



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-000939
UI-2024-000940
& UI-2024-000941

First-tier Tribunal No:
PA/55211/2022; LP/01359/2023
PA/55213/2022; LP/01361/2023
PA/55214/2022; LP/01360/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10 September 2024**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**XX
XY
XZ**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Mizkiel, instructed by Greater London Solicitors Ltd

For the Respondent: Ms S Cunha, Senior Presenting Officer

Heard at Field House on 5 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court. The reasons for this order are below.

DECISION AND REASONS

1. The appellants appeal with the permission of Judge Curtis against the decision of Judge Buckwell, who dismissed their appeals against the respondent's refusal of their applications for international protection.

Anonymity

2. It is necessary to deal with Ms Mizkiel's application for anonymity at the outset of this decision. Ms Mizkiel submitted that the publication of the appellants' names or any details of their case would be likely to place them at risk in the United Kingdom. She submitted that they were at risk not only from their state of nationality but also from a neighbouring state and that the risk was likely to extend to the United Kingdom on account of the first appellant's profile. Ms Mizkiel was concerned that the publication of such details on the internet would generate risk and she invited me to order that my decision should not be made public in that way.
3. Ms Cunha indicated that the Secretary of State took a neutral stance on the application.
4. I was able to indicate at the hearing, after deliberating over the short adjournment, that I would not make the order sought because I considered it to be contrary to the principle of open justice. I did indicate, however, that I would not make reference to the facts of the appellants' case beyond those which were vital for the resolution of the appeal, and that the publication of those limited details, together with an order for anonymity in the terms above, struck the correct balance between open justice and the protection of the individual.

Background

5. The first appellant is a national of a state which was formerly a part of the Union of Soviet Socialist Republics. His two children have linked appeals. A third child was born in the United Kingdom in 2022. She is not an appellant in her own right but she is dependent on the outcome of the appeal. That is also the case in respect of the appellant's wife, as was confirmed by the Presenting Officer before the First-tier Tribunal: [5] of that decision refers.
6. It has been accepted throughout the course of this appeal that the first appellant rose to a position of some seniority in his country of nationality: [10] of the FtT's decision refers, marking something of a refinement of the position set out at [40] of the respondent's decision. He stated that he had refused to reveal certain information about those he had served with and that he had been ousted from his position as a result. He had taken his claims to the media, after which he had been abducted and ill-treated and told to leave the country. He claimed that he would still be at risk on return. He had travelled to the United Kingdom via Europe and claimed asylum in 2019.
7. The appellants' claims were refused by letter of 18 August 2022. Whilst it was accepted that the first appellant had been employed as claimed, it was not accepted that he or his family would be at risk on return. The respondent did not accept that the first appellant had been ousted from his job because aspects of his account were considered to be inconsistent. The respondent also noted that the appellant had delayed in claiming asylum after arriving in the United Kingdom in 2018.

The First-tier Tribunal's Decision

8. There were two hearings before the judge, on 18 October 2023 and 8 January 2024. Both parties were represented by counsel: Mg Kogulathas for the appellant and Ms Ahmed for the respondent. It is apparent that the judge was faced with a volume of documentary and oral evidence, as summarised at [4]-[52] of his decision. The representatives made detailed oral submissions on that evidence, as set out at [54]-[74].
9. The judge turned to his findings at [77]. He considered that the first appellant's credibility was at the heart of the case: [78]. The judge did consider that the delay in claiming asylum reflected adversely on the credibility of the claim but this was only a 'relatively minor factor': [84]. The judge considered, however, that the first appellant had given a discrepant account of how he had been expelled from his country of nationality, and he found it incredible that the governing party would have made arrangements to place the first appellant into exile: [88]-[90]. Having noted, at [92], that there was an absence of detail in the statement made by the first appellant's father, the judge found that the appellant had made his own arrangements to leave his country of nationality and relocate to Europe. He noted that the first appellant and his wife had remained in their country of nationality for some time after he had left his employment and he concluded that they had planned to come to the UK: [93]. Whilst the judge accepted that the first appellant felt 'extremely aggrieved' at having lost his senior role, he found that the reality was that he and his wife had decided to relocate to the UK and to start a family here: [94]. The judge did not accept that there was any risk on return and the appeals were dismissed accordingly.

The Appeal to the Upper Tribunal

10. Three grounds of appeal were advanced before Judge Curtis:
 - (i) The judge failed to make findings on a key aspect of the first appellant's case, namely his claim to have made public his complaints against his employer;
 - (ii) The judge left material matters out of account in considering the credibility of the first appellant's account, namely the relevant background material and a transcript of a television programme; and
 - (iii) The judge's finding that the first appellant had given a discrepant account of his departure was tainted by procedural impropriety, in that it had not been put to him.
11. Judge Curtis gave permission on the first two grounds but refused permission on the third. In respect of the third ground, he said this:

The Judge was not required to raise with the Appellant each and every point he considered to be capable of relevance in the credibility assessment. It ought to have been obvious to those representing the Appellant that the chronology and his own evidence, as to the manner in which he travelled to [x] was inconsistent.
12. Ms Mizkiel submitted before me with reference to [EH \(PTA: limited grounds, Cart JR\) Bangladesh \[2021\] UKUT 117 \(IAC\)](#) that Judge Curtis' purported limitation on

the grounds of appeal was of no effect, since he had not made a direction limiting the arguments which might be pursued before the Upper Tribunal.

13. I was able to indicate immediately that I did not accept that submission, since EH (Bangladesh) is a case which concerns grants of permission to appeal by the Upper Tribunal. Where permission is granted by the First-tier Tribunal, the law as it currently stands is to be found in Safi & Ors (permission to appeal decisions) [2018] UKUT 388 (IAC); [2019] Imm AR 437. What that decision requires is that any limitation on the grounds must be recorded in the 'Decision' section of the document, and not merely in the section of the document which gives reasons for the decision. Ms Mizkiel's difficulty in this case is that Judge Curtis was evidently aware of that rule, since the Decision is carefully recorded in the following terms:

Permission to appeal is granted on a limited basis: grounds 1 and 2 are arguable. Ground 3 is not.

14. I indicated in those circumstances that I rejected Ms Mizkiel's submission that there was no effective limitation on the grounds, and that the only grounds available to her in the absence of an application were the first two. I did indicate, however, that it was open to Ms Mizkiel to make an application to vary the notice of appeal so as to include argument on ground three. She duly made that application, submitting that it was clear that the judge had attached significance to what he thought to be a discrepancy over the first appellant's mode of departure, and that it was equally clear that the point had never been raised with the appellant in either of the hearings before the FtT.
15. For the respondent, Ms Cunha was able to accept that the point had not been put to the appellant. She nevertheless opposed the application to amend the grounds for two reasons. She submitted, firstly, that the judge was not required to raise every adverse point with the appellant: SSH D v Maheshwaran [2002] EWCA Civ 173. Secondly, she submitted that any error in this respect was immaterial, since the judge has apparently attached greater significance to the implausibility of the appellant's account. Ms Cunha helpfully confirmed that she would not require any additional time to respond to the point if permission was granted for a variation of the grounds.
16. I granted permission for Ms Mizkiel to argue ground three. I noted that Ms Cunha had raised no concern in relation to timeliness or prejudice. I considered the third ground to be arguable with reference to Tui v Griffiths [2023] UKSC 48; [2023] 3 WLR 1204. It was also arguable, in my judgment, that any error in this respect was not immaterial to the outcome, as the point seemed to be one to which the judge had attached considerable significance.
17. I then heard submissions from Ms Mizkiel and Ms Cunha on each of the grounds of appeal. I did not need to hear from Ms Mizkiel in reply to Ms Cunha, and was able to announce at the hearing that the decision of the FtT was vitiated by errors of law which required it to be set aside in full and remitted to the First-tier Tribunal to be reheard afresh. My reasons for that conclusion are as follows.

Analysis

Ground One

18. By her first ground, Ms Mizkiel submits that the judge failed to make findings on material aspects of the appellant's account. The appellant had not stated that he

had lost his employment in 2014 and had left the country some years later; it was an important part of his account that he had 'gone public' and that it was this decision which had prompted adverse interest from the government. Whilst the judge had evidently been aware that this was the first appellant's account, he had failed to make a finding upon it. Ms Mizkiel submitted that the judge had also failed to make a finding on the letter from the Young Lawyers' Association dated 9 March 2023, which stated that the first appellant was 'politically persecuted' by the government. The judge had accepted that the appellant was employed as claimed but he had failed to make a finding on the crucial events which followed, and had instead proceeded to consider the mode of the first appellant's departure. She submitted that this was a 'stark omission', not least because the first appellant had arguably suffered politically-motivated persecution in the past, which sufficed to engage paragraph 339K of the Immigration Rules and should have informed the judge's assessment of future risk accordingly.

19. Ms Cunha submitted that the appellant had remained in Georgia for some time after he had taken his case to the media and been detained. As such, there was no need for the judge to make a finding on these matters.
20. I reject Ms Cunha's submissions on this ground. It is unfortunately clear that this experienced judge failed to make a finding on a key aspect of the first appellant's account. The appellant states that the risk to him arises not merely from the fact that he was dismissed from a senior position but also from the fact that he decided to make his annoyance over that dismissal public by taking his case to the media and to other non-governmental organisations. Whilst the judge recorded that claim in terms at [86] of his decision, he made no finding upon it.
21. In many cases, of course, it is possible to infer that a judge who has made no explicit finding on a particular point must nevertheless have rejected it. Where a composite finding is made, rejecting the account as a whole, it might properly be said that all of those parts of the account which are material to the protection claim have been rejected. That is not the case here, since the judge accepted the first appellant's claims to have risen to a senior role in the administration, and his claim that he lost that role when there was a change of government. He also accepted that the appellant was 'extremely aggrieved' by the loss of that employment. It was necessary, in the circumstances, for the judge to make an express finding about the first appellant's decision to go to the media and to have suffered difficulties as a result. As Ms Mizkiel submitted, findings on these matters were necessary in order for the judge to undertake his assessment of risk with reference to paragraph 339K of the Immigration Rules¹. I am unable, with respect to the judge, to infer any finding on those matters from the findings which he made about subsequent aspects of the narrative.
22. I find that the first ground is made out for those reasons. I was not assisted in reaching that conclusion by reference to the letter from the Young Lawyer's Association. The letter is vague and lacking in detail and although it might have been better for the judge to address it explicitly in his decision, I would not have

¹ The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

found that the failure to make express reference to it sufficed in itself to establish ground one.

Ground Two

23. Ms Mizkiel addressed me at some length on ground two. There had been a video of a television programme before the judge. There had also been a transcript of that programme. The only reference to it in the judge's decision was at [7], where he had recorded the agreement of counsel that 'a video submitted was not required for the hearing'. Ms Mizkiel submitted that this was correct, but only as far as it went; it had not been necessary to *play* the video at the hearing because the transcript had been agreed between counsel. It had remained necessary, she submitted, for the judge to consider the transcript as part of his assessment.
24. Ms Mizkiel explained that the appellant had not featured in the programme, whether in person or by name. The importance of the video was that it illustrated what had happened to people in comparable positions to the first appellant. There was reference in the programme to certain information being sought from these people, and to their having died during interrogation or having been 'killed in broad daylight'. The picture painted in this regard was similar to the account given in the relevant report from Amnesty International, but the judge had failed to consider any of this evidence in reaching his findings on the account given by the first appellant. The judge had recorded at [71] of his decision that submissions had been made on the background material but he had failed to make any reference to it in his analysis.
25. For the respondent, Ms Cunha submitted that the judge's failure in this regard was not material to the outcome because there was an obligation on the parties to make their cases clear before the FtT. The appellant's skeleton argument before the FtT made no reference to the video or the transcript and it was consequently not incumbent on the judge to consider it.
26. I reject Ms Cunha's submission on the second ground also. It is clear from [7] of the judge's decision that there was a discussion about the video at the start of the hearing. Efforts had been made by the appellant's solicitors to upload that video to the MyHMCTS portal and it was clearly a piece of evidence upon which reliance was to be placed, whether or not it was referred to in the skeleton argument before the judge. I accept that it was agreed between counsel that the video was 'not required' because there was a transcript of it.
27. What the transcript appears to show is that people in a comparable situation to the appellant had been targeted not only by his country of nationality but also by the adjoining state, with which the current government of the appellant's country is said to be aligned. This evidence dovetailed with the first appellant's claim to have suffered at the hands of the regime as a result of his decision to 'go public' and it was evidence which the judge should have considered as part of his assessment of the appellant's account, and of the risk to him as a result of his actions. The fact that the transcript was not drawn squarely to the judge's attention might go some way to excuse his failure to consider it but cannot render that failure immaterial.

Ground Three

28. Ms Mizkiel's third ground is straightforward. She notes that the judge attached significant weight to a discrepancy in the appellant's account concerning the way in which he left the country of his nationality. The judge noted that the appellant's account was that he had been taken by coach from his country of nationality to another country, whereas the chronology prepared by his representatives stated that he had travelled by flight. The judge noted this contradiction at [88] of his decision.
29. Ms Cunha relied in her response to this ground on what was said by Schiemann LJ in SSHD v Maheshwaran. She also recalled, without citing the case, what was said by Ouseley J in WN (DRC) [2004] UKAIT 213, in which it was emphasised that a hearing would not necessarily be rendered unfair by a failure to put obvious points of contradiction to a witness. She submitted that this was an obvious point of contradiction and it was not incumbent on the judge to ensure that it had been put to the appellant.
30. I have taken account of those dicta, and of what was more recently said on the subject in Tui v Griffiths and then Abdi v ECO [2023] EWCA Civ 1455. As Popplewell LJ said at [29] of his judgment in the latter case, what 'fairness requires is essentially an intuitive judgment which is dependent on the context of the decision'.
31. In my judgment, Ms Mizkiel is entirely correct in her submission that the judge found this discrepancy to be one of the few matters which led him to conclude that the appellant's account of having been 'exiled' by the authorities was untrue. It is also notable that the discrepancy was not between two accounts given by the appellant as such; the first version of events was from the first appellant's mouth, whereas the second was from the chronology prepared by his solicitors. This was not therefore the type of obvious contradiction of which Ouseley J spoke in WN (DRC). In my judgment, both the importance of the discrepancy to the final credibility finding and the way in which it arose required that it be put to the appellant. It is common ground before me that it was not. I therefore conclude that the hearing before the judge was also vitiated by procedural impropriety.

Relief

32. Having announced my decision at the hearing, I asked the advocates for their submissions on relief. Ms Mizkiel submitted that the matter should be remitted to be heard afresh by a different judge of the First-tier Tribunal. Ms Cunha agreed. Having reminded myself of the Practice Statement and of what was said in Begum (remaking or remittal) Bangladesh [2023] UKUT 46 (IAC); [2023] Imm AR 558, I also agree. The errors into which the FtT fell suffice to vitiate the credibility findings as a whole and the only proper course is remittal de novo.
33. I add this for the benefit of the FtT. This case has previously been listed with the appellants' initials. For the reasons I have given above, and assuming for present purposes that their accounts are true, I do not consider that to provide adequate protection for these particular appellants and I suggest that the appeals should be listed using only the letters I have used in the title of this decision. That is a matter for the FtT, but the appellants' solicitors might be well advised to write to the hearing centre before the matter is listed, so as to draw this to the attention of the Resident Judge.

Notice of Decision

The appellants' appeals are allowed. The decision made by the First-tier Tribunal involved the making of errors on points of law. That decision is hereby set aside and the appeal is remitted to the FtT to be heard de novo by a judge other than Judge Buckwell.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 August 2024