



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05069/2019 (V)**

THE IMMIGRATION ACTS

Heard at George House by *Skype for Business* for Decision & Reasons Promulgated
On 15 July 2020 On 29 July 2020

Before

UT JUDGE MACLEMAN

Between

N M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr Caskie, Advocate, instructed by JK Law, Solicitors

For the respondent: Mr Whitwell, Senior Presenting Officer

DETERMINATION AND REASONS

1. The decision of FtT Judge Gillespie, promulgated on 18 October 2019, was set aside by the decision of UT Judge Keith, promulgated on 2 June 2020.
2. The further hearing on 15 July 2020 took place by way of *Skype for Business*. Neither party raised any objection to that form of hearing. I conducted it from a tribunal hearing room at George House, Edinburgh. No members of the public attended, personally or by *Skype*. Mr Caskie and Mr Whitwell participated remotely. The appellant attended remotely, with his solicitor, from his solicitor's office. Connections failed several times,

but were restored. There was intermittently poor sound quality, which required some repetition. At the end of the hearing, representatives confirmed that they had conveyed their submissions in full and had heard the full submissions from the other side. Despite the technical problems, which prolonged matters, I was satisfied that there had been a fair hearing. I am obliged to Mr Caskie and to Mr Whitwell for the patience and clarity with which they presented their submissions.

3. As quoted by Judge Keith at [25], a report by Professor Bowring opined at [30] that for the appellant, being a Lezgin and a Sunni Muslim from Dagestan, his *“language and ethnicity are in themselves reasons for persecution. It is also my opinion that if he returns to any part of Russia, he may be subject of persecution.”*
4. (The appellant was interviewed and gave evidence in Russian. It has not been disputed that he also speaks Lezgin.)
5. The FtT concluded that the appellant was not at risk by *“merely being one of 800,000 Lezgins from Dagestan”*. Judge Keith at [26] said that while the judge was entitled to find, notwithstanding the expert report, that ethnicity and language were not enough, he had stated his conclusion without giving reasons, which was an error of law.
6. Judge Keith maintained the FtT’s findings, adverse to the appellant, at [47-50], but not at [51]. The case was retained in the UT, given the limited scope of the issue remaining, *“an analysis of the expert’s report and limited fact-finding”*.
7. A transfer order was made to enable the re-making of the decision to be completed by another UT Judge.
8. The principal points which I noted from the submissions by Mr Caskie were these:
 - (i) The expertise of Professor Bowring on southern Russian regions was undisputed.
 - (ii) There were 3 key paragraphs in his report - [20], on targeting of members of a mosque in the capital of Dagestan, regarded as a Salafi centre; Salafis seen as a threat in Dagestan; even reporting on the pressure imposed on them by the authorities can be a reason for illegal detention and harassment; [23], on targeting persons on a “watch list”; and [30], as above.
 - (iii) It was the expert’s duty not to purport to resolve the issue which was for the tribunal. That was why he opined that the appellant *may*, not *would*, be subject to persecution. That was consistent with the declaration of his compliance with his duties. His conclusion went as far as he properly could go.
 - (iv) The general description of the situation in southern Dagestan, the appellant’s home area, showed that matters were so bad that the

appellant qualified on language and ethnicity alone, even although he had not been found specifically to be a Salafi Muslim.

- (v) Further, the evidence justified a finding that he is a Salafi Muslim. In his account of his difficulties he mentioned being bearded (at the time). He said he was targeted at a mosque, and the expert evidence was that it is Salafi mosques which attract adverse attention; examples at [20] and [23]. There was no mention of similar pressure on non-Salafis.
- (vi) Wherever the appellant might go in Russia, he would be identifiable as a Lezgin from Dagestan.
- (vii) The appellant's religious and ethnic profile established a risk, regardless of the lack of credibility of the rest of his account.
- (viii) The FtT, in essence, shied away from a "floodgates" finding; but where evidence shows that all members of a group are at risk, that is the conclusion required.
- (ix) The case did not turn on being one of 800,000, but on being from a village of fewer than 5,000, in an area of particularly intense pressure.
- (x) Professor Bowring's report was also "signed off" by a second expert who was able to confirm the appellant's language and ethnicity.
- (xi) The appeal should be allowed.

9. The principal points advanced by Mr Whitwell were these:

- (i) Only the refugee protection issue was live.
- (ii) Although the appellant is accepted to be a Lezgin Muslim from Dagestan, there were good reasons for not accepting anything else he said. No more favourable findings should be reached.
- (iii) The expert status of Professor Bowring was undoubted. However, this was a "hybrid" report, outsourced in part to Mr Alpautov, a former student of Professor Bowring. He made no declaration of his duties as an expert. He appeared to be a Prague based radio journalist. His impartiality was not established.
- (iv) The report was based on claims which the appellant had not proved about detention and interrogation.
- (v) The report did not cite evidence to support a risk to all 800,000 Lezgins, and particularly not a risk which followed them throughout Russia. That conclusion stood in isolation from the rest of the report.
- (vi) The appellant now sought a finding that he is a Salafi Muslim, but he never asserted that in evidence. He described himself at interview simply as a Muslim, and there was no evidence that he is anything but a (mainstream) Sunni. He said nothing about allegiance to any particular branch of Islam. No such finding should be made.

- (vii) The report at [22] referred to a watch list. Although it said that a person might not know he was on that list, there was nothing to suggest that the appellant was likely to be on it.
- (viii) The report at [19] set out the likely categories of victims of human rights abuses. The appellant did not fall within any of them. He is not a public figure, does not claim to have high profile relatives, and is not a journalist, activist, or insurgent. Even by his own account, he has an uncle, a former policeman, who was able to get him out of trouble.
- (ix) It was acknowledged that the respondent did not have a Country Policy and Information Note (CPIN) covering the appellant's origins. However, the evidence did not show that Lezgin, as a class, are at risk.
- (x) The appeal should be dismissed.

10. Mr Caskie replied:

- (i) It was conceded that the case turned on refugee protection, and could not succeed on humanitarian protection or any other grounds.
- (ii) Mr Alpautov was not partisan, but a specialist of the type who might be found on the BBC world service. He had an impressive academic and expert background. He made no separate declaration, but was invited to contribute by Professor Bowring, one of whose functions was to select reliable sources, for which he was prepared to vouch.
- (iii) [30] of the report did not stand in isolation. It was the conclusion from the evidence of one expert, supported by another.
- (iv) Although there was no finding that the appellant is Salafi, and he had not said so, he had not been asked; there was nothing to the contrary; and the background evidence indicated that he was likely to be Salafi.
- (v) In absence of a CPIN, the expert evidence was not countered as a source on general risk. There was nothing within the report to suggest that it should not be relied upon.

11. I reserved my decision.

12. Experts must rely on sources, and are expected to judge their quality. Mr Alpautov is well qualified. I see no reason to suspect that he is partisan. It was not necessary to make him a co-author of the report. This feature does not detract from its weight.

13. Apart from that issue, I prefer the submissions for the respondent, broadly for the reasons advanced.

14. The report comes closest at [19] to laying the evidential foundation for its conclusion: *"Dagestan is notorious for human rights abuses. Victims are mostly Salafi Muslims, relatives of insurgents, disloyal politicians,*

journalists and civil society activists ... Lezgins are regarded with suspicion and fear by the authorities."

15. There is no reason not to accept that most victims are Salafi Muslims; but the general statement does not support a real risk to all Salafi Muslims, or to all Lezgins.
16. Nor do the examples cited support such a risk. Specific instances in the report are the son of the imam at a mosque, regarded as a Salafi centre, in the capital; members of that mosque; alleged insurgents and Lezgin separatists; and a journalist.
17. The appellant has not shown that he falls within any of the further categories, or sub-categories, in the general statement.
18. The report does not cite evidence which would support a tribunal in concluding that Lezgin language and ethnicity, without more, establish a real risk of persecution.
19. Evidence is also lacking for a conclusion that any risk of persecution might extend elsewhere in Russia. No example is given.
20. Although no reference was made in the UT, I note that the appellant produced in the FtT several items of background evidence on oppression of Salafists and insurgents in Dagestan. These were from apparently reputable sources, including Human Rights Watch. However, it was not suggested that these sources set up a case of general risk.
21. The appellant mentioned that he was bearded at the time of his alleged difficulties, but not as part of his usual appearance or as a token of religious fervour; rather, this was by way of preparation for a family wedding. His account established clearly that he is Muslim, but his self-description is as a conformist rather than as an ardent devotee. He did not hint at Salafism.
22. I note from [17] of the report that 83% of the population of Dagestan adheres to Islam, and that "*Lezgin Sunni Muslims follow the Shafi'i rites that have been in place for centuries*". Shafi'i is one of the four major Sunni schools of religious law. Salafism is a distinct and much later movement. I was not referred to any statistic on the number of Lezgin Salafis, but they appear to form a minority, not the mainstream, in Dagestan.
23. It is not impossible that the appellant is Salafi, but it is odd that he has not mentioned it, even in passing, in his account. I do not find that the evidence, as a whole, supports a finding now that he is Salafi, even as a reasonable likelihood.
24. Even if the appellant did attend a Salafi mosque, that would not make his case.

25. The issue specified at [6] above is accordingly resolved against the appellant.
26. The decision of the First-tier Tribunal has been set aside. The decision substituted is that the appeal, as brought to the FtT, is dismissed.
27. The anonymity direction made earlier in the proceedings is maintained.

Hugh Macleman

UT Judge Macleman, 20 July 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.