activists within Russia itself. That was proved by the country background evidence about the treatment given to internal opposition. There is no suggestion that the Judge

thought otherwise. What the Judge found was that there was no evidence before her of general monitoring of ordinary frank and file demonstrators *outside* Russia.

13. Mr Layne submitted that the Judge had gone too far and that there was such evidence in the Appellant's bundle. The Tribunal disagrees. The evidence of monitoring in the *Observer* item was at best anecdotal, a single newspaper report of a notably high profile well-attended event which the Appellant had not claimed he organised. Such a news item hardly bears the status of an expert's report. There were no examples given in the article of anyone who had merely demonstrated abroad facing any problems with the authorities on return to Russia. The Judge was not entitled merely to surmise or assume that such consequences were reasonably likely, as it was for the Appellant to prove his case to the lower standard.
14. In any event, as part of the anxious scrutiny the Judge applied to the claim, the Judge considered the alternative scenario contended for by the Appellant, namely that monitoring of overseas demonstrators or dissidents was a regular or routine practice by the Russian authorities. Here it was necessary for the Judge to take account of the previous findings that the Appellant's *sur place* activities were contrived solely to advance his asylum claim and would be recognised as such by the Russian authorities. The Judge applied relevant case law when reaching that conclusion, as the extracts from her decision given above show.
15. As Mr Parvar submitted, there was nothing in the other complaints made on the Appellant's behalf by his representatives. In particular, the Judge conducted a thorough Article 8 ECHR assessment. Her conclusions are unimpeachable.
16. In the Tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than disagreement with the experienced Judge's findings of fact. The Tribunal accordingly finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged, including the anonymity direction which remains in force.

Signed R J Manuell **Dated** 2 September 2024
Deputy Upper Tribunal Judge Manuell