Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **PA/08378/2017**

THE IMMIGRATION ACTS

At **Royal Courts of Justice**	Decision & Reasons Promulgated
On **22.01.2018**	On 30.01.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[L K]

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Admas Habteslasie* (counsel instructed by Duncan Lewis & Co)
For the respondent: Mr Paul Duffy

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Alan Baldwin), sitting at Harmondsworth on 22 August, to dismiss an asylum appeal by a citizen of Georgia, born 1985. The appellant claimed to have a well-founded fear of persecution by way of lack of protection from a ruling party politician called Isako, or more likely Irako Tshipurishvili, as a result of incidents he said had taken place leading up to elections in 2008 and on 8 October 2016. Permission was given on the basis that the judge had arguably failed to take account of background evidence about Tshipurishvili which was before him. The ruling party had changed between the two elections; but so had Tshipurishvili.

2. The appellant did not give a date for the 2016 incident: he said (in his first statement, paragraph 11) it had happened "… near the date of the Parliamentary Election …"; but a supporting statement (taken in Georgian, and translated) said it had been in the spring; then he had gone for safety to the capital Tbilisi. However on 21 July 2016 he had applied for a

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

business visit visa, granted on the 29th and valid till 29 January 2017, on which he arrived in this country on 4 September.

3. On 20 June 2017 the appellant was found working illegally at a car-wash, in possession of a false Romanian driving licence. After refusing to answer questions about that, he was detained for removal, but on the 22nd claimed asylum. Following interview and his first statement (8 August) that was refused on the 14th. Up to that point, the appellant hadn't named Tshipurishvili, saying he feared for his family if he did so; but in a further statement (15 September), he did. He said he had heard about continuing threats from Tshipurishvili when he spoke to his father in December 2016; but his father had died on the 30th.

4. On appeal the judge set out the background evidence and the appellant's in some detail. At 20 he noted that the appellant was already 31 when he left Georgia, and had completed three years of a five-year law degree. He noted that he was not required (see s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) to make a finding on delay without considering the 'country evidence'. After disposing of two ancillary points, one raised by the respondent, and one by the appellant, he went on at 21 to do so.

5. At 21 the judge reviewed the evidence as to what happened in connexion with what was claimed to have been a vote-rigging incident at the polling station in Lagodekhi, eastern Georgia, where the appellant was retained as a 'short-term adviser' to an NGO in the electoral field in 2008. The crux of the appellant's claim was that, because of what had happened then, he took Tshipurishvili's threats in 2016 seriously enough to flee, first to Tbilisi (the national capital, once known in this country by its more pronounceable Turkish name of Tiflis, in the centre of the country). As the judge said, if he was not telling the truth about what happened in 2008, it was hard to see how he could be doing so as to events in 2016. The judge went on to consider the reasons for the appellant's striking delay in making his asylum claim.

6. At 22, the judge made appropriate allowances for any fear the appellant might have been under in 2016, so that he felt obliged to put himself forward as a genuine business visitor in order to make his way out of Georgia. What he did note was that the appellant, having got his visa on 29 July, apparently felt no need to leave the country till 4 September. As the judge pointed out, that meant his visa ran out just under five months later, on 29 January. Yet he had done nothing by that time to claim asylum, or put together any evidence to support such a claim, and in the end did not make it till two days after he was detained the following June.

7. Subject to the complaints made in the grounds, the judge was entitled to describe the appellant as a 'highly educated man', even on the basis of a partially-completed law degree, and to draw appropriate conclusions from that. He went on to find that, even if he were wrong about that, the appellant would have been able to solve his problems by way of internal relocation on return: I shall deal with that point only if I find I need to.

8. The complaints made in the grounds are first, what is described as mis-application of the standard of proof. Permission to appeal was not granted on that point, and there is nothing in it. At 19, the judge set the standard correctly as that of 'real risk', and there is nothing at all to show that he did not apply it. Second, two points are made about what is said to have been the judge's failure to deal properly with the evidence before him, in connexion with a finding he made at 21.

9. Having already made a number of findings against the appellant, the judge went on

> Furthermore it would appear from the information provided about Radio Hereti that when [Tshipurishvili] tried to bribe and persuade the Station that they should stop broadcasting anti-Ruling Party ideas, he was told to 'leave and mind his own business'. [The discussion was both broadcast and reported to various government bodies, including the Public Defender's Office]. Such a response hardly suggests that [Tshipurishvili] was a dangerous man who should be feared.

10. The complaint in the grounds is that, in making this finding, the judge failed to deal with two significant sources of evidence which were cited to him. The first in time was a 2003 'report' (in fact a news article) about Tshipurishvili, by someone called Giga Chikhladze. The grounds point out that the article was in the appellant's bundle (at 48 – 52): this is true, but, considering that there were 644 pages of evidence in the bundle, the judge could not be blamed for not considering anything to which he was not specifically referred.

11. While the grounds (neither by Mr Habteslasie, nor by counsel who appeared for the appellant before the judge) assert that he was referred to the Chikhladze article in the course of the hearing, it does not appear in the appellant's skeleton argument before the judge, or in the judge's very detailed decision. I cannot accept that the judge made any error of law in not dealing with it. The article in any case did no more than relate local rumours, to the effect that Tshipurishvili had been responsible for unsolved murders in the Lagodekhi area: while this might have been of some relevance to any subjective fear on the appellant's part, it could not show it was objectively justified.

12. The other source, referred to in the skeleton argument before the judge at p 13, is a statement by the Georgian Public Defender of 3 February 2009. It refers to Tshipurishvili coming into a polling station on May 21 2008, an election day, and complains that he "… used foul language against a young journalist, assaulted her and crashed her tape recorder". Although neither the anonymous author of the skeleton argument, nor counsel who drafted the grounds of appeal took the trouble to provide a reference for that, Mr Habteslasie did, and it can be seen at [AB 106]. Since it was there in the skeleton argument, it would have been a good thing for the judge to have dealt with it, no doubt asking for a proper reference so he could do that.

13. Whether failure to do so amounted to a material error of law, in other words one which affected the result reached by the judge, may be another

matter. There are two main points to be considered. First, the judge introduced the point under challenge “Furthermore …”, hardly suggesting that he regarded it as crucial to his findings as a whole. Even on the basis that it was of some importance, the judge’s point was not that Tshipurishvili was a well-behaved peaceful citizen, but that the radio station had felt able to answer his threats and proffered bribes in the way they did. Apparently their reports to the Public Defender had included the threat made to their journalist.

14. I do not regard the judge’s failure to deal with the complaint from the radio station as a material error of law, even taking his findings about events in Georgia on their own. However, as I pointed out to the parties when I had heard them about that part of the case, the judge was not required or entitled to approach the case on that basis. S. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, so far as relevant, says this

> (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies. …

15. That was considered in *SM* (Section 8: Judge’s process) Iran [2005] UKAIT 00116, later approved in *JT (Cameroon)* [2008] EWCA Civ 878. Pill LJ set out the following principles (leaving out the inessential):

> 1. Section 8 can, in my judgment, be construed in a way which does not offend against constitutional principles. It plainly has its dangers, first, if it is read as a direction as to how fact-finding should be conducted, which in my judgment it is not, and, in any event, in distorting the fact-finding exercise by an undue concentration on minutiae which may arise under the section at the expense of, and as a distraction from, an overall assessment. Decision-makers should guard against that. A global assessment of credibility is required …
>
> 1. I am not prepared to read the word "shall" as meaning "may". The section 8 factors shall be taken into account in assessing credibility, and are capable of damaging it, but the section does not dictate that relevant damage to credibility inevitably results. Telling lies does damage credibility and the wording was adopted, probably with that in mind, by way of explanation. However, it is the "behaviour" of which "account" shall be taken and, in context, the qualifying word "potentially" can be read into an explanatory clause which reads: "as damaging the claimant's credibility". Alternatively, the explanatory clause may be read as: "when assessing any damage to the claimant's credibility". The form of the sub-section and Parliament's assumed regard for the principle of legality permit that construction.
>
> 1. Section 8 can thus be construed as not offending against constitutional principles. It is no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility. If there was a tendency for tribunals simply to ignore these matters when assessing credibility, they were in error. It is necessary to take account of them. However, at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the

particular facts. I do not consider the section prevents that finding in an appropriate case. … Where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact-finder.

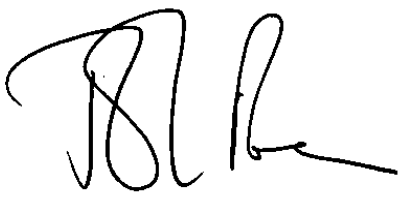
16. I invited submissions from the parties on the effect of the judge's credibility findings on the appellant's delay in claiming asylum. There was no suggestion that he had not decided the question for himself in a properly independent way, and the challenges remained limited to those already dealt with.

17. In my view the judge had fully complied with what *JT (Cameroon)* required him to do. He had not regarded the basis on which the appellant arrived in this country as fatal to his case, and had made proper allowance for the fact that he might have needed to spin a tale to get a visa, if he really had been in fear. However, he was fully entitled to note that, even after the appellant got his visa on 29 July, he had not felt it necessary to leave Georgia on it till 4 September. The judge was also entitled to find that the appellant, with the education he had, and the advantage of four or five months in the capital, must have known of the existence of the asylum system.

18. The judge went on to note, in the appellant's favour, that his reluctance to return to Georgia, even for his father's funeral, might have shown he was afraid to do so. However, he then considered what had actually made him stay here. He had not used the time between his father's phone call in December 2016, or his death on the 30th, and the expiry of his own visa on 29 January 2017, to do anything to regularize his own position. He had on the other hand equipped himself with a false Romanian driving licence, on which he had disappeared from view in pursuit of employment till 20 June; and even then only claimed asylum two days later.

19. The judge did consider events in Georgia with some care; but, even if he had been wrong in his approach to the background evidence, in my view he was fully entitled to regard the facts on the appellant's delay in this particular case as effectively overwhelming. There was no material error of law on his part.

Appeal dismissed



(a judge of the Upper Tribunal)