



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05131/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17th April 2015

Decision & Reasons Promulgated
On 23rd April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR JULJAN HYKAJ
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mills of Counsel
For the Respondent: Miss Savage

DECISION AND REASONS

Introduction

1. The Appellant born on 23rd August 1981 is a citizen of Albania. The Appellant was represented by Mr Mills of Counsel. The Respondent was represented by Miss Savage, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had arrived in the United Kingdom on 3rd May 2012 and claimed asylum on the same day. The Respondent had refused the Appellant's application for asylum on 30th June 2014 and issued removal directions. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Boyd sitting at Hatton Cross on 27th August 2014. He had dismissed the Appellant's appeal on all grounds.
3. An application for permission to appeal including lengthy Grounds of Appeal had been issued and permission to appeal was granted by First-tier Tribunal Judge Cruthers on 6th January 2015. It was submitted that the grounds raised were arguable but the grant of permission should not be taken as any indication the appeal would be successful for the reasons in part outlined at paragraph 5 of the permission to appeal decision.
4. Directions have been issued for the Upper Tribunal to firstly decide whether or not a legal error had been made in this case and the matter comes before me in accordance with those directions.

Submissions on behalf of the Appellant

5. Mr Mills of Counsel provided me with a skeleton argument in respect of the grounds and referred to that skeleton argument and the grounds contained within the permission application.
6. In summary his grounds could be analysed under five headings. Firstly it was said there was a procedural unfairness in the judge had relied upon the different spelling of a surname and had made critical credibility findings in that respect. Secondly it was submitted that there was a material error of fact when the judge had suggested there was no evidence the Appellant's brother had been injured when there was such evidence in support of that fact. Thirdly it was said that the judge had speculated about the legal process in Albania in reaching a conclusion. Fourthly it was submitted that in various respects the judge had made findings on credibility without reference to the Appellant's evidence and referred me to various features of that contained within paragraphs 35 to 44 of the judge's decision. Finally it was submitted that there was a lengthy delay between the hearing of the appeal and promulgation of the decision such that there was a significant risk of prejudice in that the judge may not have accurately recalled facts. An example of an error at paragraph 1 of the decision was referred to in this respect.

Submissions on behalf of the Respondent

7. Miss Savage relied upon the Home Office response of 23rd January 2015. In respect of the delay it was said that there was no evidence of any prejudice. She then dealt with each of the submissions raised on the Appellant's behalf and in summary and in conclusion had submitted that the Judge of the First-tier Tribunal had dealt properly and adequately with all matters.

8. At the conclusion of the hearing I reserved my decision to consider the submissions and materials involved and I now provide that decision with my reasons.

Decision and Reasons

9. I deal in turn with the submissions raised by Mr Mills on behalf of the Appellant. Dealing firstly with the general submission that the delay in promulgation of this case inevitably caused or raised an issue of unfairness or an inability of the judge to give anxious scrutiny to the evidence.
10. The judge heard the case on 27th August 2014 and whilst there is no date given when the judge signed that decision it was not promulgated until 10th December 2014. Accordingly a proper assumption as the judge did not sign the decision until or shortly before 10th December 2014. That is a delay of some fifteen weeks. It is a not insignificant period of time. However the file reveals the judge had maintained a detailed Record of Proceedings amounting to 27 handwritten pages. He clearly had before him, additionally, all the documentary evidence supplied by both parties. An examination of the decision shows that the judge had a clear and detailed knowledge of the evidence presented and had read and considered the documentary evidence. The only reference made by Mr Mills to an extract from the decision that may have disclosed an error potentially brought about by delay, was a reference at paragraph 1 to the existence of dependents. That was a mistake, there were no dependents. It is not a mistake repeated elsewhere nor is there any further reference directly or indirectly to dependents. That mistake had no bearing on the decision. There is no indication when reading the decision as a whole that the passage of time had affected the judge's understanding of the case, the issues or the facts. No doubt he was assisted by those lengthy Record of Proceedings.
11. Accordingly whilst the delay is regrettable there is no evidence it had any adverse affect upon the fairness of appeal procedure or the judge's ability to deal properly and carefully with all the evidence provided.
12. It is said that the judge adopted a procedurally unfair approach in finding significance in the differing spelling of the Appellant and brother's name within documentation. The judge refers to this aspect of the case at paragraph 31 of his decision. In particular Mr Mills submitted that the Respondent had accepted the relation of the Appellant and brother and by inference must have accepted the differing spelling of the names. That is not entirely correct. The Respondent had within the refusal letter accepted the Appellant and brother were related as claimed, the brother was a police officer as claimed and the Appellant was a DJ and well-known in Albania. The judge did not resile from those concessions and adopted them at paragraph 33. The spelling difference (one letter difference) may or may not have been noted by Respondent in the refusal letter. It is unclear because there is no reference to that matter one way or the other. The differing spelling also took a greater significance post refusal in that the Appellant's witness and cousin at the appeal hearing had the different but very similar surname as noted. Mr Mills conceded that the differing spellings referred to by the judge within certain

documents at paragraph 31 of his decision was a factually accurate assessment by the judge. Whilst the differing spelling may not have resulted in questions at the hearing nevertheless on a close examination of documents put in by both parties the judge was entitled to reach the views he did. However even if it could be said a failure to raise the discrepancy at the hearing and therefore not provide the Appellant an opportunity to deal with such was an error, it did not amount to a material error of law because the judge made plain at paragraph 32 of his decision that he had looked at the case on the basis that it was the Appellant's brother involved and the differing spelling of the surname made no difference. He said "I have though gone on to consider the situation if indeed it was his brother who was involved." The bulk of the decision making thereafter is predicated on that basis.

13. It is said the judge speculated as to the legal process in Albania in reference to comments made at paragraph 32. The judge was entitled to note that whilst the Appellant had said his brother was seriously injured and had to go to hospital, such did not appear in the court document. The judge had noted the document was lengthy and detailed and he was entitled to infer that the nature of injuries to a police officer could be of relevance in the context of a criminal conviction and sentence of a perpetrator. Indeed a reading of B19 part of the court document would allow such a proper inference to have been made.
14. It is submitted the judge made findings on credibility but did not address the Appellant's evidence. The judge clearly had in his mind the evidence of the Appellant both within the documentary evidence including a record of interview and witness statements together with oral evidence. He has set out a summary of that evidence at paragraphs 5 to 29 of his decision. He was entitled to reach the conclusions he did at paragraphs 34 to 42. For example Mr Mills criticised the judge for taking no account of the Appellant's explanation for not claiming asylum in Italy and Holland. In reality the judge at paragraph 45 said that the Appellant had failed to give any good reason for that failure, a view he was clearly entitled to take based on the Appellant's explanation.
15. Finally, underpinning the judge's conclusions are the accepted facts that the Appellant's brother (who on his account was at most risk from the alleged criminals) had remained in Albania as a police officer at the same home address with his wife and daughter and that the Appellant's parents also remained in Albania with their two homes in different towns as before. The Appellant further remained in Albania for ten months after the alleged incident giving rise to matters. The judge was entitled to conclude that those features above leaving aside anything else seriously undermined the Appellant's case and such was alluded to by the judge who granted permission to appeal.

16. This is a case where the judge provided a detailed decision, giving anxious scrutiny to the evidence and reached conclusions open to him within a correct legal framework.

Notice of Decision

There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Anonymity not retained.

Signed

Date

Deputy Upper Tribunal Judge Lever