



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

Appeal Number: PA/13577/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 11 June 2019**

**Decision & Reasons Promulgated  
On 13 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**MIKHEIL [S]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Anderson, Counsel, instructed by Justice and Rights Law Firm

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal E B Grant (the judge), promulgated on 14 February 2019, dismissing the appellant's appeal against the respondent's decision dated 19 November 2018 refusing his protection and human rights claim.

**Background**

2. The appellant, a national of Georgia, was born in 1989. He entered the UK with his wife on 1 July 2014 on the basis that they were celebrating their honeymoon. He and his wife overstayed and, after being served with papers indicating that they were overstayers, he claimed asylum on 30 May 2017.
3. I summarise the asylum claim. The appellant was a member of the United National Movement (UNM), the former ruling party of Georgia. He was also employed with the Ministry of Internal Affairs between July 2012 and 2014. In October 2012 the UNM were defeated in elections and the Dream Party took power. As he was a civil servant the appellant, though he remained a member of the UNM, was not involved in any decision-making in the party, did not have any specific designation within the party, but would participate in meetings and reform discussion forums.
4. The appellants cousin, [LS], was a prominent member of the UNM, and had previously been a Senior Investigator within the Serious Crime Department of the Georgian penitentiary system. [LS] was made redundant in November 2013. From December 2013 the appellant was asked by a Chief Inspector of the Special Task Force of the Constitutional Security Department of the Ministry of Internal Affairs to implicate [LS] in the torture and rape of prison inmates. The appellant was later threatened and then beaten for refusing to cooperate. After getting married on 10 May 2014 the appellant and his wife fled Georgia. [LS] had previously worked as the Head of Security at Tbilisi airport and, through connections, was able to assist the appellant and his wife in leaving the country. Since leaving Georgia the appellant's family have received threatening phone calls, and [LS] fled in August 2014, his whereabouts unknown.
5. The respondent accepted that the appellant was employed with the Ministry of Internal Affairs. The respondent did not however accept that the appellant had faced any persecution on account of his membership of the UNM, and rejected as incredible his account of events that caused him to leave Georgia. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

### **The decision of the First-tier Tribunal**

6. The judge heard oral evidence from the appellant and his wife, and was provided with a bundle of documents that included several human rights reports. The bundle also included, inter alia, statements from the appellant and his wife and some translated documents. At the appeal hearing the appellant served a document purportedly issued by an NGO named Sociometry, and its translation, setting out

the appellant's account of events and briefly describing ill-treatment meted out by the Dream Party against political opponents.

7. At [10] the judge stated,

"The respondent does not accept as credible the appellant's claims that he was persecuted by the authorities in Georgia and it is not accepted that he is a member of the United National Movement."

8. At [16], under the heading, "My Findings", the judge found the appellant had told "a pack of lies." At [17] the judge drew an adverse inference from the appellant's failure to claim asylum until 4 years after his arrival in the UK, and, at [18], his claimed ignorance as to [LS]'s whereabouts. The judge found implausible the appellants answer, when asked why he made no effort to find [LS], that he did not think [LS] could be of assistance in his case. Whilst the judge accepted that [LS] worked as Head of Security at Tbilisi airport, the judge did not accept that he had been a Senior Investigator within the Serious Crime Department. At [21] the judge stated,

"The abuses committed within the prison system in Georgia have been well documented in background material and I am satisfied that if [LS] had been involved in the rape and torture of prisoners, that there would be some independent objective background material to support this claim."

9. At [22] the judge rejected the appellant's claim that he had been approached by the authorities in order to give false evidence against his cousin, and that if his cousin had been wanted by the authorities, that he would not have retained his employment or his security pass to enable him to walk freely through the secure areas of the airport. At [23] the judge noted the absence of evidence that [LS] was a member of the UNM and satisfied herself that there would be no reason for him to be persecuted by way of false charges as alleged or at all.

10. At [24] the judge noted that the document from Sociometry read as a summary of the appellants claim to the respondent and that there was nothing to indicate any independent source for the information contained in the document. At [25] the judge drew an adverse inference from the belated production of the document and the consequent inability of the respondent to verify it. At [26] the judge noted an inconsistency between the evidence from the appellant and his wife in relation to a head injury.

11. Having found the appellant's account to be a fabrication "in its entirety", the judge dismissed the appeal on both protection and human rights grounds.

## **The challenge to the First-tier Tribunal's decision**

12. The grounds of challenge are fourfold. The first ground contends that the judge failed to make any finding in respect of the appellant's membership of the UNM, and failed to determine whether he would face a real risk of persecution on account of his political association. The second ground contends that the judge erred in law through her expectation that there would be some independent or objective background material supporting the authorities' claim if [LS] had been involved in the rape and torture of prisoners. The third ground contends that the judge erred in law by attaching no weight on the Sociometry document "solely" on the basis of its belated production. The Fourth ground contends that the judge attached a disproportionate amount of weight to the appellant's immigration history, and in particular, the late timing of his asylum claim.
13. Permission was explicitly granted in respect of the first three grounds. There was no reference to the fourth ground. In the absence of any express refusal to grant permission in respect of the fourth ground, I am satisfied the judge intended to grant permission in respect of all grounds.
14. At the outset of the 'error of law' hearing Mr Clarke accepted, in relation to the first ground, that the judge misunderstood the Reasons for Refusal Letter and that the respondent had never expressly found that the appellant was not a member of the UNM. As a consequence, there had been no assessment of any risk faced by the appellant on return to Georgia on account of his political association.
15. On behalf of the appellant Mr Anderson submitted, with particular reference to [21] and [22] of the judge's decision, that she misunderstood or mis-characterised the appellant's account and that she was not entitled to draw an adverse inference from the absence of any evidence that [LS] had been involved in the rape and torture of prisoners. This was said to go to the "core of the case."
16. Mr Anderson further submitted that the principal reason the judge attached little weight to the Sociometry document was because of its late production and that she failed to give credible reasons for her conclusion. Mr Anderson finally submitted, albeit briefly, that the judge erred in attaching undue weight to the timing of the appellant's asylum claim.
17. With respect to the second ground, Mr Clarke submitted that the judge fully understood the appellant's case as she made specific reference to his claim that he was being coerced into giving "false evidence" against his cousin. In respect of the third and fourth grounds, Mr Clarke submitted, with reference to [24] and [25], that the judge had not attached little weight to the Sociometry document "solely" because of its late production but had given other cogent

reasons for finding the document unreliable, and that the judge was entitled to draw an adverse inference from the timing of the appellant's asylum claim.

## Discussion

18. I find the first ground is made out. As Mr Clarke accepted, the Reasons for Refusal Letter makes no clear findings in respect of the appellant's claimed membership of the UNM (see paragraphs 28 to 33). It is sufficiently clear from paragraph 33 of the Reasons for Refusal Letter that the respondent does not accept the appellant's claim to have been persecuted by the Georgian authorities on account of his membership of the UNM. It is not however clear whether the respondent accepted that the appellant was a member of the party. Given this ambiguity it is perhaps understandable that the judge assumed that there had been a rejection of the appellant's claim to membership of the UNM. As conceded by Mr Clarke, this was not the case. In misstating, at [10], that the respondent rejected the appellant's claim to be a member of the UNM, the judge failed to appreciate or engage with the ambiguity within the Reasons for Refusal Letter. The judge then failed to determine whether the appellant was in fact a member of the party and whether, as a consequence of any association with the UNM, he faced a real risk of persecutory ill-treatment if returned to Georgia. Given that this was an element of the appellant's asylum claim, it was incumbent on the judge to determine this issue.
19. I note the absence of any reliable independent evidence relating to the appellant's membership of the UNM, including the absence of any evidence from the UNM itself (in his statement the appellant said that he had to complete a form to join the UNM, and claimed in his interview that he would try to obtain a copy of this form but that there were internal divisions within the party). I additionally note the appellant's limited involvement with the party. Nevertheless, it cannot be said that the judge would inevitably have concluded that the appellant was not a member of the party had she specifically addressed this point. Nor, having brief regard to the background evidence contained in the appellant's bundle of documents before the First-tier Tribunal, could it be said that any appeal would inevitably fall to be dismissed on the basis that, even if the appellant was a member, he would not face a real risk of persecutory ill-treatment. I consequently find the judge's error was a material one.
20. I now consider the second ground. At [21], set out in paragraph 8 above, the judge found, having referred to well documented abuses committed within the Georgian prison system, that if the appellant's cousin had been involved in the rape and torture of prisoners, there would be "some independent objective background material to

support this claim.” The appellant’s claim however was that [LS] was not involved in the ill-treatment of prisoners. As a consequence, the basis upon which the judge relied when assessing the likely existence of such evidence collapses. If the appellant’s cousin was not involved in such ill-treatment, one would not expect any “independent objective background material”. I acknowledge Mr Clarke’s submission that, at [22] and again at [23], the judge refers to “false charges”, suggesting that she was aware of the nature of the appellant’s account. It is however difficult to reconcile these references to what the judge clearly said at [21].

21. I am mindful that the judge advanced other reasons for finding the appellant an incredible witness. I am nevertheless satisfied, albeit by the narrowest of margins, that the error identified in [22] is material in the sense that it renders the judge’s ultimate adverse credibility findings unsafe. Had the error not been committed, it cannot be said that the judge would inevitably have concluded that the appellant fabricated the entirety of his case.
22. I deal briefly with the third and fourth grounds. At [24] the judge accurately noted that the Sociometry document read as a summary of the appellant’s claim to the respondent, and that there was nothing to indicate the provenance of the information contained in the document. The judge was unarguably entitled to attach little weight to the document given its late production together with the reasons identified at [24]. Nor has the judge erred in law in drawing an adverse inference from the late timing of the appellant’s asylum claim. Whilst an assessment under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 would usually be found at the end a credibility assessment, the judge demonstrably looked at the evidence ‘in the round’ and did not attach a disproportionate amount of weight to the late asylum claim.
23. I am nevertheless satisfied, for the reasons given above, that the decision must be set aside. Given that the issue of the appellant’s credibility needs to be revisited, and that primary findings of fact need to be made in respect of the appellant’s political involvement with the UNM, it is appropriate for the matter to be remitted for a de novo hearing before the First-tier Tribunal.

### **Notice of Decision**

**The decision of the First-tier Tribunal involved the making of an error on a point of law.**

**The case is remitted to the First-tier Tribunal for a fresh hearing before a judge other than Judge of the First-tier Tribunal E B Grant.**

A handwritten signature in cursive script, appearing to read 'Blum'.

Signed  
Upper Tribunal Judge Blum

11 June 2019

Date