



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

Appeal Number: PA/08532/2016

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 7 February 2018**

**Decision & Reasons Promulgated
On 19 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

LEVAN IREMASHVILI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sinker instructed by Sabz Solicitors

For the Respondent: Mr Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 6 April 1985 and is a national of Georgia.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 1 March 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 5 August 2016 to dismiss the Appellants protection claim.
5. Grounds of appeal were lodged arguing: that the Judge was in error in that he applied the wrong standard of proof; the Judge failed to take into account the risk of persecution by the state but the potential mistreatment he would face in prison as a deserter.
6. On 19 June 2017 First-tier Tribunal Judge Astle refused permission to appeal. The grounds were renewed and on 14 September 2017 permission was granted.
7. There is a Rule 24 response dated 4 October 2017.
8. At the hearing I heard submissions from Mr Sinker on behalf of the Appellant that
 - (a) He relied on the grounds of appeal.
 - (b) The Appellant was accepted to have deserted and was sentenced to 5 years in prison in absentia. It appears to be a high sentence and from that it can be assumed that the sentence was politically motivated.
 - (c) There is background material to suggest that there are issues with the independence of the judiciary although there have been improvements.
 - (d) The background material did not suggest that the conditions in prison engaged Article 3 but if his sentence was politically motivated he would serve it in harsher conditions
9. On behalf of the Respondent Mr Mc Vitie submitted that :
 - (a) This was simply a disagreement with findings that were reasonably open to the Judge
 - (b) It cannot be argued that the sentence was high given that the offence carries a sentence of between 3-7 years.

- (c) The Appellants evidence before the Judge was that he no longer feared mistreatment arising out of his political associations just as a result of desertion.
- (d) The sentence passed was a proper one given the nature of the treatment meted out to the officers. One of the sergeants was sentenced to Community Service which was not harsh.
- (e) The Judge sets out that the Appellant had a right of appeal against his sentence and there was the suggestion that the term of imprisonment might be set aside if he returned.
- (f) In relation to prison conditions in Georgia they appeared to be no worse than those in the UK.
- (g) It was speculation that he would serve a sentence in different circumstances because of the nature of the conviction.

The Law

10. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative

inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
13. It is a trite observation that a judge need not address in detail every single argument advanced before him, nor consider in isolation every single piece of evidence. He must weigh all of the evidence before him, and give clear reasons for his conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision.
14. The argument that the Judge applied the wrong standard of proof has no merit and quite properly was not pursued by Mr Sinker either in his skeleton argument or in oral submissions. The Judge at paragraphs 2949 set out the legal principles that included both the burden and standard of proof for all those matters he had to assess. There is nothing in his decision that suggests he applied these criteria incorrectly.
15. The Judge accurately and succinctly set out the background to the Appellants flight to the UK. He noted at paragraph 52 that the Appellants claim was no longer that he was at risk because of the events of 2011. He did not fear that he would be prosecuted for what he accepted had been an illegal act: others had taken responsibility and he had only ever been summonsed as a witness.
16. The Judge also noted at paragraph 54 that a nation is entitled to expect its citizens to perform national service and prosecute those who deserted which the Appellant accepted he had.
17. Against that background I see no basis on which the Judge could find that his sentence of 5 years for desertion was politically motivated. Not only did the Appellant not advance that argument but such an argument would be unsupported by the background material that the Judge had before him and which he summarised at paragraphs 21-23 that showed that the Appellant had received a mid level sentence given the penalty was 3-7 years and Document A made clear

that there was a right of appeal and the Judge noted that the background material showed that the appeal process was fair (paragraph 55).

18. Mr Sinker did not seek to argue before me that prison conditions breached Article 3 and conceded that they did not because the weight of the background material from independent sources was strongly against him. The conditions described in *some* of the prisons and pre trial detention facilities were poor and they lacked 'adequate sanitary facilities' (paragraph 23) but this is not enough to engage Article 3.

19. Given the fact that there was no basis on which to conclude that the sentence was politically motivated there was no reason or basis on which the Judge could have concluded that the Appellant was likely to serve his sentence in less favourable conditions even if in the event he appealed and was unsuccessful.

20. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

21. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

22. The appeal is dismissed.

Signed

Date 11.2.2018

Deputy Upper Tribunal Judge Birrell