



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13036/2015

THE IMMIGRATION ACTS

Heard at Field House, London
On 20th May 2016

Decision & Reasons Promulgated
On 1st June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[J N]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Sherman (LR)
For the Respondent: Mr E Tufan (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge S Lal, promulgated on 15th March 2016, following a hearing at Hatton Cross on 8th March 2016. In the determination, the judge dismissed the appeal of [JN], whereupon the

latter applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Albania, who was born on [] 1999. He is, accordingly, a minor. He appealed against the decision of the Respondent Secretary of State rejecting his asylum claim on the basis that he was involved in a gay relationship in Albania in consequence of which he had suffered persecution.

The Appellant's Claim

3. The Appellant's claim was that he had left Albania in January 2015, travelled to Montenegro, and then to France. He entered the UK and claimed asylum on 11th March 2015. Given his age, he was given limited leave to remain until April 2017, and that leave is still extant today. He had a screening interview on 20th March 2015. He was interviewed on 3rd July 2015. His application was then refused on 3rd November 2015. The Appellant claims that he started a relationship with a fellow boy at school in Albania and he would meet this boy for sex in empty classrooms and that one day he was caught by his father who had attended school. He was then beaten up by his uncles and one aunt while his parents were present. He managed to escape Albania through the help of a friend who helped him board a bus to Montenegro. In the asylum interview he had also stated that his parents also beat him up and that the last beating was the night before he fled. This was recounted at paragraph 12 of the determination.

The Judge's Findings

4. At the hearing before Judge Lal on 8th March 2016, a surprising turn of events took place. Mr Grennan, who appeared for the Respondent Secretary of State, as a Presenting Officer, sought to adduce the RALON check document from the British Embassy in Tirana dated 17th August 2015, and this purported to show that the Appellant had actually left on his own passport to travel to Italy on 29th January 2015, and he was actually accompanied by his father, [AN]. This meant that, rather than to be fleeing from his father, and alleging persecution in his country of origin, he had actually been accompanied by his father, and he had actually travelled on his own passport, in coming to the UK. As the judge recalled in his determination, "Mr Grennan submitted that the Tribunal should have this document as it in effect demolished the Appellant's story, namely that he left Albania because he feared his family" (see paragraph 10).
5. At the hearing, Ms Sherman, who also appeared before Judge Lal, had then proceeded to ask for an adjournment "so she could further explore the above matters", but Judge Lal refused to do so, granting only a brief adjournment to allow her to take instructions, "because 'the Tribunal was satisfied that adjourning the case to another date would serve little purpose as the Appellant could deal in oral evidence with the matters now raised'" (paragraph 11).

6. The judge then went on to dismiss the appeal.

Grounds of Application

7. The grounds of application state that the Appellant was caused prejudice by the production of evidence at the eleventh hour during the hearing, on which the Appellant's representatives themselves had no notification so as to be able to prepare for a change of evidence that was being relied upon to support the refusal decision by the Respondent, Secretary of State.
8. On 19th April 2016, permission to appeal was granted on the basis that, "it is just about arguable that it may have been unfair to refuse the adjournment application" (see paragraph 3).

Submissions

9. At the hearing before me on 20th May 2016, the Appellant was again represented by Ms J Sherman, and the Respondent was represented by Mr E Tufan, a Senior Home Office Presenting Officer. Ms Sherman submitted that the refusal letter of 21st October 2015 relied heavily on negative findings with respect to the Appellant's alleged sexuality. At the hearing on 8th March 2016, despite the RALON check document being dated 17th August 2015, the Appellant was faced with new documentary evidence, which could have been disclosed to the Appellant's solicitors much earlier than 8th March 2016. All that Ms Sherman had was ten minutes to take instructions, and this was with respect to a child who was potentially vulnerable at his age, before being required to proceed further in the hearing. That was the matter that caused the Appellant prejudice. Ms Sherman submitted that it was quite possible that the Appellant's travel documents had been used by somebody else, and what they would have required was an adjournment for the opportunity to inquire into this possibility. The failure to give them that adjournment caused a prejudice to the Appellant's side.
10. For his part, Mr Tufan submitted that the production of the RALON check document on 8th March 2016 caused no prejudice whatsoever because the refusal letter itself was based upon the rejection of the very evidence that was being adduced by the Appellant. For example, paragraph 6 of the refusal letter states that the Appellant had claimed that "... you left Albania and travelled to Montenegro by lorry, without using your passport ... However, evidence obtained from the British Embassy in Tirana shows that you left Albania on 29th January 2015 by ferry and travelled to Italy using your national passport" (paragraph 6). There was no evidence produced today that this contention in the refusal letter by the Respondent Secretary of State had in any way been successfully challenged. Indeed, no effort was made to challenge this decision by producing evidence that the Appellant had indeed travelled to Montenegro by lorry, as he had claimed. Second, the solicitors could have made inquiries in relation to all these matters themselves without the RALON check document being produced on 8th March 2016. Third, the refusal letter at paragraph 6 makes it quite clear that the Appellant left Albania "using your own national passport". That is exactly what the RALON check document now confirmed. If it

was Ms Sherman's case that this was not true, because the travel document could have been used by somebody else, then there had been ample opportunity since 21st October 2015 to make inquiries and produce evidence to the contrary. This had not been done. Finally, the judge was entitled to give the RALON check document the weight that she thought fit in the circumstances. This she did do. The Appellant had suffered no prejudice. In fact, the Appellant had been in receipt of discretionary leave to remain until 2017.

11. In reply Ms Sherman submitted that all that paragraph 6 stated was that the Appellant had travelled to Italy first, rather than to Montenegro. Second, in any event, none of this made any difference to the Appellant's central claim, namely, that he had been the victim of persecution on account of his sexual orientation. Where the Appellant travelled, whom with, and using which passport, was entirely relevant to this central claim.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, the judge had to bear in mind the "overriding principle" and to dispose of hearings in a timeous and efficient manner with due regard to the interests of justice. The information now being provided by the RALON check was already implicit in the refusal letter at paragraph 6, which had maintained that the Appellant had, in fact, travelled on his own passport, and had done so to Italy, rather than to Montenegro, and that this was ("evidence obtained from the British Embassy in Tirana"). This allegation would have been known to the Appellant's side. It would have been mentioned to the Appellant and his advisors. Instructions would have been taken on this. If it had been the case that no such travel arrangement had been made in this manner, and certainly not using the Appellant's own passport, it is a matter that could have been raised earlier, and it could not have been dependent upon the RALON check document being produced on 8th March 2016. Second, Judge Lal did grant the Appellant a "brief adjournment to allow her to take instructions" (paragraph 11). At no point did Ms Sherman submit that it had always been the Appellant's case that he had never travelled on his own document and had always travelled to Montenegro first, rather than to Italy. Third, the judge did examine the sexual orientation claim quite independently of the document now produced, and oral evidence was given by the Appellant (see paragraph 13) and there was cross-examination that took place (paragraph 14). It was only after that that the judge made findings of fact.
13. With respect to the judge's findings of fact, the judge observed that the photograph on the document is that of the Appellant and the passport number is the same as that on the Appellant's passport. The judge concluded that

"The claimed account that he was beaten up by his father the night before and he fled the next day via an overland route is discredited by the fact that the Appellant has been shown to have crossed into Italy with his father via the

ferry to Bari. The Tribunal finds that this would not have been the action of the alleged persecutor and in fact completely detracts from the very core of the Appellant's story" (paragraph 16).

14. This was a conclusion that the judge was entitled to come to, and did do so on the basis of the evidence before the Tribunal.

Notice of Decision

15. There is no material error of law in the original judge's decision. The determination shall stand.
16. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

3^{1st} May 2016