



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10948/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21 March 2018

Decision & Reasons Promulgated
On 2 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

FJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, Counsel instructed by Parker Rhodes Hickmotts
Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. Although an anonymity direction was not made by the First-tier Tribunal ("FtT"), as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, FJ is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his

family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. This is an appeal against a decision and reasons by First-tier Tribunal (“FtT”) Judge Geraint Jones QC promulgated on 7th December 2017 in which he dismissed the appellant’s appeal against the respondent’s decision of 13th October 2017 to refuse to grant the appellant asylum and humanitarian protection.
3. Having heard submissions from Ms Smith and it having been conceded by Mr Bramble that the decision of the FtT Judge is infected by a material error of law for the reasons set out in grounds, 1, 2 and 4 of the appellant’s grounds of appeal, at the conclusion of the hearing before me, I announced that the appeal is allowed. The decision of the FtT Judge is set aside and the appeal is remitted to the FtT for hearing *de novo*. I said that I would give short reasons for my decision in writing. This I now do.
4. The applicant is a national of Azerbaijan. It appears that in May 2017, the appellant and his family applied for entry clearance to enter the UK as visitors. They were granted entry clearance on 10th May 2017, valid for six months until 10th November 2017. The appellant claims to have arrived in the UK on 8th July 2017 and claimed asylum on 12th July 2017.
5. The background to the claim for asylum is set out at paragraphs [13] to [40] of the decision of the FtT Judge. The Judge’s findings of fact are set out at paragraphs [41(i)] to [41(xiii)] of the decision. The Judge, at [42], rejected the assertion that the Azerbaijan authorities have any or any significant adverse interest in the appellant arising from his writing and publishing of any newspaper articles and/or asking to register a NGO, and or because of the appellant’s attendance at any rallies or demonstrations.
6. The appellant advanced nine grounds of appeal. Permission to appeal was granted by FtT Judge Robertson on 8th January 2018. The Judge considered there to be particular merit to grounds 1, 2, 4 and 7 and having considered those

grounds arguable, noted that the appellant is not precluded from relying on the other grounds.

7. For present purposes it is sufficient to note that grounds 1, 2, 4 and 7 of the grounds of appeal concern the Judge's consideration of the evidence relating to material parts of the appellant's claim. First, the complaint that the appellant made to the Minister of Justice concerning the stumbling blocks that he encountered when trying to set up an NGO and the events that followed. Second, the appellant's arrest following a demonstration that he attended against the constitutional referendum in September 2016. Third, the evidence relating to the article's written by the appellant, and finally, the evidence concerning the release of the appellant from detention.
8. Mr Bramble accepts, rightly in my judgment, that the decision of the FfT Judge is infected by a material error of law for the reasons set out in grounds, 1, 2 and 4 of the appellant's grounds of appeal.
9. The assessment of the account relied upon by the appellant and the credibility of an appellant is always a highly fact sensitive task. The FfT Judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by him, the Judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. If an account is littered with internal inconsistencies that may be enough for a Judge to dismiss the evidence of an appellant as incredible. It does not follow that a Judge is entitled to dismiss an account in the same way, simply because the account is implausible. That is not however to say that a Judge is required to take at face value, an account of facts proffered by an appellant.
10. Here, the Judge did not accept the appellant's account that the appellant attempted to register a NGO in Azerbaijan. The Judge rejected the account because it was "*simply a bald assertion of unexplained fact*", but in reaching that

conclusion the Judge does not refer to the explanation provided by the appellant during his interview and in his witness statement. Similarly, the Judge found that the appellant was not a person of any significant profile and that his involvement in rallies, gatherings or demonstrations was not recorded or documented. The Judge states "*There is, quite literally, no available evidence that would permit a contrary finding.*". The Judge recorded at [23], that the appellant's evidence that he was blacklisted, was speculation. The appellant had however claimed in his interview that he had been arrested at a demonstration to do with the referendum on 11th September 2016. He had claimed in his interview that he was held for two hours and paid \$200, but before he was released he was asked where he worked, lived, and for personal information. The Judge does not appear to have considered that evidence.

11. At paragraph [21] of the decision, the Judge referred to the articles published in a newspaper called Bushka. At paragraph [22], the Judge records that the appellant had no answer to the proposition that if the government disapproved of his articles, it would have prevented them from being published. At paragraphs [31] to [38] the Judge carefully considered the articles that were in the evidence before him. In considering that evidence, the Judge did not consider whether the account given by the appellant is consistent with any relevant specific and general country information. There was at least some background material of a crackdown on freedom of expression during 2017. Equally, in rejecting the evidence relating to the alleged detention, the Judge failed to consider the account provided by the appellant and give reasons for rejecting that account.
12. It is important to note that the Judge reached a number of adverse findings, and although the appellant seeks to challenge those findings, on their own, in my judgement, the findings would have properly been open to the Judge and taken in isolation, the appellant's remaining grounds would have amounted to nothing more than a disagreement with findings properly open to the Judge. I have carefully read the decision as a whole and in the end, I am not satisfied that the

Judge would inevitably have reached the same decision if the errors identified, had not occurred. The errors are therefore material.

13. It follows that the decision of the FtT must be set aside. As to the disposal of the appeal, as the credibility of the appellant is something that is at the heart of this appeal, the appropriate course is to remit the matter back to the FtT for hearing *de novo*. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

14. The appeal is allowed and the appeal is remitted the FtT for a fresh hearing of the appeal with no findings preserved.
15. I have made an anonymity direction.

Directions

1. A Russian interpreter is needed.
2. Time estimate: Three hours.

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 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.

Signed

Date 27th April 2018

Deputy Upper Tribunal Judge Mandalia