



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/12554/2016

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus House)**

**Decision & Reasons  
Promulgated**

**On 17<sup>th</sup> August 2017**

**On 22<sup>nd</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**A S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: M J Edwards (Counsel)

Instructed by: Adam Khattak Solicitors

For the Respondent: D Mills (Home Office Presenting Officer)

**DECISION AND REASONS**

1. **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008** The Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant is a citizen of Uzbekistan who appeals a decision of the First-tier Tribunal (Judge O'Brien), promulgated on 7<sup>th</sup> February 2017, in which the judge dismissed his international protection claim based on his fear of the authorities arising from the publication of oppositional articles he had written.

The appeal to the Upper Tribunal.

3. The Appellant's appeals with the permission of the First-tier Tribunal (Judge Keane), granted on 9<sup>th</sup> June 2017. At the hearing before me, and without objection from Mr Mills, Mr Edwards renewed the ground upon which the grant of permission was silent.
4. There were three distinct challenges.
  - (a) Given that the judge had commented that there might be clues as to his real identity within articles he had written under a pseudonym, he failed to give that finding adequate weight when concluding that the Appellant would not reasonably likely be exposed to a risk of persecution.
  - (b) The judge arrived at an irrational finding when concluding that the Appellant's ability to leave Uzbekistan in 2015 undermined his claim to be sought by the authorities at the time given the proposition in LM (returnees - expired exit permit) Uzbekistan CG [2012] UKUT 390 that officials based at the airport would not have had a reason to stop the Appellant at the airport because he had a valid pre-existing exit visa. Mr Edwards argued that the case of LM showed that throughout the two years of their authorised travel under an exit permit Uzbek passport bearers could freely leave and enter Uzbekistan. That would indicate to an airport-based official that there was a high degree of trust invested in the holder and so airport-based officials would not have had reason to stop the Appellant at the airport. In those circumstances, it was an error for the judge to rely on the Appellant's ease of passage through the airport on exit as a factor undermining the credibility of his account to be wanted by the authorities at the time.
  - (c) The judge gave inadequate reasons for finding that the critical articles had been fabricated for the purposes of the claim, so that the judge's finding that having written articles critical to the regime for the purpose of the claim it was not reasonably likely that he would continue to write such articles on return, had an unsound basis. There was a qualitative difference between writing a series of articles and finding a reputable source such as BBC World Service to publish them, and relatively straightforward sur place activity such as having a photograph taken on a demonstration outside an embassy. Further if the Appellant would cease writing articles critical of the regime upon return only because of fear of persecution arising from such acts then he would nevertheless qualify for refugee status.

5. Mr Mills relied on the rule 24 response submitting that:
- (a) In respect of any risk arising from the sur place articles written for the BBC the judge was satisfied that even if the authorities were aware of them they would not be able to identify the Appellant because they were written under a pseudonym and whilst they might have clues as to his identity as the judge noted they would have to be very familiar with the Appellant's life here in the UK rather than in Uzbekistan, and there was no evidential basis to assume such.
  - (b) LM did not assist the Appellant the judge had found that it was incredible that had the authorities been interested in the Appellant and required him to surrender his passport they would not have notified the airport so that even though he had at the time a valid exit visa it would not have assisted him, being countermanded by the alert.
  - (c) In respect of the assessment of the sur place claim whilst Mr Mills accepted that writing articles which got published by the BBC represented a better effort than simply turning up at the embassy holding a flag and having a photograph taken it was nonetheless open to the judge to find that it was a cynical effort to bolster his claim. The judge had set out reasoning which included adverse credibility findings including of his historical account of allegedly reporting to the police station, being required to return to the police station bringing his passport with him, and of nonetheless being able to leave Uzbekistan on his own passport in the face of such interest. Firstly, the Appellant asserts close links to the ERK, the opposition party, however he was able to come and go from Uzbekistan without interference until July 2015. Secondly, the Appellant exaggerated his connection with journalism claiming to have "studied" journalism when in fact he had studied computer science in Uzbekistan and had applied for a Tier 4 Student visa to study business in the United Kingdom. Thirdly, he claimed to have seen one of his witnesses relatively recently in Uzbekistan, contrary to the evidence of the witness. The judge found his explanation that he might be confusing a recent sighting of the witness with having seen him as a child as expedient. Fourthly the articles for the BBC which the Appellant's witness indicated he knew the Appellant had written all post-dated the claimed interest in him shown by the authorities. Fifthly the Appellant had failed to claim asylum on his return to the United Kingdom on 29<sup>th</sup> July 2015, only claiming in April 2016, after his extended student visa had expired in March 2016.
6. In response Mr Edwards pointed out that it is not unknown for regimes to monitor internet activities without knowing the real-world identities of the writers. The qualitative nature of the sur place activities make a difference there as they would be most likely to monitor the BBC World Service.

## **My Consideration**

7. I found no merit in the Appellant's appeal.
8. The argument that there was information in the articles which could lead somebody to know that the Appellant had written them and that that might expose the Appellant to risk on return cannot properly be said to have been overlooked by the judge given his conclusion at [49 to 50]. The example highlighted by the Appellant is that in his articles he revealed the nationality of his housemate. The judge took all of the evidence into account but concluded that whilst some of the details in some of the articles might have given clues to the Appellant's identity, these would only help someone who knew the Appellant and his life in the United Kingdom. Mr Edwards point that the authorities would likely monitor the publishing source and so be likely to read the articles does not undermine the judge's reasoning. It is clear from the decision that the judge had in mind the whole of the Appellant's argument and evidence on the point. It is not suggested that the finding is perverse, there being no evidence that the judge has failed to take into account and his conclusion is one that is open to him on the evidence.
9. I turn to the LM point. The judge found that had the appellant been required to report to the authorities so they could prevent him leaving, by physically taking and cancelling his passport, and, on finding that he had failed to bring it with him, had he been released but required to report again, bringing his passport with him for cancellation, the appellant would be unlikely to be able to exit without any difficulty through the airport. I find no merit that the finding is contrary to the case of LM. LM was a case which was purely concerned with whether or not people could experience difficulty on returning or leaving the country when their exit permit expired. That is an entirely different situation from the question as to whether or not someone would be able to leave the country when they were wanted by the authorities as a suspected political dissident. Although the evidence to which Mr Edwards took me shows me what underlay the Tribunal's conclusion that there was an entry and exit permit system operating in Uzbekistan, and that such exit visas are valid for a period of two years, the evidence took his point no further. The strictness of the position is entirely congruent with the judge's conclusion that the Appellant's account was not credible being inconsistent with the country evidence of control, so that some sort of alert would have been forwarded to the airport authorities to stop him in the event that he took the opportunity to immediately leave.
10. The judge fairly accepted that even though the evidence before him was unexpectedly limited on the point, the fact that a witness recalled that the articles had appeared was sufficient to establish publication. The fact that the Appellant's articles were published by the World Service does not disturb the judge's finding that they were a cynical effort to create evidence in support of an asylum claim. The judge took the publisher into account.

11. Mr Edwards' point that the judge needed to give strong reasons to justify the conclusion that the Appellant would stop writing articles because they were simply a cynical ploy to gain asylum rather than because he was frightened of being persecuted is misconceived. Having found that the articles were written purely for the purpose of obtaining an immigration benefit, to the point therefore that they were not a genuine reflection of the Appellant's own political beliefs, it is a nonsense to suggest that there would be any evidential basis for concluding that the Appellant would be likely to continue to write such articles on return to Uzbekistan even to the lower standard applicable. To extrapolate further to the hypothetical position that having thought that he would maintain that fiction on return the appellant might then desist from doing so in order to avoid persecution, is to extend the argument beyond speculation to the fantastical.

### **Decision**

12. The decision of the First-tier Tribunal dismissing the appeal reveals no error of law and it stands.

Signed

Date 21 September 2017

Deputy Upper Tribunal Judge Davidge