



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

Appeal Number: PA/01609/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC**

**Decision & Reasons**

**On 8 November 2018**

**Promulgated**

**On 6 December 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms E Rutherford, Counsel, instructed by Dicksons Solicitors

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a national of Azerbaijan. In a decision made on 2 February 2017 the respondent dismissed his protection claim. His appeal came before Judge N Lodge of the First-tier Tribunal who in a decision sent on 16 August 2017 dismissed it.
2. The appellant's grounds on which permission was granted rested primarily on a challenge to the judge's stated reasons at paragraph 24 for departing from the decision made by Judge Bowen on 23 July 2002 allowing the

asylum appeal of the appellant's sister and finding her a credible witness. At paragraphs 20-24 the judge stated:

- “20. The appellant claims that he will be at risk on return to Azerbaijan. He claims that the Azerbaijani authorities will persecute him because of his imputed political opinion.
  21. In 1994 the appellant's father was murdered. From that point onwards the family received threats. In his asylum interview in 2005 the appellant does not ascribe the threats to the Government or the authorities in Azerbaijan. An unknown group was responsible for his father's death, his father being killed as a result of a power struggle at the factory where he was managing director. In his screening interview he states 'My father has been killed by some persons (his employees)'; page 44.
  22. In her Determination of the 23<sup>rd</sup> July 2002 at paragraph 54 Judge Bowen finds that the appellant's sister was perceived to be an enemy of the Government because of her father's high position. Judge Bowen goes on to say that if returned to Azerbaijan 'she would suffer persecution for a cv reason at the hands of the authorities' and there is no adequate state protection. It is noticeable that in the Determination of Judge Bowen there is no reference to the fact that the perpetrator of the murder has been arrested, convicted and sentenced to imprisonment. In his asylum interview in 2005 the appellant says 'it is not known' who ordered his father to be killed; AIRQ3. He goes on to say he was killed by an employee at the factory and names him; AIRQ7.
  23. At paragraph 29 one of the issues for Judge Bowen is whether the Government was covering up the murder by arranging the death of the appellant's husband, badly beating up the appellant's brother (this appellant) and the appellant and whether this would result in persecution at the hands of the Government.
  24. It is against that background that Judge Bowen made her findings that the appellant's sister would suffer persecution, if returned, at the hands of the authorities. I am satisfied that had Judge Bowen been presented with evidence that that (sic) the murderer has been arrested, prosecuted and imprisoned it may be that she may not have reached the conclusion that the appellant's fathers' (sic) murder was instigated by the state. I am satisfied that I can depart from the findings of Judge Bowen and consider in the light of all the evidence before me whether the appellant is at risk from the Azerbaijani authorities.”
3. In subsequent paragraphs the judge went on to identify a number of matters which were considered to weigh heavily against the credibility of the appellant's claim.
  4. In submissions Mr Bates said he accepted that the judge was wrong in paragraph 24 to say that there was no evidence before Judge Bowen that the appellant's father's murderer had been arrested, prosecuted and imprisoned. There was. In the written grounds Ms Rutherford had noted that in paragraph 14 of his determination Judge Bowen recorded that the appellant's sister in her appeal had said that:

“... she was not aware of the people who killed her father, but she was aware they worked for Haydar Aliyev. The person who was directly responsible for the killing was taken to court, following a prosecution he was sentenced to 15 years’ imprisonment, having escaped the death penalty”

and at paragraph 22 she recorded that she had said that “she has subsequently established that the man convicted of her father’s murder has been released from prison”.

5. Mr Bates went on, however, to submit that this error on the part of the judge was not material as there was nothing to indicate that it had “infected” the judge’s other findings.
6. I am not persuaded by Mr Bates’ submissions on immateriality.
7. It is not in dispute that Judge Bowen’s decision came within the **Devaseelan** guidelines, even though his appeal related to the appellant’s sister. As the Court of Appeal held in **Ocampo** [2006] EWCA Civ 1276 and **AA (Somalia)** [2007] EWCA Civ 1040 such decisions fall within these guidelines if there is a closely related factual matrix or material overlapping. Indisputably there was such a material overlapping here.
8. The central difficulty with Mr Bates’ submission is that the effect of the judge’s analysis at paragraph 24 was to reject Ms Bowen’s decision as a start-point. Although he did speak of “departing” from it (language which suggests treating it as a start point), he goes on to state that he could “consider in the light of all the evidence before me whether the appellant is at risk from the Azerbaijani authorities” without any reference to Ms Bowen’s decision. Two things flow from this way of formulating matters. First, the only reason given for so “departing” was the absence of evidence that the murderer had been convicted. That on its face implied that but for this absence the judge would not have departed from Judge Bowen’s findings (which included that there were political motives for the murder). Second, the judge was effectively setting Judge Bowen’s positive assessment of the appellant’s sister’s credibility at nought. This is confirmed by the judge’s subsequent analysis which only adverts to Judge Bowen’s decision for the purposes of identifying discrepant facts: see e.g. paragraphs 25 and 40. By focusing solely on the evidence at large without regard to how the facts had also been evaluated by Judge Bowen, the judge failed to engage with the fact that a previous judicial fact-finder (Judge Bowen) had found the sister credible. It was not simply enough for Judge Lodge to say, without regard to Judge Bowen’s reasoning, that he considered her “unreliable” (see paragraph 39).
9. In light of the above I cannot exclude the real possibility that (1) had the judge realised there was not a lack of evidence before Judge Bowen as regards the conviction and sentencing of the appellant’s father’s

murderer, and (2) had he made a rounded assessment of the credibility of the appellant's sister, one that engaged, inter alia, with Judge Bowen's reasons for finding her credible, he may have assessed the evidence differently, particularly given that the appellant's evidence was broadly consistent with the background country information.

10. For the above reasons I conclude that the judge materially erred in law and I set aside his decision.
11. I see no alternative to the case being remitted to the FtT. Nothing in my decision should be taken as suggesting Judge Bowen's assessment of the appellant's sister should be treated as a given "end-point"; only that it did require - and will now require - being properly treated as a start point; and, if the next Judge decides to depart from it, it will be necessary to do so on the basis of a correct understanding of the evidence that was before Judge Bowen.
12. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge N Lodge).

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

Signed

Date: 1 December 2018



Dr H H Storey  
Judge of the Upper Tribunal