



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004723

First-tier Tribunal No: PA/54724/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

BB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Pipe, Counsel instructed by Justice and Rights Law Firm (Ltd)

For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 December 2023

Order Regarding Anonymity

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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Khurram, (the "Judge"), dated 30 June 2023, in which he dismissed the

Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim. The Appellant is a national of Kyrgyzstan of Uyghur ethnicity. His wife and four daughters are dependent on his appeal.

2. Permission to appeal was granted by Designated Judge Shaerf in a decision dated 27 October 2023 as follows:

"The grounds assert the Judge arguably erred in law first in his treatment of the country expert report. At paragraph 20 the Judge referred to the report and noted its description of the general situation and background discrimination against Uyghurs. He directed himself that he had to test and evaluate the expert report and that it was for the Tribunal to make findings of fact. This does not disclose any arguable "M'bunga" error.

Given the Judge's findings of fact about the Appellant's progression in the army, he did not arguably err in law after referring to the expert report and in the same paragraph nevertheless finding the Appellant's claim to have been discriminated against by the army on account of his ethnicity was an embellishment.

The Judge's findings at paragraph 21b of his decision appear not to take into account the Appellant's claim to have been a cattle trader made in response to interview question 20 (not 33-35). It is arguable that the Judge erred in not taking into account the Appellant's claimed business in assessing the credibility of the claimed transaction with Azamat.

At paragraph 21.c of his decision, the Judge asserted that he gave little weight to the medical evidence in line with the jurisprudence in *Tanveer Ahmed* which requires a prior adverse credibility finding if documentary evidence is going to be given little weight for reasons essentially related to the Applicant's general credibility. The Judge then went on to explain that he gave the medical evidence little weight because of the lack of evidence of the underlying evidence recording the making of his complaints about Azamat to the police.

The grounds disclose arguable errors of law and permission to appeal is granted. Except the ground based on claimed discrimination against the Appellant on account of his ethnicity while he was in the military, all grounds may be argued."

3. In his Rule 24 response the Respondent opposed the appeal.

The hearing

4. The Appellant attended the hearing.
5. I heard submissions from both representatives following which I stated that I found the decision involved the making of material errors of law. I set the decision aside.

Error of law

6. Ground (a) asserts that the Judge erred in his treatment of the expert report. The Judge considers this at [20]. He states:

"I have also considered the country expert report provided by the appellant dated 20 January 2023. In particular I have considered the various points referred to therein as set out in the skeleton argument and during submissions by Mr. Pipe. I note the general position on the prevailing situation in Kyrgyzstan, the corruption and human rights issues and background discrimination against Uyghurs. I bear in

mind that it remains my duty to test and evaluate the expert evidence and that an expert is not a judicial decision-maker. Therefore, the findings of fact remain with the Tribunal, and it is the function of the fact-finding Tribunal to assess the facts as found against the relevant legal standards.”

7. The only other reference to the report is at [21.a] where the Judge states that the expert report “is of little assistance” to him in his consideration of the Appellant’s claim to have left his career in the military.
8. I find that there is no consideration of the substance of the report in the decision. Although the Judge states that it is his “duty to test and evaluate the expert evidence” he then fails to do so.
9. At [21] the Judge makes four adverse credibility findings against the Appellant. In relation to ground (b), and the treatment of the evidence relating to his military career, although the expert report corroborated the Appellant’s claim, the Judge finds that the expert report does not assist him. I was referred to [29] of the expert report where the expert stated: “The Appellant claimed he could not follow his career and switched into business due to his ethnicity which is also highly plausible.” It was submitted that to state that the expert report did not assist was erroneous.
10. I find that grounds (a) and (b) are made out. I find that the Judge failed properly to engage with the expert report. He failed to consider the assessment of the Appellant’s account set out by the expert when assessing the Appellant’s credibility.
11. Ground (c) asserts that the Judge failed to take into account material evidence. At [21.b] the Judge states:

“The appellant says his problems began in 2017 when he gave two cows to a neighbour, [A]. I do not consider credible the circumstances in which the claimed cows were sold to [A] to be credible considering, they had never spoken before, notwithstanding being neighbours for about two years. The appellant was also unaware at the time whether the underlying reason for the cows, namely a funeral was true, and he says before this meeting he did not know anything about [A]. In such circumstances, giving two cows worth 900 US dollars to a stranger is not credible.”
12. It was submitted that the Judge had failed to take into account the evidence in the Appellant’s asylum interview. I was referred to Q33 to Q36 of the Appellant’s first asylum interview. The Appellant explained why he had given the cows to A and why he had deferred payment for them. He explained that he had done this before in similar circumstances. I find that Judge failed to engage with the Appellant’s explanation of why he had given the cows to A. I find that to fail to take into account the Appellant’s account when making an adverse credibility finding against the Appellant is a material error of law.
13. Ground (d) asserts that the Judge erred in his consideration of the medical evidence. At [21.c] the Judge states:

“The appellant and his wife have reported Azamat to the local/capital police and prosecutor on several occasions. Whilst it is understandable that he would try to seek protection and justice, it is not credible that they would continue to do so having been made aware of Azamat’s claimed criminal connections, being

physically attacked, and threatened by Azamat, being beaten, and threatened by the police and forced to retract his complaint, and his wife miscarrying as a result of stress. I have considered the medical assessments filed, which mention Azamat in line with the principles of Tanveer Ahmed. I consider them worthy of limited weight, none of the underlying complaints or correspondence with the police/prosecutor's office have been filed, they are self-declaratory, and I have concerns about the appellant's credibility."

14. I find that the Judge has failed properly to assess the medical evidence which consisted of reports from hospital in Kyrgyzstan which corroborated the Appellant's account of the assaults. The Judge has stated that they are of limited weight first because the police/prosecutor documents have not been provided. However, this is no reason not to assess or give weight to the documents on their own merits. He secondly states that they are "self-declaratory" but he has failed to assess the evidence contained in them. There is no reference to the contents of the reports. Thirdly he has attached limited weight to them because he has "concerns about the appellant's credibility". The documents should have been assessed holistically, not given less weight because the Judge had concerns with the Appellant's own credibility. I find that the Judge has materially erred in his consideration of the medical reports.
15. Ground (e) asserts that the Judge has failed to give adequate reasoning and has failed to consider the evidence before him. I find that this ground is made out. The Judge's findings amount to one paragraph where he comments on the expert report, and one further paragraph where he makes four separate credibility findings, the last of which he does not hold against the Appellant as it was not put to him. There is no detailed consideration of the Appellant's own evidence, the documentary evidence, or the expert report. The Appellant's claim for protection has not been adequately considered. I find that the failure to meaningfully engage with the evidence is a material error of law.
16. I find that the grounds are made out. I find that the Judge has failed to engage in any meaningful way with the evidence before him. I find that his finding that the Appellant's claim was "manufactured" is vitiated by material errors of law.
17. I have taken into account the case of Begum [2023] UKUT 46 (IAC) when considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. At headnote (1) and (2) it states:

"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."

18. I carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal. I have found that the decision involves the making of material errors of law in the Judge's failure to adequately assess the evidence. There are no findings which can be preserved. Given the extent of fact finding

necessary, I therefore consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

19. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
20. The appeal is remitted to the First-tier Tribunal to be reheard.
21. The appeal is not to be listed before Judge Khurram.
22. A Russian interpreter will be needed for the resumed hearing.

**Kate
Chamberlain**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 December 2023