



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

Appeal Number: PA/08010/2019

THE IMMIGRATION ACTS

Heard at Bradford

On 25 June 2021

**Decision & Reasons
Promulgated
On 22 July 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KD

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1985 and is a male citizen of Russia. He appealed to the First-tier Tribunal against a decision of the Secretary of

State dated 8 August 2019 refusing his claim for international protection. the First-tier Tribunal, in a decision promulgated on 11 October 2019, allowed his appeal. Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The Senior Presenting Officer, Mr Bates, appeared by video. The appellant, who was not professionally represented, was present in court. I was careful to explain the proceedings to the appellant, who had the assistance of an interpreter in the Russian language. I am satisfied that the appellant understood the proceedings and had every opportunity to participate in the appeal.
3. The judge found that the appellant had attended three anti-government demonstrations in Russia [81]. The judge also found that, 'if the appellant had been identified as a participant [in the demonstrations]' then it was reasonably likely that he would, as he claimed, be at risk of threats and physical violence at the hands of the state authorities.
4. There are problems with the judge's reasoning of that conclusion. First, the appellant himself told me that 'I can only guess that [the Russian authorities] tracked me - but there is no logic to it.' The appellant claimed to have been attacked 'by men who hunt the people who take part in the demonstrations' [interview, Q44] which he accepted must mean that he had been subject to some form of surveillance at the demonstration. There was, however, no background material or evidence that such surveillance occurs or, if it does, what form it might take. At the First-tier Tribunal hearing, the Secretary of State's submission had been that the appellant, who was not, even by his own admission, a high-profile activist but rather, along with many hundreds of others, no more than a mere participant was only a 'face in the crowd.' The judge acknowledged [85] that it was 'somewhat implausible' that the appellant should have been identified but observed that it 'was not incredible that there would have been some method of face recognition or some electronic means of identification' although he does not indicate what means. The judge went on to say (with little obvious certainty) that the appellant's limited presence on social media 'may have provided a means by which he could be identified.' It is by lapsing here into speculation that the judge has, in my opinion, fallen into legal error. There was no evidence before the judge to support his conjectures; it may be possible to create facial recognition systems to enable the tracking of participants at the demonstrations but there is no reason to find that it reasonably likely that such systems were in use in Russia in 2018.
5. In the circumstances, I find that the decision should be set aside. None of the findings of fact shall stand. There will need to be a fresh fact-finding exercise which is better conducted in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

LISTING DIRECTIONS: Return to First-tier Tribunal; not Judge Turnock; 2 hours; Russian interpreter; first available date.

Signed

Date 12 July 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.