Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01373/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 October 2015	**On 25 November 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Francis Gaskin, Counsel, instructed by Elder Rahimi Sols.
For the Respondent: Ms Emma Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 9 January 2015 refusing to grant asylum and to remove the appellant from the UK.

Introduction

3. The appellant is a citizen of Azerbaijan born in 1979. He has worked as a chemist at a [-] bottling plant owned by [-] since about 2007. He claims that he has also worked as a journalist for [-] and [-]. As a journalist, the appellant wrote articles that were critical of the government or members of the government. That drew adverse attention towards him and in May 2010 his editor was warned that the articles should cease or there would be consequences. [-] was shut down in 2010. The appellant ceased to write articles between May 2010 and September 2010 but resumed after that by writing articles on a website operated by [-]. In September or October 2010 there was a threat to his mother who had answered a telephone call intended for the appellant. During April 2012 some bullets in an envelope were placed at the gate of his house as a warning. He then ceased writing.

4. However, in February 2013 the appellant was the target of an assassination attempt when a lorry deliberately drove into and damaged his car. In April 2013 the appellant was attacked and beaten by three people when his car was being repaired. While he was recovering in hospital his house was set on fire and his son died in the blaze. In June 2013 the appellant was detained for a day at a police station and was beaten. He started writing again in August or September 2013. In September 2013 he was arrested from a political meeting which he was attending as a journalist. He was detained and on the second day of his detention he paid a bribe to a person to inform his family of his predicament. His uncle then paid a bribe of $3000 to procure the appellant's release. The appellant signed some blank documents before he was released. The appellant was then assisted by an agent to obtain a UK multiple entry visit visa and left with his wife and two surviving children. They arrived in the UK on 9 November 2013 and the appellant claimed asylum on 12 November 2013.

5. The respondent did not accept that the appellant worked as a journalist or that he had problems with the government. The appellant had failed to show that the car crash and the April 2013 attack had anything to do with the government. The claimed injuries were not substantiated and could have been caused in other ways. The appellant was able to travel twice to Turkey in 2013 with no difficulties.

The Appeal

6. The appellant appealed to the First-tier Tribunal and attended a hearing at Hatton Cross on 8 May 2015. The judge rejected his claim to be a journalist. His work record documents showing employment as a chemist and a correspondent with [-] could not be reconciled and his claim that [-] was shut down in 2010 was not substantiated because the [-] work

record showed continued employment until October 2013. There was no record of employment by [-], despite the fact that the press badge produced by the appellant showed that he was employed by [-]. The reference from [-] states that the employment commenced in May 2007 whereas the work record shows that the employment commenced in July 2007. The letter was written after the appellant fled the country but makes no mention of the closure of [-]. There was no evidence that the son said to have been killed in the fire was ever born, much less that he died. The appellant was equivocal about who was responsible for the fire. He did not tell police that he believed that the fire was linked to his writing.

7. The judge found that the damage to the front of the car in the photographs produced was irreconcilable with the appellant's statement in the screening interview that he was struck from the back and the damage did not appear consistent to an experienced lawyer and judicial officer with a head-on or glancing collision with a large lorry travelling at speed. There was no clear and consistent chronology as to when the appellant might have ceased to write and when he might have resumed journalism (May-September 2010 in the witness statement but 2011 in the asylum interview). If there was a threat in September 2010 then it was surprising that the appellant persisted in his writing between 2011 and 2013. The appellant also claimed to have ceased writing in April 2012 before starting again in August or September 2013 and therefore there was no reason for the persistent threats and assaults alleged between those dates. It was highly unlikely that the appellant would continue to write critical articles in his own name after a series of potentially fatal attacks. The judge found that the appellant had failed to prove the core of his account.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal but that was refused by First-Tier Judge Shimmin on 25 June 2012. The appellant renewed his application to the Upper Tribunal and permission to appeal was granted by Upper Tribunal Judge Pitt on 24 August 2015. It was arguable that the judge had misunderstood aspects of the appellant's evidence relating to his employment as a journalist and that the credibility findings were therefore undermined. The grounds were arguable.

9. In a rule 24 response dated 10 September 2015, the respondent sought to uphold the judge's decision on the basis that there was no evidence that the appellant was qualified or indeed a trained journalist. The judge gave sustainable reasons for finding that the employment records were not reliable and there were a number of discrepancies between the appellant's account and the information contained in the documents. The appellant's account was neither consistent or plausible.

10. The appellant made an application at the oral hearing on 23 October under rule 15 (2A) to adduce new evidence, namely country background information regarding employment history books in Azerbaijan.

11. Thus, the appeal came before me.

12. If the Upper Tribunal identifies a material error of law then the appeal should be remitted for a fresh hearing.

Discussion

13. Mr Gaskin submitted that the cumulative effect of a series of errors by the judge is a misunderstanding of the appellant's case. The evidence from the Labour Code is only capable of interpretation that an individual may have separate work books for each employment. Employers must store and keep the registration book and give it to the employee when the contract is terminated. There is a very poor translation at page 18 of the appellant's bundle and holding that document against another document was too dangerous. [-] and [-] were the same entity. The press badge (D20 in the respondent's bundle) has both organisations on the face of the document. The judge has not referred to the photograph at page 11 of the appellant's bundle which shows the appellant working as a press journalist. There is a photograph of the damage to the car at page 12 of the appellant's bundle and the reference in the screening interview to damage at the back of the car was just a mistake. The damage appears to the front and the remainder of the car cannot be seen. The judge appears to be giving an expert opinion from a limited photograph and that is not permissible. It was unfair to describe the answer at Q134 of the asylum interview as evasive.

14. Ms Savage submitted that the findings at paragraphs 15-16 of the decision were properly open to the First-tier Tribunal. The judge considered the documents in the round. It was open to the judge to find that the work records were inconsistent. The documents cannot be reconciled. The Labour Code is of very limited assistance because it does not expressly support what the appellant is asserting and does not explain the discrepancies. The judge was aware that [-] was linked to [-] as shown in paragraph 4 of the decision. There is no requirement for the judge to refer to every piece of evidence. The judge considered the evidence in the round and was entitled to consider the articles as a whole. The judge was entitled to reach the conclusions stated in relation to Q134 of the asylum interview. The grounds are no more than a disagreement with findings that the judge was entitled to reach.

15. The appellant asserts that employment history books or work records can be issued simultaneously for different employments in Azerbaijan. The employment history books submitted by the appellant confirm that the appellant worked as a journalist. I find that the appellant has submitted one work record for each employment and the judge has failed to give adequate reasons for the finding in paragraph 16 that the work records submitted by the appellant cannot be reconciled. That is a material error

of law. I have not found it necessary to consider the fresh evidence although that will be relevant at the de novo hearing.

16. The appellant asserts that the judge failed to understand that [-] is part of [-]. I find that the judge failed to mention that the press badge stated both [-] and [-] and did not mention the photographic evidence that appears to show the appellant working as a journalist. At paragraph 4 of the decision, the judge referred to [-] as a successor of, or former owner of, [-]. However, at paragraph 17, the judge expressed concern that the [-] work record extended to October 2013 and that there was no record of employment by [-]. The judge then stated that, "*Weight is added to that conclusion by the circumstances that the appellant purports to produce a press badge showing that he is employed by [-]. This, as an employer, ought to be reflected in a work record.*"

17. I find that the judge has not properly considered the consequences of [-] being in effect, part of the same organisation as [-]. The absence of a separate work record from [-] was not an adverse credibility factor that could properly be taken into account by the judge. I also find that the judge has failed to consider the apparently highly relevant photographic evidence showing the appellant working as a journalist or to mention that the press badge refers to both [-] and [-]. I find that the judge has failed to properly consider the weight of the evidence indicating that the appellant did work as a journalist in Azerbaijan and that is a material error of law.

18. The appellant asserts that the judge materially erred by purporting to have expert knowledge in relation to the causation of the car accident. I find that the judge was entitled to consider all of the evidence in relation to the car accident and to make findings. However, the judge has not given any reasons for the finding that the damage to the car shown in the photographs does not appear to be consistent with a head on or glancing collision with a lorry travelling at speed. There might have been something from the photographic evidence that was clear to *an experienced lawyer and judicial officer* but the judge has not explained what it was. That finding was important in terms of assessing the appellant's credibility and the failure to give reasons for the finding is a further material error of law.

19. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

Decision

20. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

21. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed:  Date: 20 November 2015

Judge Archer
Deputy Judge of the Upper Tribunal