



IAC-FH-NL-V1

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

Appeal Number: AA/05313/2015

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated**

Reasons

On 1 March 2016

On 14 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VB

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. G. Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr. C. Lane, Counsel instructed by Genesis Law Associates Ltd.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Hawden-Beal, promulgated on 6 July 2015, in which she allowed VB's appeal against the Secretary of State's decision to refuse to grant asylum.

2. For the purposes of this appeal, I refer to the Secretary of State as the Respondent, and to VB as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. I have made an anonymity direction, following that made in the First-tier Tribunal.
4. Permission to appeal was granted as follows:

“It is arguable that the judge has not sufficiently addressed those “credibility points not related to documentation” in the process of deciding that the appellant’s core asylum account fell to be accepted.”
5. The Appellant attended the hearing. I heard oral submissions from both representatives following which I announced that I found that the decision did not involve the making of a material error of law, and that my full reasons would follow.

Submissions

6. Mr. Harrison relied on the grounds of appeal.
7. Mr. Lane relied on his skeleton argument. He submitted that the grounds of appeal were very basic, and related only to “non-documentation” issues. He submitted that these consisted of the mayoral race, the Appellant’s family going to Turkey, and whether or not the Appellant had gone to hospital after being tortured. He submitted that these were minor points. The decision was detailed and well thought through. The documents were the crux of the Appellant’s case. A large amount of the decision was concerned with consideration of the documentary evidence, as the reasons for refusal letter had been.
8. The judge had pointed to mistakes in the reasons for refusal letter relating to the documents. She had considered the documents in detail and found them to be genuine, and their contents accurate. She found them to be corroborative of the Appellant’s account. I was referred to paragraph [40]. Having found that the documents were genuine, the judge found that the Appellant had reached the lower standard of proof required.
9. I was referred to paragraphs [3], [20] and [21] of the decision which showed that the judge was aware of the reasons that the Respondent had refused the Appellant’s claim, including the “non-documentary” reasons. The non-documentary credibility issues were referred to again in paragraph [38]. At three points in the decision the judge had set out the Respondent’s assertions in detail. She had weighed up the documentary evidence with the few minor credibility concerns and concluded that the documents corroborated the Appellant’s claim. The minor non-

documentary credibility concerns did not outweigh the documentary evidence.

10. The judge had dealt with the issues in full and, even if she had not, given her findings as to the documentary evidence, it could not be material. There was nothing to show that the decision was irrational. I was referred to the case of Nixon (permission to appeal; grounds) [2014] UKUT 00368 (IAC).
11. In response Mr. Harrison referred to the way in which the judge had dealt with the documentation at paragraph [32]. He submitted that the judge had given her own evidence regarding the documents at paragraph [34]. The judge's finding that the documents were genuine was made on rather inadequate grounds. There were no findings in paragraph [38] in relation to the non-documentary issues. If I were to find that the judge had done sufficient in relation to the documentary evidence, he accepted that his point relating to the inadequacies in paragraph [38] would carry no weight. He accepted that the grounds were brief and did not challenge the approach to the documentary evidence. The judge had attached weight to the documentary evidence, not to the concerns of the Respondent as set out in the reasons for refusal letter.
12. Mr. Lane submitted that the grounds of appeal were limited to a challenge to the non-documentary issues. The grant of permission was limited to non-documentary issues. In any event, the judge had made clear and detailed findings in relation to the documents. The grounds amounted to no more than a disagreement.

Error of law

13. While the grounds of appeal are not very clear, as recognised by the grant of permission, what is apparent is that there is no challenge in the grounds of appeal to the judge's findings in relation to the documentary evidence. Permission to appeal was granted in relation to the non-documentary issues. I find that there is no challenge to the judge's approach to the documentary evidence, or to her findings in respect of the documentary evidence.
14. The judge dealt fully with the documents submitted by the Appellant, and made clear and detailed findings. As submitted by Mr. Lane, the documents were the crux of the Appellant's claim. I find that, having found that the documents provided were genuine, and their contents accurate, it was open to the judge to find that the Appellant had shown to the lower standard of proof applicable that he was at risk in Ukraine on account of his political opinion.
15. In relation to the non-documentary aspects of the claim, the judge set out in detail the reasons why the Respondent had refused the Appellant's claim in paragraph [3], which include these issues. In paragraphs [20] and

[21] she set out the Respondent's representative's submissions, including the Respondent's concerns relating to the non-documentary issues. In paragraph [38] the judge set these out again. It is clear from the decision that she was aware of these issues.

16. However, in paragraph [30], when commencing her findings, she states:

"The crux of the respondent's refusal is that she does not accept the documents which the appellant has submitted in support of his claim because the translations are not certified and some of them are clearly wrong in terms of the names and dates which have obviously been mistranslated."

17. The judge is clear that the documents lie at the centre of the Appellant's claim, and also that they lay at the centre of the Respondent's reasons for refusing the Appellant's claim. She is entitled therefore to place consideration of these documents at the heart of her decision. In paragraphs [39] and [40], having considered the documents individually in paragraphs [30] to [37], as well as the issue of the translations, she finds that she can place reliance on the documents. This leads to her finding that the Appellant is at risk in paragraph [41].

18. In paragraph [40] she finds that the documents "corroborate what the appellant has said about his experiences which to an extent are also supported by the report from Amnesty International and Human Rights Watch". She links the documents to the Appellant's account of his experiences, and specifically finds that the documents corroborate his account. It is clear from this that she has the entirety of the Appellant's account in mind.

19. Given that the crux of the Appellant's claim rests on the documents, the findings in respect of which the Respondent has not challenged, I find that the judge was entitled to place less weight on the non-documentary aspects of the Appellant's claim, and to consider them to be minor concerns of the Respondent when weighed against the documentary evidence. I find that she was aware of these issues, as is clear from the fact that she has referred to them on three occasions in the decision, but that she placed less weight on them. She placed more weight, as she was entitled to do, on the documents. I find that there is no error of law in her consideration of these issues.

20. In any event, even if I were to have found that she made an error of law by insufficiently addressing the non-documentary aspects of the claim, given her findings in relation to the documents, which have not been challenged, such error could not be material.

Notice of Decision

21. The decision does not involve the making of a material error of law and I do not set it aside.

22. The decision of the First-tier Tribunal stands.

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 his 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 4 March 2016

Deputy Upper Tribunal Judge Chamberlain