Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07153/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 27 June 2019	**On 23rd July 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

V L
(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Sachdev, Counsel, instructed by Bury Law Centre
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a national of Russia. In a decision sent on 13 February 2019 Judge McClure of the First-tier Tribunal dismissed his appeal against the decision made by the respondent on 26 March 2018 refusing his protection claim. The basis of the appellant's claim was that as a result of his lengthy history of acting as an Advocate in the Russian courts and then finding himself the subject of prosecution for making threats to judges, he had come to the adverse attention of an Investigation Committee in 2017 and would be at real risk on return of serious harm from the Russian authorities.

2. The appellant's grounds refer to two grounds. Unhelpfully, they overlap and each raise points amounting to additional grounds. As stated, ground (1) alleges that the judge failed to take into account relevant evidence and failed to make proper findings, errors said to be magnified by the fact that the appellant had known medical issues and had been assessed by a medical expert, Dr Rojo, as at risk of committing suicide; ground (2) takes issue with the judge's delay in promulgating the decision, his failure to make mention of or make use of the appellant's Litigation friend; and failure to address key matters of evidence.

3. I heard extremely thorough submissions from both representatives.

4. Given the overlapping and multi-layered nature of the two grounds pleaded, I shall deal with the most important points in my own order, commencing with the particular points that I found unpersuasive.

5. First of all, I reject the appellant's submission that the judge failed to recognise that when dealing with an appellant with mental health problems, he should have given more prominence and weight to the background evidence. I consider that at paragraph 64 the judge was well aware of this need. In this paragraph he stated:

> "In circumstances where the medical reports indicate that the appellant's perception of reality may be a problem, where the appellant may be boastful and overstate matters where the appellant may give explanations which are not fully based on reality, there may be some difficulty in ascertaining the truth of the situation with regard solely from the appellants evidence."

Whilst he does not thereafter refer systematically to other sources of evidence, it is clear he was at all times looking to consider what evidence there was apart from the appellant's own statements and testimonies.

6. Second, I see absolutely no merit in the judge's assessment at paragraph 80 that:

> "With regard to the claims that the appellant is suicidal the reports refer to the possibility of such but I find that appropriate arrangements can be put in place to return the appellant to Russia to minimise any risk. I do not find that the appellant would be at risk of taking his own life and that in any event appropriate steps can be taken to minimise such risk."

That was a fair description of the medical report by Dr Rojo and it must also be borne in mind that Dr Rojo did not identify the need for any specific steps to be taken by medical authorities to protect the appellant against the risk of suicide. Further, on the appellant's own account, uncontradicted by the doctor, he was not undergoing any treatment in the UK for his mental health problems. (I should add that although the judge did state incorrectly, e.g. in paragraph 13, that the appellant was in receipt of treatment in the UK, that mistake had no material impact on the judge's assessment of risk on return or his level of suicide risk).

7. However, I am persuaded that grounds (1) and (2) do disclose some material errors of law, when considered cumulatively.

8. First of all, despite being acutely aware that the appellant had mental health problems, and that he "lacked capacity to give evidence" (paragraph 51) the judge nowhere indicates that he was therefore treating him as a vulnerable witness, in respect of whom allowances may need to be made for discrepancies, vagueness and the like. Perhaps because the appellant did not give oral evidence the judge overlooked that he still needed to consider the application of the Joint Presidential Guidance Note 2010 on vulnerable witnesses and Court of Appeal guidance pertaining to this: see **AM (Afghanistan)** [2017] EWCA Civ 1123.

9. Second, despite it having clearly been made known to him at the outset that the appellant was assisted by a litigation friend (Ms Van Wick), who had sent a statement of suitability on 12 October 2018, the judge does not appear to have engaged her at all in the proceedings. Given that in a number of places the judge relied on discrepancies in the appellant's evidence and the lack of adequate explanation for them, he should at least have stated why he chose not to engage with Ms Van Wick to help ascertain whether, indirectly, the appellant wished to address any concerns the judge had with the appellant's evidence.

10. Third, between hearing the appeal on 15 October 2018 and promulgating his decision on 13 February 2019 there was nearly four months delay, or at least three months if one takes the date he has given along with his signature. By itself this feature would not necessarily cause sufficient concern to interfere, but in this case the judge's response to the highly discursive account given by the appellant in his various written statements seems also to possess a discursive flavour, raising a question as to whether the delay in writing up the case may have caused this judge (who is characteristically lucid) to be no longer being on top of the materials before him.

11. Fourth, even though the judge clearly did set out to attach more weight than usual to the documentary evidence (in view of the appellant's mental health problems), he failed to refer to key items of documentary evidence. The judge rightly saw as crucial to the appellant's case his claim to face a risk of persecution as a result of alleged visits paid to him by an Investigation Committee in 2017. At paragraph 75 he concluded:

> "Thereafter I do not see that the authorities within Russia would have any interest in the appellant. The appellant has referred to the fact that he had commenced to work with a friend making furniture. I do not see in such circumstances that any Investigation Committee would have any interest in the appellant or would seek to threaten the appellant. I do not accept the appellant's assertions or the assertions within the documents produced that officials would seek to monitor the appellant's conduct. I do not accept that the appellant was under

surveillance of that the appellant was threatened by members of the investigation committee."

12. Taken on its own, such a conclusion would appear unexceptionable. However, it was premised in part on the judge's earlier conclusion that the authorities would not perceive the appellant as an anti-government troublemaker because he had failed to show that he had ever worked in the courts helping citizens fight cases or that he had ever been involved with the Democratic Union or an organisation called Memorial which sought to promote human rights. Yet in reaching those findings the judge nowhere makes reference to or explains what weight if any he attached to the article from Mr Rudnitsky stating that the appellant did human rights work or the letter from Memorial confirming the appellant's association with them or to the medical reports from Russian doctors which in the course of their psychiatric evaluations refer (without any query) to his role in litigating cases. The judge appeared to reject the appellant's claim to have been involved as an advocate in cases before the Russian courts for the reason that the appellant had no legal qualifications, but his own account was that parties authorised him by power of attorney to speak for them in court and I have not seen anything from the respondent indicating that such party-authorised advocacy is not permitted in the Russian courts. This again is precisely the type of disputed issue of fact that could usefully have been pursued by the judge by involving the litigation friend, to try and gain more clarity as to how it was on the appellant's account he was able to play such a role.

13. I concur with Mr Bates that there were many aspects of the appellant's evidence that the judge was understandably sceptical about, particularly in relation to his own court case (which had resulted in an order to undertake correctional work for six months) given that on his own account he had made serious threats against the judge hearing the case. At the same time, given that he was a vulnerable witness and someone who, on the basis of the medical report, had at times a tenuous grasp on reality, the judge failed to show that he had taken into account all the documentary evidence in the case.

14. The errors identified above clearly had a material impact on the judge's assessment of credibility. Accordingly, I see no alternative to the decision being set aside and remitted to the First-tier Tribunal. Assuming that it will continue to be the case that the appellant will not be called as a witness, but will again have the assistance of a litigation friend the next judge should state at the outset what he or she expects the role of such a person to be and should seek to engage this person in consideration of discrepancies in the appellant's evidence. It may be a useful starting point will be the gov.uk website entry on Litigation friends, read together with reported decisions of the Upper Tribunal dealing with litigation friends.

15. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT Judge, not before Judge McClure.

I would observe, that as was necessary last time, the case would best be dealt with by an experienced judge.

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 Date: 9 July 2019

Dr H H Storey
Judge of the Upper Tribunal