
**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/04249/2015

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Determination issued** |
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| **on 24 August 2015** | **On 1 September 2015** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MINO JAVAKHISHVILI**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:
For the Appellant: Mr A Devlin, Advocate, instructed by P G Farrell, Solicitors
For the Respondent: Ms S Aitken, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Georgia, born on 15 December 1978. She appeals against the determination by First-Tier Tribunal Judge Doyle, promulgated on 27 May 2015, dismissing her appeal against refusal of recognition as a refugee.

2. The appellant's grounds are these:-

    1) The Appellant was a member of the UNM Party in Georgia. She had a position as an Electoral Officer for the Party. Following the defeat of the Party, she had lost her Government job. Her husband had been forced out of his businesses. Her husband had been attacked. Her son had been attacked and robbed. Her son, despite being a top player, had been told to leave his Football Club, Dynamo Tblisi. The FTT

proceeded on the basis that her account was credible. It did not accept however, that these events had occurred because of her political affiliation. The appeal was refused.

2) The Appellant had lodged objective evidence by way of an annual report for 2014 called "State of Human Rights in Georgia" prepared by the Human Rights Information and Documentation Centre in Tblisi. This Report confirmed *inter alia* at page 28 that political dismissals from work were frequent during the 2013-2014 years. Dismissed local Government officials were subject to pressure and threats and attributed their dismissal to their political views. The example was given of one dismissed employee who had been involved in the District Election Commission from the United National Movement, the same Party as the Appellant. The same Report also indicated at page 30 that in the pre-election period of 2014 local Government elections, oppression over candidates who participated in the local elections represented a significant problem. Again an example was given relating to the UNM.

3) …

4) The Appellant submits that there have been several errors in law. The first of these is the failure of the FTT to refer to the above mentioned Human Rights Report and in particular to fail to take cognisance of the aspects relating to the UNM, their difficulties in state employment and in the local elections. The Appellant had complained that she had been made aware by her employer, following the election, that she should change her political views. If she did not there would be difficulties. The Appellant was subsequently sacked. The objective evidence provided corroboration to this course of conduct taking place in Georgia. The FTT appears to have made no specific finding on this and appears to have ignored the objective evidence in this regard. Had they considered this evidence and indeed made a specific finding, they may well have concluded that the entire course of events which led to the Appellant leaving Georgia may well have been connected to her political affiliation. This objective evidence in effect could have been viewed as providing causal link between her political activities and the persecution she suffered. The failure of the FTT to consider the objective evidence and indeed to make a specific finding regarding termination of her employment constitutes a material error in law. It may well have been viewed that the tax [*attacks?*]on her son and her husband, and her husband's loss of 2 businesses, and her son's dismissal from his football team and her dismissal from employment were not purely coincidental.

5) The second error in law relates to the failure of the FTT to consider the son's dismissal from the football team. The Appellant's evidence was that her son had been doing very well in the football team and that no explanation whatsoever was given by the team for his dismissal. They had not indicated that it was for matters connected to football. The FTT have failed to make any finding in this regard. Had this matter been adequately considered, it may well have had a bearing on their overall view of the evidence.

6) The Appellant had complained that not only was she removed from her employment but that her husband had had 2 businesses taken away from him … such action may be sufficient to constitute persecution.

The FTT have failed to give this matter adequate consideration. Had they done so they may well have concluded that the Appellant was the victim of state sponsored persecution.

7) The Appellant had indicated that her husband had his business taken away from him. The FTT proceeded on the basis that this was indeed correct. The FTT however concluded that this was purely as a result of criminal activity. In doing so the FTT appears to have overlooked the fact that the Appellant indicated that the beneficiaries from her husband's misfortune were members of the Political party which she had and continues to oppose. Had this matter been considered adequately it may well have concluded that this strand of evidence tended to indicate that she was not simply the victim of criminals but that her misfortunes were indeed connected to her political activity.

3. Under Rule 24 the Secretary of State responded as follows:-

3. The judge acknowledged the Human Rights report submitted on behalf of the appellant, but found that there was no indication that membership of UNM leads to persecution, nor that the Georgian government intimidates political opponents. The judge has explained the findings over several paragraphs, and was entitled to decide the weight to be attached to the evidence. It was open to the judge to conclude that there is a lack of evidence to support the appellant's claims, and that the appellant has failed to discharge the burden of proof upon her. Whilst the appellant may disagree with the findings, the respondent will submit that there is no material error of law in the determination.

4. In essence, the ground relating to the appellant's son's dismissal from the football club is based on the premise that no explanation was given for the dismissal. In the absence of evidence to indicate that the event is linked to the reasons for the appellant's claim, the respondent will submit that the judge cannot be said to have materially erred in law in not making a specific finding on this point.

Submissions for appellant.

4. Mr Devlin referred firstly to case law, in particular *Bugdacay* [1987] 1 AC 513 at 531 F- G and 537G-H on the need for the most rigorous examination of a decision to ensure that it is in no way flawed, according to the gravity of the issue, and, where fundamental human rights are concerned, the need for the most anxious scrutiny, and *Karanakaran* [2000] Imm AR 271 per Lord Justice Sedley at page 304 on the need to take everything material into account, continuing, "No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it".

5. Decisions which fail to reach those standards cannot stand. Any failure of anxious scrutiny is bound to lead to a reduction or reversal of the decision challenged.

6. Turning to the adequacy of this decision, the appellant said more about the political background to her husband's removal from his garage business than was acknowledged by the Judge in the effective part of his decision. The Judge failed to have regard to the full extent of the

appellant's explanation and failed to cite passages of her evidence which clearly bore on the outcome of the case, especially when the Judge had not doubted her overall credibility. He did not mention the background evidence that supporters of the UNM were forced out of their employment due to their political allegiance. There had been evidence of like instances, in particular in the report "State of Human Rights in Georgia". The Judge failed to deal with the central planks of the claim.

7. Regarding the dismissal of the appellant's son from his football club, while there had been no direct evidence that this was linked to her political victimisation, the determination failed to indicate the surrounding circumstances and the chronology. There was a nexus between on the one hand all the adverse events suffered by the appellant, her husband, and her son and on the other the electoral process and political timing. The Judge ignored the fact that those who threatened the appellant's husband had significant links to the police and to the Prime Minister. This was a good deal more than intimidation and beating by persons unknown.

8. There was a further point to be developed, although not contained in the grounds. At paragraph 15(n) the Judge failed to make clear what he meant by saying he took the claim "at highest". Did he mean accepting all that the appellant said, but not inferring that the agents of persecution were the government? He should have taken the case as highest on the latter basis, and should therefore not have gone on to find that it would be defeated on grounds of internal relocation or sufficiency of protection.

9. At 15(l) the Judge observed that it was not the appellant but her husband and son, who had not been UNM members, who had been targeted. Although that was an accurate record of her claim if it was intended as an adverse finding it was odd, because it is well known that it is not unusual for persecutors to target someone through their family members. If it was intended to imply that the experiences of the rest of the family had nothing to do with the UNM connection, that was ill-founded.

10. The internal relocation and sufficiency of protection findings could not stand once it was understood that the government is the persecutor. A finding of a functioning police force was beside the point when the state is the persecutor and the police are an arm of the state. The determination could not be saved by alternative findings on internal relocation and sufficiency of protection, which were also not adequately explained.

11. The case required a fresh hearing.

Submissions for respondent.

12. Ms Aitken relied on the Rule 24 response. She said that the Judge had not ignored the Human Rights report, but specifically noted at 15(g) the great emphasis which the appellant sought to place upon it. Against that background, the findings on the case "at highest" did understand the case correctly. The Judge based those findings on there being no programme of intimidation of political opponents, on the basis of evidence provided by the appellant. At paragraphs 15(k) and (j) the Judge clearly had taken account of the appellant's version in her witness statement. That had not

been ignored. The appellant simply disagreed with the Judge's finding that there was no link between any family misfortunes and her involvement in the UNM. The Judge properly understood the case before him and was entitled to resolve it as he did for the reasons given.

Response for appellant.

13. Mr Devlin in response agreed that the Human Rights report did not establish systematic persecution of all members of the UNM. He said the significant point was that the appellant was not simply a member of the UNM but a former electoral commissioner who had directly accused the party in government of electoral fraud. That put her in a different category. She did not rely on establishing a wholesale campaign against UNM members. The Judge's findings did not take account of her position. Her findings that her husband did not have security of tenure in the business premises from which he was ejected missed the point, which was the underlying reason for the persecution.

Discussion and conclusions.

14. Notwithstanding what has been said about the concept of anxious scrutiny and the need to consider every factor which might tell in favour of an appellant, a Judge does not have to analyse every dot and comma of written evidence or every word uttered in oral evidence. The degree of particularity required varies according to the case. The concepts on which Mr Devlin relied should not be used to dress up what are in truth challenges to findings of fact under headings of legal error.

15. The fundamental finding by the adjudicator is at 15(i), "There is no causal link between the misfortunes which have befallen the appellant and her family since the end of 2012 and the Georgian Dream Coalition". He gives sensible, detailed, fact-based reasons for finding that her husband's loss of his business was not for any such cause.

16. The suggestion that the appellant's son was dropped from his football team for political reasons is particularly egregious. He was not a "top player" for Dynamo Tblisi, a well known first rank club. He played at some level well below their first team. There is nothing to suggest that he played in Georgia at any higher a level than he does in Scotland, for Maryhill Juniors – a respectable but not top level of football, in the junior not senior leagues. The great majority of teenagers who play at the lower levels of famous football clubs eventually face the disappointment of progressing no further.

17. The Judge acknowledged the appellant's position that she was an office bearing political activist. He was not required to set out her claim in any more specific detail than he did. The reasons given for dismissing it have not been shown to be legally inadequate. The challenge is essentially of a factual rather than a legal nature.

18. The determination of the First-Tier Tribunal shall stand.

19. No anonymity direction has been requested or made.

Upper Tribunal Judge Macleman

28 August 2015