



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

Appeal Number: AA/09670/2012

THE IMMIGRATION ACTS

Heard at North Shields

On 29 May 2013

Determination

Promulgated

On 1 July 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SV

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rebecca Pickering, Counsel, instructed by David Grey Solicitors

For the Respondent: Mr John Kingham, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Belarus born on 24th April 1973.
2. He arrived in the United Kingdom on 16th August 2012 seeking to claim asylum on the basis of his membership of the Belarus Social Democratic

Party. It is his case that he had been arrested and detained on five separate occasions and that he was at risk were he to be returned.

3. His application was refused by the respondent. Thereafter the hearing of the appeal came before First-tier Tribunal Judge Hands on 11th December 2012. She also rejected his claim on the basis that he lacked credibility altogether.
4. Detailed grounds of appeal have been submitted and permission to appeal was granted. Thus the matter comes before me in pursuance of that leave.
5. There is a considerable volume of material both in terms of statements, documents and background evidence. My attention was drawn in particular to the skeleton argument as presented by Ms Pickering.
6. Ms Pickering spoke at length, inviting me to find that there were material errors of law. Mr Kingham on the other hand invited me to find that the determination was sustainable.
7. To summarise his submissions he invites me to find that in relation to the fifth and final arrest, the approach taken by the judge to that in paragraphs 30 and 31 of the determination was entirely correct. It is unlikely that the KGB would have released the appellant from detention only then to seek to re-arrest him. If the plan was to raid his home it is unlikely that they would have alerted the lawyer to that fact. A search of the home was more likely than not to have revealed the documents now claimed to be genuine documents in his case.
8. If the detention and release and arrest did not happen in the way described, that of itself throws into sharp relief the credibility of the appellant's evidence that he was ever arrested at all.
9. Although it was accepted that he had certain duties in relation to the party, if he had not been arrested in the past it is unlikely therefore that he would be of any interest in the future. He thus invites me to find that the reasoning of the judge was entirely understandable and was within the reasonable parameters of judicial decision making.
10. It seems to me, however, that although superficially attractive as an argument it fails to deal with the two main planks of the complaint. The first being an inadequate consideration of the documentation presented in the case, and secondly failing to consider the background evidence in the light of the acceptance made that the appellant did indeed carry out certain activities for the party.
11. Key documents in the case relate to the court documents issued on 26th March 2009, 27th September 2011 and 20th February 2012. The evidence from Mr Chenciner was to the effect set out in paragraph 3.2 of his report

that the documents appeared to be genuine with regard to the originals and that he could find no reason to suspect that they were false. The contention seems to receive short shrift from the judge, as in paragraph 25 of the determination it was noted that these items were authenticated with reference to they being similar to items on the Google image of such rulings. Thus the judge concluded:

“This could mean the appellant has been able to have such a document prepared copying the Google image just as easily as it could be said such a similarity makes the documents appear to be genuine”.

12. At no stage, however, does the judge make any clear findings as to whether those documents are or are not genuine. It is to be noted that the expert, in considering each of those documents, did so at length, having regard not only to the form but to the substance of what they had to say. The judge does not seem to have acknowledged that fact nor dealt with it in the detail which perhaps such important documents merit.
13. Some criticism has been offered in the grounds of appeal that there was no reason at all why the KGB, had they searched the house, would have found the documents if indeed those documents had been hidden. It was pure speculation on the part of the judge to conclude that a search of the house must necessarily have revealed such documents if they existed.
14. Perhaps of significance is the letter written from the Belarusian Social Democratic Party dated 18th July 2012. The judge, in considering that document, finds that it adds nothing to the claim. That is to ignore the last paragraph of the letter which contains the information, rightly or wrongly, that a criminal case has been opened against the appellant under the criminal code. Potentially therefore that letter does add something.
15. So far as the injuries to the appellant are concerned arising from his activities, he produces a medical document which the judge finds does not amount to independent evidence as to how he came about the injuries. That may be so, but the fact that he has the nature of the injuries described is a relevant factor to be placed in the balance in considering the matter overall.
16. Thus it seems to me that there is considerable substance in the concern expressed that the judge has not made a full and careful consideration of the documentation in this case.
17. It seems to be accepted that the appellant was a member of that particular party and that his political activities amounted to distributing leaflets, informing people about the elections, writing posters and graffiti, participating in pickets for the party and participating in a demonstration in December 2010 in Minsk.

18. Ms Pickering submits that although it is right that the judge has summarised certain of the background material relating to the attitude of the authorities to the party, there has been no full acknowledgment as to the extent of that interference. Ms Pickering in her submissions highlights for example pages 145, 146, 149, 150, 154, 176, 182 and 190 of her background material bundle as illustrating precisely the nature of the response by the authorities to those who oppose their ideas.
19. She submits that, given the acceptance that the appellant performs certain activities, the issue arises as to the application of the decision in HJ (Iran). There is little consideration by the judge of the intentions of the appellant were he to return and whether such would bring him to the attention of the authorities.
20. In fairness to the judge it is clear that the judge has in mind that issue, as it is a question as posed in paragraph 23 of the determination, that is if he returns to Belarus and continues with his political activity what risk of persecution would he face. The judge at paragraph 33 concludes that she does not have the information to support the appellant's claim that any political activist no matter how lowly would be placed in a position whereby they face a real risk of persecution by the government or the KGB. It seems to me, however, that in the light of the documentation relied upon by Ms Pickering that perhaps cannot be quite so clearly stated in those terms.
21. I should add for the sake of completeness that I was also provided with a skeleton argument on behalf of the respondent which I read. The respondent also highlights in the course of that skeleton argument that the expert has been the subject of critical comment in a recent decision before the Upper Tribunal in which he was found not to be an entirely dispassionate expert in the case.
22. I am alive to the issue but it is not for me in considering material error of law, to evaluate the respective merits of the appeal. It does seem to me that the judge's approach to the documentary evidence and to the background material was such that the matter should be reheard. I have in mind paragraph 7 of the Senior President's Practice Directions on remittals. Given that credibility lies at the heart of this case, both as regards the documents and also the events described, I consider that the appropriate form is the First-tier Tribunal as the primary fact-finder.
23. It will be a matter for the appellant's representatives to conduct any further investigation either as to the allegations as made in the party letter or to clarify the nature and reliability of the course documents.

Directions

- (1) The decision of First-tier Tribunal Judge Hands shall be set aside.

- (2) There will be a rehearing on all issues before the First-tier Tribunal.
- (3) An interpreter in the Russian language with Belarus dialect is required.
- (4) Any further documentation or expert report is to be served no later than five days before the hearing.
- (5) Any further directions that will be necessary will be issued by the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge King TD