



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

Appeal Number: UI-2021-000315  
(PA/07419/2019)

**THE IMMIGRATION ACTS**

**Heard at : Manchester Civil Justice  
Centre  
On : 12 September 2022**

**Decision & Reasons Promulgated  
On : 31 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**KD  
(Anonymity Direction made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Faryl, instructed by AJO Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Azerbaijan, born on 17 April 1990. He arrived in the United Kingdom on 22 May 2017 on a visit visa valid until 10 November 2017 and claimed asylum on 28 November 2017. His claim was refused on 29 May 2018 and his appeal was dismissed in the First-tier Tribunal on 2 January

2019. He became appeal rights exhausted on 17 January 2019. On 31 May 2019 the appellant lodged further submissions which were treated as a fresh claim. His claim was refused on 15 July 2019 and he appealed against that decision.

3. The appellant's asylum claim, as initially stated and summarised in the decision of the previous Tribunal, was made on the basis that he was at risk on return to Azerbaijan because of his political activities. He claimed to have been employed at Baku State University and to have worked as a journalist for MH at the Sensasiya newspaper. Together with MH, he was filming properties belonging to the government in Azerbaijan and had two articles published in the Sensasiya newspaper. He was arrested and detained several times with MH for filming the property of one of the Azerbaijan ministers and was sacked from the university after a detention in March 2017. On the last occasion he was released from detention because the authorities could not find any evidence against him, but MH was not released and was charged with offences against the government. At court, MH gave his name as being his assistant and since then the authorities had been looking for him. MH's conviction had been overturned on appeal, but he had still not been released. The appellant also claimed to have been arrested when attending a rally and was detained but released after payment of a bribe on condition that he remained in Baku. However, he bribed a government official to have his name removed from a list of those subjected to a travel ban and he managed to apply for a visa to the UK and leave Azerbaijan. Since leaving the country his father and brother had been interrogated and tortured.

4. In a decision dismissing the appellant's appeal against the refusal of his claim, the First-tier Tribunal Judge, Judge Graham, noted that the appellant admitted to having bribed an employee of the university to arrange false employment documents and had falsely inflated his bank balance to enable him to obtain a visa for the UK, and considered that that undermined his credibility as a whole. She considered further that the accounts given in his statement and his oral evidence were riddled with inconsistencies, including inconsistencies in dates which contradicted his account of events and inconsistencies in his evidence as to the documentation he held. The judge noted that the appellant's explanation for the inconsistencies in his evidence was as a result of memory problems caused by the torture he sustained during detention, but in the absence of medical evidence supporting his account of memory loss she did not accept that explanation. She concluded that there were material discrepancies in the appellant's evidence which went to the core of his claim. She did not accept his account of having a travel ban. The judge also referred to the documentary evidence produced by the appellant, namely two summonses dated 23 November 2016 and 24 February 2017 and an arrest warrant dated 24 October 2017, as well as a letter from an acquaintance DM who claimed to have returned to Azerbaijan and obtained the documents from the appellant's father. In the absence of DM in person she did not give weight to his letter, and she rejected the documentary evidence as unreliable, noting in particular errors in the arrest warrant. The judge dismissed the appellant's claim, rejecting his account as entirely lacking in credible, and found that he

was at no risk on return to Azerbaijan and that his removal would not breach his human rights.

5. The appellant then made further submissions on 31 May 2019 which he claimed addressed Judge Graham's concerns and supported his account. He claimed that one of the documents previously submitted to the First-tier Tribunal, a court verdict of 24 October 2017, had been wrongly translated and he produced a correct translation, together with copies of the two summonses and a new Court Order from Azerbaijan. He also produced two medical reports from Azerbaijan, a report from University Hospitals of Derby and Burton and hospital appointment letters as evidence of his memory problems and mental health problems, together with a statement from himself clarifying various matters and a statement from DM.

6. The respondent, in her letter of 15 July 2019 refusing the appellant's fresh claim, noted that many of the documents submitted had been considered in the previous appeal. The respondent considered there to be no evidence of the qualifications of the person who had provided the new translation of the court document and did not accept that the medical letters confirmed his claim to suffer from memory loss in Azerbaijan. The respondent accepted, from the medical evidence from the UK, that the appellant may possibly suffer from depressive pseudo dementia but did not accept that he had been diagnosed with mental health problems. The respondent gave little weight to the documentary evidence and did not consider that the appellant had demonstrated that he would be at risk on return to Azerbaijan.

7. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Davies on 3 March 2020. The judge had before him an additional medical report, from Dr Scott, referring to the appellant's memory problems, and he heard evidence from two witnesses in addition to the appellant, Shafa Seyidi who had re-translated the summonses and the court verdict document, and the appellant's colleague DM. Judge Davies considered that the claim that the court documents had been translated incorrectly was pure speculation and considered that Ms Seyidi's translation made no sense. He considered there to be no evidence to show that the previous interpreter had been at fault. The judge was not satisfied from Dr Scott's report that the appellant's previously inconsistent evidence was due to treatment received in Azerbaijan. He did not accept that he should give little weight to the inconsistencies previously identified by Judge Graham and he did not accept that the medical evidence before him was such that it showed that the appellant had been unable to give consistent evidence. Judge Davies did not accept that the appellant was a credible witness, and he placed no reliance upon the new documents. He did not consider that the evidence of DM took the appellant's case any further. He accordingly dismissed the appeal on all grounds.

8. Permission to appeal the decision to the Upper Tribunal was sought on grounds which are not clearly expressed but which I summarise as follows: that the judge placed over-reliance upon the case of Devaseelan and the previous judge's decision; and that the judge failed to give proper consideration to the

new evidence, namely the new translation of the court documents, the evidence of DM and the psychology report.

9. Permission to appeal was initially refused in the First-tier Tribunal, but was granted upon a renewed application to the Upper Tribunal.

### **Hearing and Submissions**

10. The matter then came before me for a hearing. Both parties made submissions.

11. Ms Faryl submitted that if the judge had had issues with the new translations of the documents, he should have put his concerns to Ms Seyidi, who was in attendance at the hearing. She submitted that the judge had simply dismissed the further evidence without giving it proper consideration and had dealt with the evidence in a wholly unsatisfactory way. The report from Dr Scott provided evidence of the appellant's memory having been affected by previous ill-treatment in Azerbaijan and explained the inconsistencies in his evidence before the previous Tribunal. The judge acted erroneously in dismissing Dr Scott's report on the basis that he did.

12. Mr Tan submitted that Ms Seyidi's statement went no further than clarifying an ambiguity in the previous translation but did not address the matters raised by Judge Davies in his decision at [24] and [25] where he expressed further concerns about the documentation. If a document did not make sense, there was no evidential value in asking questions of Ms Seyidi when her role had simply been to translate the documents. Mr Tan submitted further that it was not just the documents themselves which raised concerns, but the appellant's own testimony before Judge Graham was that it was easy to obtain false documents in Azerbaijan, and Judge Davies was therefore entitled to consider that himself. Mr Tan submitted that Judge Davies had considered Dr Scott's report in the context of the many inconsistencies identified by Judge Graham in her decision and was entitled to conclude that his report did not address the extent of those inconsistencies. As for DM's evidence, there was limited evidential value in the judge questioning him as he was only able to say how he collected the documents and could not have commented on their reliability.

13. In response, Ms Faryl reiterated that the judge could have sought clarification from Ms Seyidi if he had concerns about the translations.

### **Discussion**

14. The grounds challenge the judge's approach to the new translations of the documentary evidence, to the witnesses and to the medical evidence, essentially asserting that he dismissed the new evidence without seeking further clarification and without giving it proper consideration. It is asserted that that was particularly the case with the documentary evidence, where Ms Seyidi was in attendance as a witness and could have been questioned by the judge. However, I have to agree with Mr Tan that since Ms Seyidi's role had

been simply to translate the documents, it is difficult to see what evidential value there was in questioning her. The judge was entitled to consider that her translations reflected the contents of the documents. Mr Tan referred in particular to the judge's observation that the summons of 24 February 2017 contained no details of the date and time at which the appellant was required to attend at the police station. It was not Ms Seyidi's role to explain why that was the case, and the judge was perfectly entitled to conclude that that was reason to doubt the reliability of the documents themselves. I agree with Mr Tan that Ms Seyidi's evidence went no further than clarifying an ambiguity arising in the previous translation of one of the documents before Judge Graham and that Judge Davies, having had regard to Judge Graham's findings arising from the documents and also her findings arising from the appellant's own testimony before her, and having taken account of the clarification provided by Ms Seyidi, was perfectly entitled to reach his own conclusions on the documents for the reasons properly given at [24] and [25].

15. The same can be said about the challenge in the grounds in relation to MD's evidence before the judge. As with Ms Seyidi, there was no evidential value in the judge questioning the witness MD further, since he was not able to provide evidence about the reliability of the documents. Ms Faryl, in her submissions in reply, agreed with Mr Tan that MD's evidence was simply that he had collected the documents from the appellant's father and he could not attest to the genuineness of the documents. That was the point made by Judge Davies at [25] and clearly did not give rise to any error in his decision. I therefore reject the criticisms made in the grounds to the judge's approach to the witnesses and their testimony.

16. The other main focus of the appellant's challenge to Judge Davies' decision was in relation to the medical evidence which it is asserted was not given proper consideration by the judge. The appellant relies upon medical reports from Azerbaijan which he claims to have already had in his possession, but which he states had been erroneously omitted from the evidence before Judge Graham, together with medical notes and reports, all of which he said confirmed his claim that he suffered from memory loss and mental health problems and explained the inconsistencies in his evidence before Judge Graham. Whilst Judge Davies' assessment of the medical evidence was arguably brief, it is clear that he nevertheless took it into account and had particular regard to the report of Dr Scott when considering the appellant's explanation for the inconsistencies previously arising in his evidence.

17. It is relevant to note that Judge Graham had had some limited medical evidence before her upon which the appellant was relying, which she found to be essentially little more than a record of the appellant's own complaints to his GP but without any diagnosis confirming those complaints. As Mr Tan submitted, it was in that context, and in the context of the extent of the discrepancies and inconsistencies identified by Judge Graham in the appellant's evidence, that Judge Davies considered Dr Scott's report and the further medical evidence, concluding that none of it amounted to confirmation of a medical condition supporting the appellant's explanation. Having myself had regard to the medical evidence from the University Hospitals of Derby and

Burton at pages 65 to 66 of the appellant's appeal bundle and the notes from Greenfield Community Mental Health team in the additional bundle of evidence, I find nothing to suggest that Judge Davies erred in reaching such a conclusion. As for Dr Scott's report, I agree with Mr Tan that it is limited in its evidential value, lacking in specific reference to the appellant's evidence and failing to address historic inconsistencies or recollection of past events, but rather making generalised comments which do not particularly assist the appellant's case, all of which is entirely consistent with the conclusions reached by Judge Davies. Judge Davies was, in my view, entitled to accord the weight that he did to Dr Scott's report and to the other medical evidence and the grounds are little more than a disagreement with his conclusions in that respect.

18. Accordingly, for all these reasons, I reject the assertion that Judge Davies relied exclusively upon Judge Graham's decision without having regard to the new evidence. On the contrary, Judge Davies gave adequate consideration to the fresh evidence and assessed the previous findings of Judge Graham in the light of that new evidence. He gave cogent reasons for concluding that it did not provide reason to depart from the adverse conclusions previously reached. The grounds of challenge are not made out. Judge Davies was entitled to dismiss the appeal on the basis that he did. His decision contains no errors of law and is accordingly upheld.

## **DECISION**

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

### **Anonymity**

The appellant has requested anonymity and I therefore make an anonymity order.

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant without that individual's express consent. Failure to comply with this order could amount to a contempt of court.

Signed: S Kebede  
September 2022

Dated: 20

Upper Tribunal Judge Kebede