



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12206/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 24th August 2018

Decisions and Reasons Promulgated
On 04th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M.T S
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant:

Mr McVeety, Home Office Presenting Officer

For the respondent:

Mr Greer, Counsel, instructed by Citizens Advice Bureau, Bolton.

DETERMINATION AND REASONS

Introduction

1. Although it is a Secretary of State who is the appellant in these proceedings for convenience I will continue hereinafter to refer to the parties as they were in the First tier Tribunal.

2. The appellant entered the United Kingdom in 2013 on a visit visa accompanied by his wife and their daughter, born in July 2009. They made a claim for protection on arrival. They have since had another child, a son, born in June 2014 in the United Kingdom.
3. The appellant said that he was a police officer who had attained the rank of Major. His claim was that in the run-up to the 2012 election he was told to monitor the activities of colleagues and their likely support for the opposition group. After the election the opposition group came to power and they in turn began investigating the activities of members of the old regime. His spying on colleagues became known and he was ordered to give evidence in pending court proceedings against members of that former regime.
4. The appellant decided to leave the country for his own safety. However, in March 2013 he was called to a meeting and signed a statement that he had been ordered to collect data about colleagues. After doing so he was ordered not to leave the country pending the court hearing.
5. His daughter had a medical condition and they had been travelling to Germany every six months or so for treatment. He then made a request for leave on the basis he was going to Germany for his daughter's treatment. Initially this was refused but the appellant let it be known that he also had information about members of the current regime which he threatened to disclose. Because of this he was granted permission to leave on a temporary basis.
6. On the 10th November 2017 the respondent refused his claim. It was accepted that the appellant worked for the Georgian police but his account of being ordered to spy on colleagues and consequently to give evidence was not accepted. The refusal also questioned whether the claim engaged the Refugee Convention.

The First tier Tribunal

7. His appeal was heard by Judge of the First-tier Tribunal Turnock sitting at Bradford on 9 May 2018. The appellant was represented by Mr Greer as he is now. A presenting officer was in attendance. In a decision promulgated on 4 June 2018 the appeal was allowed under the Refugee Convention. In the course of that hearing the presenting officer accepted that the claim potentially engaged the Refugee Convention, namely, political opinion.
8. The appellant had complained about the ability of the interpreter shortly after his substantive interview. The judge acknowledged there were issues about the interview and referred to the need to exercise caution when considering its content. He had been asked for details about his spying as the respondent considered his answers inconsistent. The judge referred to the appellant's witness statement where he set out how he was ordered to gather information, including searching the databases of other government departments. At paragraph 66 the judge accepted as plausible his explanation as to why he specifically would be required to give evidence against a member of the former regime. At paragraph 82

the judge refers to the problems with the appellant's substantive interview and the issues of interpretation which meant the identification of inconsistencies within his evidence was problematic. The judge accepted that in his written statement and his oral evidence he had been consistent. The judge in the following paragraph found his claim consistent with the country information provided of factions seeking revenge against others for past actions.

9. At paragraph 72 the judge deals with the circumstances of the appellant leaving his home country. The respondent did not find it credible that he would be allowed to leave the country. If he were subject to a travel ban his documentation which had been confiscated. The respondent felt there was little evidence that he was able to secure permission to leave by making threats of exposure.
10. Paragraph 76 records the respondent relying upon paragraph 339L of the immigration rules. The court had been provided with a transcription of a surreptitious recording the appellant had made of his attempt at obtaining permission to leave. The judge did not find this evidence particularly helpful. It recorded a discussion about the appellant taking leave to take his daughter for treatment but was not clear that he was able to pressurise individuals because of information he held.
11. At paragraph 85 the judge went on to state that it did not seem consistent on the one hand he would be told not to leave the country and then that he was permitted to leave as he claimed. However, the appellant had told the judge that other high-profile officials had not had their passports confiscated and were able to leave. The judge commented however that their circumstances were not set out.
12. At paragraph 86 the judge went on to say that the appellant had put forward a plausible reason as to why he might be permitted to leave. However, the judge commented there was no evidence provided about his daughter's medical condition or that she required treatment in Germany. The judge in paragraph 87 went on to say that regard was had to the low standard of proof applicable and found his evidence to be internally consistent and consistent with the country information.

The Upper Tribunal.

13. The respondent obtained permission to appeal to the Upper Tribunal on the basis it was arguable that the judge applied too low a standard of proof. Reference was made to the judge's comments at paragraphs 84 to 86 relating to his ability to exit the country and the absence of evidence about his daughter's medical condition. Reference was made to the decision of TK Burundi v SSHD [2009] EW CA Civ 40. That case involved a claim to family life with a daughter from a former partner. There was no evidence produced about the relationship beyond the appellant's say-so. Giving judgement in the Court of Appeal Lord Justice Thomas at para 20 referred to the importance of an appellant producing independent evidence where it would ordinarily be available and where there was no credible explanation for

the failure to produce that evidence. This could be a very strong pointer that the account being given is not credible. His Lordship said:

“... The circumstances of this case in my view demonstrate that independent supporting evidence which is available from persons subject to this jurisdiction be provided wherever possible and the need for an Immigration Judge to adopt a cautious approach to the evidence of an appellant where independent supporting evidence, as it was in this case, is readily available within this jurisdiction, but not provided. It follows that where a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant.”

14. Paragraph 339L of the immigration rules provides as follows:

“It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible [for] humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim;
- (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
- (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
- (v) the general credibility of the person has been established.”

15. At hearing, Mr McVeety accepted that the grounds upon which permission to appeal had been sought were very limited. He also acknowledges that a lot of the appellant's claim had been accepted by the judge as internally consistent and in line with country information.

16. Mr Greer referred me to the rule 24 response and referred me to paragraph 87 of the decision as indicative of the judge having regard to all of the evidence and acknowledging the appropriate standard of proof. The appellant had produced a transcript of a taped conversation where he sought to obtain leave out of the country. He pointed out that the presenting officer had not questioned him about corroborative evidence of his daughter's condition at the hearing.

17. I was provided with additional evidence which Mr Greer sought to introduce under part 15(2A) of the Tribunal Procedure Upper Tribunal Rules 2008. Mr McVeety did not object. The documents consisted of translations of medical reports from St Josephs Hospital, Berlin. It identifies the appellant's daughter and states that she attended for a laser treatment on the left side of her face because of a mark since birth. The document shows she attended on an episodic basis as stated. There are documents confirming she was an inpatient for a day so in November 2010, May 2011, May 2012, June 2012 and November 2012. I find that this evidence can be relied upon and confirms the appellant's claim that in the past he regularly travelled to Berlin so that his daughter could have medical treatment.
18. As the presenting officer has accepted the point taken in the grounds is a very narrow one. It clearly only forms a part of the overall claim which was found to be consistent. The failure to provide proofs at the original hearing was not a fatal flaw. It was a matter for the judge to assess the evidence and to decide the application of 339(11.)
19. In conclusion I find there has been no material error of law demonstrated. Consequently the decision of First-tier Tribunal Turnock allowing the appeal under the refugee Convention shall stand.

Decision

No material error of law has been demonstrated in the decision of First-tier Tribunal Turnock. Consequently, that decision allowing the appeal under the Refugee Convention shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge

Dated 24 August 2018