



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000985

First-tier Tribunal No: PA/52073/2023)
LP/02921/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13th June 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MB
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Dunne, of Immigration Advice Service
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 4 June 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed her appeal against the respondent's decision to refuse her asylum and Article 3 human rights claim. The First-tier Tribunal otherwise allowed the appeal on Article 8 grounds and the Secretary of State has not challenged that decision.

2. The appellant was born on 26 May 2001 and is a national of Kazakhstan. She arrived in the UK on 25 December 2012 as a child of 11 years of age, with her mother.

Her mother, YB, claimed asylum, with the appellant as her dependant. YB's claim was refused and her appeal against the refusal decision was dismissed by a First-tier Tribunal Judge on 30 April 2013. The appellant and her mother YB remained in the UK without any leave. YB made further submissions which were rejected. The appellant claimed asylum in her own right on 10 November 2021. Her claim was refused on 10 March 2023. She appealed against that decision and it is that appeal which is the subject of these proceedings.

3. In order to consider the appellant's claim it is necessary first to summarise YB's claim. YB's claim was made on the basis of problems arising from her involvement with the ALGA party in Kazakhstan, which she joined in 2005 and which led to her making an asylum claim in Austria in 2005. She claimed that in January 2012 the leader of the ALGA Party was arrested and charged with extremist activities and plotting to overthrow the Kazakhstan government and was sentenced to a term of imprisonment. She claimed that in August 2012 she was attacked by two unknown men and that in October 2012 she was the victim of a serious physical and sexual assault by members of the security services, in the ALGA party offices and thereafter went into hiding in her mother's home. She claimed to have continued to receive threatening telephone calls from the Security Services, and claimed that a summons was issued for her attendance before the Committee for National Security on 6 December 2012, which she did not attend. She claimed that she was kept under constant surveillance, stones were thrown at her window, and a piece of paper depicting a skull and crossbones, was affixed to her door. Eventually, she managed to escape with the help of the security committee of ALGA party, to a flat outside town and, with the committee's help, she managed to arrange visas to enable herself and the appellant to travel to the United Kingdom.

4. In a decision promulgated on 30 April 2013, First-tier Tribunal Judge Williams dismissed YB's appeal against the respondent's refusal of her claim. Although he accepted YB's account of her nationality and employment and accepted that she had been assaulted at some stage of her life, he did not accept that it was a result of involvement with the ALGA Party and did not accept her account as otherwise credible. Judge Williams did not accept that YB had worked for the ALGA Party and did not accept that she had been assaulted by the secret services or that the security services were interested in her. He did not accept that YB had left Kazakhstan for the reasons claimed and he found that she would be at no risk on return there.

5. The appellant's own claim was initially made on the basis that she would be at risk on return on account of her mother's political activities in Kazakhstan. She subsequently claimed that she would be at risk due to her own political activism in the UK and her criticism of the Kazakhstan president on social media platforms and because she had expressed support for the ALGA on social media and been in contact with the leader of the Party, and that a summons had been issued in her name as well as in her mother's name. She later claimed that she was also at risk because she was a lesbian and that she would be persecuted on account of her sexuality. The appellant also claimed that she suffered from mental health issues and had engaged in self-harm in the past, and she claimed that she met the requirements of the immigration rules for leave to remain on private life grounds.

6. The respondent, in refusing the appellant's claim, did not accept that she was of any interest to the Kazakhstan government, either as a result of her mother's claimed activities and political status or on account of her own activities. The respondent did not accept the appellant's claim about her activities in relation to the ALGA Party was credible and gave no weight to her evidence of Facebook activity. The respondent did

not accept that the appellant would be at any risk on return to Kazakhstan. The respondent did not consider that there were any very significant obstacles to the appellant's integration in Kazakhstan or that her removal to that country would breach her Article 8 rights on any other basis. It was considered that there was treatment available to her for her mental health issues and that her removal from the UK would not engage Article 3.

7. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Devlin on 14 December 2023. The appellant and her mother YB gave oral evidence before the judge. Judge Devlin considered that the appellant's account of her motivation for becoming involved in politics was vague and lacking in credibility and that the level of political knowledge she demonstrated fell considerably short of what would reasonably have been expected. The judge dismissed any suggestion that that was due to her mental health issues and found that no plausible explanation had been provided. He found the appellant's account to be both internally and externally inconsistent and he considered that the Facebook posts which she relied upon as evidence of her political commitment were of little or no evidential value. The judge noted inconsistencies between the evidence given by the appellant and the evidence of her mother YB and did not accord weight to YB's evidence. He was not satisfied that the appellant had provided a credible account of her political beliefs and activities and he found no reason to depart from Judge Williams' adverse findings in relation to YB. Judge Devlin was accordingly not satisfied that the appellant's family had been subjected to ill-treatment by the authorities on account of YB's activities and he did not accept that the appellant was a genuine or committed political activist. He did not accept that she had communicated with the Alga Party in Kazakhstan and did not accept that she had set up a Facebook account for the Alga Party in the UK or had helped set up the ALGA Party in the UK. He found in any event that the appellant would not be regarded as a person of significant interest and did not accept that she would be known by, or would be of interest to, the Kazak authorities, and that any Facebook and other activity she had undertaken was done in order to fabricate a *sur place* claim and would not lead to any adverse interest by the Kazak authorities or any risk on return. As for the appellant's claim based on her sexual orientation, Judge Devlin accepted that the appellant was lesbian and that she had only recently come to terms with her sexuality, but he did not accept that she would face persecution in Kazakhstan on that basis.

8. As for the appellant's human rights, Judge Devlin accepted that the appellant had mental health issues but did not accept that she was a seriously ill person or that she would be unable to access appropriate medical treatment in Kazakhstan and did not therefore accept that she had made out an Article 3 claim. The judge did not accept that the appellant met the requirements of the immigration rules on the basis of her private life. However taking everything into consideration, including her sexuality, her strong private life ties to the UK, her history of mental health problems, the age at which he came to the UK and the length of time spent in the UK, and the difficulties she would experience on return to Kazakhstan, he concluded that the refusal of her claim would have unjustifiably harsh consequences for her and that the respondent's decision was consequently disproportionate and in breach of Article 8.

9. In a decision promulgated on 18 January 2024, Judge Devlin dismissed the appellant's appeal on protection and Article 3 grounds but allowed the appeal on Article 8 human rights grounds.

10. The respondent did not seek to appeal the decision on Article 8 grounds and indeed I was informed at the hearing that the appellant had since been granted leave to remain in the UK on that basis.

11. However the appellant sought permission to appeal to the Upper Tribunal against the decision dismissing her protection appeal. Her application was brought on two grounds: firstly, that there had been procedural unfairness in the proceedings by reason of the judge finding that her political activity was not genuine when the respondent had not challenged the genuineness of her political opinion; and secondly, that the judge had made an irrational finding of fact on the material matter of whether she would face a real risk of persecution on account of her sexual orientation.

12. Permission was granted in the First-tier Tribunal on both grounds, and the matter then came before me for a hearing.

13. Both parties made submissions. Ms Dunne's submissions reflected the grounds of appeal. She submitted that it was unfair of the judge to impugn the genuineness of the appellant's political activities when the respondent had accepted her political opinion as genuine and when no notice had been given to the appellant of the contrary view held by the judge so that she could respond. Ms Dunne submitted further that on the basis of the references in the US State Department report which was before the judge, to harassment, physical assault and beatings of LGBT people, it was irrational of the judge to find that there was no risk of persecution and that he ought to have allowed the appeal on the basis of such evidence. Mr Tan, in response, submitted that the respondent's refusal decision clearly rejected the appellant's credibility as regards her political activities and that it was wholly inaccurate to say that the issue had been accepted by the Secretary of State. He submitted further that the judge had considered the human rights reports in detail and had set out the limitations to the US State Department report and considered the evidence in the round. His decision was not irrational and he had not erred in law. Ms Dunne did not wish to respond.

Analysis

14. I do not find merit in either ground of appeal.

15. With regard to the first ground, I agree entirely with Mr Tan that the assertion that the Secretary of State had accepted the genuineness of the appellant's political opinion and activities is wholly inaccurate. The extracts from the refusal decision which are relied upon in the grounds are taken out of context and, contrary to the assertion in the grounds, do not reflect the respondent's view, as otherwise clearly expressed at (5) of the refusal decision, that the appellant's account of her activities and political knowledge and commitment was not a credible one. In so far as the appellant relies upon the respondent's comment at (3) as to being satisfied that she had stated her political opinion and opposition to the government of Kazakhstan, that is no different to Judge Devlin's comment at [106] of his decision, that "*I do not discount the possibility that the appellant may have expressed opposition to the Kazak Government in the UK*". It is, however, clearly not an expression of acceptance that that political opinion and expression was genuine. At (5) of the refusal decision the respondent gave various examples of the appellant's limited knowledge of the Alga Party in Kazakhstan and of the opposition to the government in Kazakhstan, as well as her lack of knowledge and inability to provide a detailed account of her claimed activities in the UK, and there can be no doubt from that lengthy paragraph that the respondent did not accept the genuineness of the appellant's political opinion and involvement.

16.Indeed, as Mr Tan submitted, even if there was any doubt from the refusal letter itself (which there is not), the Respondent's Review is clear in its expression of the Secretary of State's view that the genuineness of the appellant's activities was not accepted. That is particularly evident from the expression of the alternative case, at page 989 of the consolidated bundle, "*However, even if the A's account of all sur place activities was accepted as true, the A has not proven that such activities are reasonably likely to have come to the attention of the Kazakhstan authorities.*"

17.In the circumstances, the appellant's grounds are clearly misconceived in their understanding of the respondent's position in relation to the genuineness of her political activities and opinion. The respondent's case had been clearly stated prior to the hearing and there was no reason why the appellant ought not to have been fully aware of the case she was required to answer and fully prepared to address that case. She had ample opportunity to do so, both by way of the submission of documentary evidence and in her oral evidence before the Tribunal.

18.Accordingly it was entirely open to Judge Devlin to make his own assessment of the genuineness of the appellant's political activities, taking account of the respondent's position and having regard to the evidence relied upon by the appellant. In a very detailed and comprehensive decision, the judge gave full and cogent reasons from [34] to [119] for rejecting the appellant's account of her political opinion and her motivation for her activities in the UK. I reject the assertion in the grounds that the judge was not entitled to make the findings that he did or that there was any procedural unfairness in the proceedings in that regard.

19.As for the second ground, it seems to me that this is little more than a disagreement with the findings the judge made on the background evidence and the weight that he gave to that evidence. The judge undertook a particularly detailed and careful analysis of the country background information relating to the difficulties faced by LGBT individuals in Kazakhstan, from [134] to [148]. The US State Department report was one of four reports which the judge considered at length and in detail and it is clear that he assessed the information as a whole. I reject the suggestion made by Ms Dunne that by referring to the absence of reports of murder or serious violence, as he did at [148] in relation to the US State Department report, the judge was somehow applying a 'sliding scale' for persecution or that he was setting the bar too high for what amounted to persecution. As Mr Tan properly submitted, the judge identified the limitations of the report, accepting that there were issues of concern in relation to the treatment of LGBT people in Kazakhstan, but providing cogent reasons for concluding that it did not demonstrate a pattern of persecution or amount to persecution. The judge was clearly perfectly aware of the relevant test and threshold and applied that in the context of the appellant's claim, going on, at [149], to consider the appellant's own circumstances as against that background information. The judge clearly had the correct legal test in mind when considering whether the appellant would be at risk on the basis of her sexuality and his conclusion, that she would not, was one which he was perfectly entitled to reach. There was certainly nothing irrational about his decision and there is no merit in the second ground.

20.For all these reasons I do not find the grounds to be made out. The judge reached a decision which was fully and properly open to him on the evidence before him. His decision is accordingly upheld.

Notice of Decision

21. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal on protection grounds stands.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 June 2024