



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05669/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 14 May 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

OR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, instructed by Immigration Advice Service
(Manchester)

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge O R Williams sitting at Manchester on 2 October and 13 November 2017

when by way of a decision promulgated on 5 December 2017 the judge had dismissed the Appellant's protection claim. The grant of permission by First-tier Tribunal Judge Saffer states crisply as follows:

"It is arguable that the Judge did not adequately engage with the expert evidence or explain why the expert's opinion was rejected. All grounds may be argued."

2. The grounds themselves are dated 9 December 2017 and say that there was one ground - failure to give due consideration to material evidence - and then various complaints are made in relation to the judge's decision. In short, however the contention is that the judge did not appropriately consider the country expert evidence of Robert Chenciner and that insufficient reasoning was provided to reject it. It is also said in summary that the judge did not appropriately consider the evidence which was provided by the expert and/or took the evidence out of context.
3. During his submissions to me, Mr Wood sought to amplify the grounds and indeed to make them a little clearer, the drafting of them requiring perhaps further explanation. In short, it was submitted that there were various aspects of the expert evidence which was detailed and lengthy and indeed this report was from an expert who had provided numerous reports to the Tribunal including in Country Guidance cases. By way of example, Mr Wood explained that the judge had made the following findings in his decision.
4. At paragraph 27 the judge in finding against the Appellant had said amongst other things:

"As does the fact that his family, notwithstanding the fact that 'the close families of oppressed people are frequently also at risk' - country expert AB(i)(33) have been able to continue to live in Moscow unharmed. It is reasonably likely that if the authorities were taking an active and adverse interest in the Appellant and his family they would not have been dissuaded from entering their apartment (to question/arrest them) because the receptionist did, 'not to let them in' (AB(ii) page 33)."

5. What is said is if one looked at the expert report at page 33 of the Appellant's bundle it actually said as follows:

"The authorities do not always interrogate suspected terrorists usually called Wahhabi suspect family members, there are no set rules; and they may just come to question them, or, just to ask about the whereabouts of family members. After that they are likely to be closely monitored, i.e. telephones bugged and waiting for news of relative's return. A tactic for getting the missing person to return is for the family to feel threatened and tell the absent relative so that she/he is to blame."

6. The complaint is that the judge failed to properly take into account the expert evidence and looked to sidestepping it because it was clear, as the expert has said, that the authorities do not always interrogate suspects' family members. It is also said that there were various aspects where the expert had indicated, for example at page 36, that after considering the various documentation that he thought the account was plausible. For example, at page 36 at the base the expert said:

“With regard to the plausibility of the client’s account as to why the authorities would release him if they were interested in him and put him on a wanted list. In my opinion it is plausible as the Appellant repeats that it was because they thought he would lead them to the rebels whom he was suspected to have sold petrol to and would not have detained him without stronger evidence and therefore, just invite him for questioning at the beginning, but the situation became worse and this is why he believes that if he returned his life was at risk.”

7. There are other examples given of this as well. In addition, it is argued that the judge has not given sufficient reasoning in relation to text messages which appear at page 12 of the Appellant’s bundle and which were translated. Overall it was submitted that if the judge taken into account the expert evidence in an appropriate way then he may well have come to a different decision. I was asked to find an error of law and either for the case to remain here at the Upper Tribunal for a resumed hearing or for there to be further consideration at the First tier Tribunal.

8. I asked Mr Wood whether he had the standard direction from the Tribunal and I had in mind in particular paragraph 4 which says as follows:

“There is a presumption that, in the event of the Tribunal deciding that the decision of the FtT is to be set aside as erroneous in law, the re-making of the decision will take place at the same hearing. The fresh decision will normally be based on the evidence before the FtT and any further evidence submitted together with the parties’ arguments. The parties must be prepared accordingly in every case.”

9. Mr Wood said that his experience was in the past when he has made enquiries, for example, in relation to interpreters he has been told in no uncertain terms that an interpreter would not be provided for the error of law hearing. I explained to him that whether that was or was not his experience of the past, the standard directions say what they do and in most cases that will be the course that will be adopted, namely that if an error of law is found then the Upper Tribunal at this hearing or a similar hearing will then go on to consider what should happen next including hearing from the Appellant if appropriate and

indeed making the decision at the hearing on the same day. I noted that the Appellant had not attended today's hearing.

10. I heard from Mr Bates in reply and he in some detail competently and capably explained why the expert evidence could be read in a certain way thereby being able to uphold the judge's decision and by way of example, despite the Appellant being a national service person of interest, he was able to travel freely on his own passport. Mr Bates asked the rhetorical question, how could this be if there was surveillance of the Appellant?
11. Insofar as paragraph 27 of the judge's decision is concerned, particularly that part which refers to how it could be that the Appellant's family were able to dissuade the Russian authorities from even entering into the Appellant's apartment or indeed office, how on the one hand the expert referred to excess use of powers by the authorities, yet they would not even enter the Appellant's office or home apartment was peculiar. The judge had heard the evidence. He had considered the expert report but having done so ultimately this was not a case in which there was insufficient reasoning. The judge had provided more than sufficient reasoning. In any event the expert report was hardly a ringing endorsement for the Appellant because even the expert had not been able to confirm the name of the so-called rebel leader that the Appellant claimed to be working for. It was submitted that even when the report is properly read there was no material error of law.
12. I then heard briefly from Mr Wood in reply. He referred to paragraph 24 of the judge's decision in respect of the arrest of suspected Islamic extremists from Dagestan. There was also reference there to paragraph 23 of the refusal letter whereby it was necessary to note the Appellant was in Moscow at the time and not in Dagestan. This it was submitted again showed that the judge did not properly consider the expert evidence.
13. In coming to my decision in relation to whether or not there is a material error of law I conclude that there is. I have sympathy for the judge who was hampered at the initial hearing because of a lack of complete evidence on behalf of the Appellant's side. At a later stage, during the second day of the hearing, further documents had been submitted including a corrected version of the expert report and indeed the expert report is rather detailed and somewhat difficult to read in places with close script. It is generic in many places and only becomes relevant in some parts. Nonetheless though this was evidence before the judge and it was evidence from what appeared to be an expert who had complied with the duties of experts, including provision of a detailed CV and of the expert's background. Indeed, the Tribunal had even been furnished with a copy of the expert's invoice at page 48 where it is said he spent some thirteen hours at £120 an hour (much I suspect is a much higher hourly rate than the solicitors will have been able to charge for this case) to undertake the report.

14. The judge in my judgment did not fully engage with the way in which the plausibility of the Appellant's account was dealt with. The judge did not take into account the other possibilities of the evidence having been presented. The judge was hampered by not getting a full explanation at the hearing but paragraph 24 of his decision does indicate that he had in mind "Dagestan" as the location where the Appellant was but in fact the Appellant was in Moscow at the time.
15. Therefore, taking all of those factors and matters into account, in my judgment reminding myself that this is a protection claim and whereby that the lower standard of proof applies, the judge did materially err in law.
16. Now having found that error, I would have continued to go on to consider what was to happen next had the Appellant been in attendance. I have not been given a reason why the Appellant is not in attendance, but it may be linked to what Mr Wood's experiences of the past whereby these hearings have not continued to be fully resolved. In any event, I am told that in addition there is no Russian interpreter today. In the circumstances there appears no alternative but to consider whether the next step should be that there be a further hearing here at the Upper Tribunal or at the First-tier Tribunal. In my judgment, considering part 3, paragraph 7.2(b) of the Upper Tribunal Practice Statement of 25 September 2012 the effect of the error of law has been to deprive the Appellant of a complete and fair hearing in that the expert report has not been fully considered and analysed. In the circumstances I will remit this case to the First-tier Tribunal to enable a re-hearing to take place. This shall take place before a judge other than First-tier Tribunal O R Williams and it will be on all issues. None of the current findings shall stand. I order that any expert evidence relied upon shall have highlighted for the Judge precisely those sentences or paragraphs relied upon. It will not be sufficient to say at the hearing at the FTT that the whole of the expert report is relevant.
17. This is a protection claim therefore anonymity is appropriate. I make an anonymity direction.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is therefore set aside.

A hearing de novo on all issues shall take place at the First-tier Tribunal.

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 their 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: A Mahmood

Date: 14 May 2018

Deputy Upper Tribunal Judge Mahmood