



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07440/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Stoke
On 10 August 2017**

**Determination Promulgated
On 15 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**Mr K R
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Parker Rhodes Hickmotts Solicitors.

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1 This is an appeal brought by the Appellant against the decision of Judge of the First-tier Tribunal I F Taylor dated 2.2.17 dismissing the Appellant's appeal against the Respondent's decision of 8.7.16 refusing his claim for protection. The Appellant is a national of the Russian Federation, and last entered the United Kingdom on 10.1.16, arriving at Heathrow, where he claimed asylum.

- 2 The Appellant's claim for protection was on the basis that he feared serious harm from non-state agents, principally Colonel Valery Borisovich Platanov, said to be an agent of the FSB (Federal Security Service), and Gagarina Nelli Gennadievna, the Mayor's 'Deputat' (City Councillor), in the town of Dzerzhinsky, in the suburbs of Moscow. The Appellant owned a construction company, and had entered into a construction project in the town of Dzerzhinsky.
- 3 Ms Gennadievna was involved in the project in a capacity that does not need to be examined in this decision. The Appellant's case was that Ms Gennadievna was corrupt and that she had sought to involve one Colonel Platanov in the project. It was said that Platanov had attempted to coerce the Appellant into signing further documents which would have resulted in the Appellant surrendering his own financial interest in the project, but whilst still bearing the burden of construction. It was alleged that Platanov had physically assaulted the Appellant on three occasions in 2012, 2014, and 2015.
- 4 The Appellant had relied upon a variety of documents regarding the construction project and the contractual relations between the parties in support of his claim for protection.
- 5 The Judge had made the following positive findings:
- '26 The Appellant relies upon a substantial amount of documentary evidence in relation to his building project. I do not doubt that there was corruption involved in this building project...'
27. Overall, I am satisfied that the Appellant has been the victim of corruption leading to substantial monetary loss to himself in relation to the building project in Dzerzhinsky city.'
- 6 However, the Judge dismissed the Appellant's appeal for the following reasons, in summary:
- (i) The Judge found that in the initial contact and asylum registration form (ICARF) (aka screening interview) there had been no mention of a Colonel Platanov or his role in the construction of the building. The Judge found it 'inconceivable' that if Colonel Platanov existed and was involved in the building project in the way described by the Appellant that he would not be mentioned at section 4.1 of the form. The Judge held that this matter 'significantly undermines the credibility of the Appellant's account' [20].
 - (ii) The Judge noted that the Appellant had been in the United Kingdom previously, from 16.7.15, and had visited a number of other European countries at the end of 2015, before returning to Russia on 9.1.16, where he remained for one day, before flying back to the United Kingdom on 10.1.16, and claiming asylum. The Judge held that the Appellant's failure to claim asylum in the prior visit to United Kingdom represented behaviour as defined under section 8

of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to which he would have regard as diminishing the Appellant's credibility. Although the Appellant claimed that his return to Moscow was an attempt to see if things had settled down, and on finding on his arrival that they had not, and immediately returned to the UK, the Judge did not accept this explanation for the Appellant claiming asylum only on return to the UK. The Judge noted for instance that the Appellant had continued to receive threats from Platanov during his earlier visit to the UK.

- (iii) The Judge found that the Appellant's account of meeting a former classmate in Moscow on 9.1.16, who informed the Appellant that Platanov was still interested in him, was implausible, and the Judge noted that there was no witness evidence from this former classmate to support the Appellant's contention.
- (iv) The Judge noted that amongst the Appellant's documentation there was no reference 'at all' to a 'Colonel Platanov'. The Judge noted there were two documents referring to a V B Platanov, and that this individual was stated to be president of a company called 'Agricultural Holding Lubyanka', created for the purpose of implementation of the Federal Program of the Ministry of Agriculture of the Russian Federation in order to provide assistance to servicemen in the organisation of their personal farm enterprises. However, the Judge held that these letters referencing V B Platanov did not assist the Appellant.
- (v) The Judge held at [27]:

"... I am not satisfied on the evidence before me that Colonel Platanov is a real person and in the alternative if he was a real person, that he had any involvement with this building project at all. I am satisfied that the Appellant had referred to Colonel Platanov for the first time in his asylum interview in an attempt to strengthen what is in my estimate a weak case."

7 Grounds of appeal dated 10.2.17 assert (in summary) that:

- (i) It was unclear whether and for what reasons the Judge rejected the Appellant's claims of being attacked in 2012, 2014, 2015.
- (ii) The Judge had erred in his assessment of the evidence contained in the screening interview, which made reference to both a Mayor, and a Major, thus evidencing that more than one person was being referred to in the screening interview, even if the specific name of Colonel Platanov was not mentioned. The grounds suggested that the Judge had failed to apply the relevant guidance in the case of JA (Afghanistan) v SSHD [2014] 1 WLR 4291, which gave cautionary advice as to the weight to be attached to interviews in the asylum process, particularly bearing in mind the circumstances in which

such interviews might take place. The grounds asserted that the purpose of the screening interview was to take brief details of the claim only, and it was improper for the Judge to have placed significant weight on the absence of a direct reference to Colonel Platanov in the screening interview.

- (iii) The grounds also assert that the Judge had erred in law in failing to properly apply s.8 of the 2004 Act by failing to take into account the fact that the Appellant claimed asylum immediately upon his most recent arrival in the United Kingdom, and that he had returned to Russia believing that the threat against him had abated.

8 Permission to appeal was granted on all grounds by First-tier Tribunal Judge Hodgkinson in a decision dated 24.5.17

9 I heard submissions from both parties. Having perused the documents in the Respondent's bundle, I noted that there was in fact a document at page D10, dated 4.9.12, from a government department addressed to the Appellant and to Ms Gennadieva, referring to the construction project, and a 'verification process' which had involved 'Platanov Valeriy Borisovich', Chairman of the General Meeting of the Veterany (*sic*) Krapovyie Berety LLC members. The existence of this document within the papers, referring to the full name of Platanov, might suggest that the Judge had overlooked one element of the corroborative evidence on which the Appellant relied.

10 The Judge's lack of reference to this document is not a matter that is raised in the Appellant's grounds of appeal. However, upon my drawing the existence of this document to the parties, it becomes, in my view, a Robinson obvious point for the Appellant to take, that the Judge had failed to take into account this relevant evidence regarding Platanov's involvement in the construction project. Mr Holmes sought permission to rely upon this additional matter, and, with no objection from Mr McVeety, I granted permission for this to be argued as an additional ground of appeal.

11 Mr Holmes addressed me on the content of the screening interview, and the Judge's failure to take proper account of the contents of the same. It is apparent at question 4.1 of the screening interview that the Appellant mentioned, as part of his fear of harm in the Russian Federation, the role of the Mayor of the town, and also the involvement of a Major. Both parties and I agreed that the words Mayor and Major were distinctly set out at that question in the screening interview, rather than the evidence making reference only to the Mayor of the town. Although the reference to the rank of Major is clearly distinct from the rank of Colonel, the reference to a person of military rank at all in the screening interview is clearly capable of suggesting that this represented a reference by the Appellant, at the outset of his claim, in the screening interview, to the person he later and identified as FSB officer Colonel Platanov.

- 12 Further, Mr McVeety helpfully and very fairly indicated to the Tribunal, following his review of the note of evidence taken by Ms Simbi, Presenting Officer attending at the First-tier hearing, that no question appeared to have been put to the Appellant during the course of the hearing before Judge about the absence of any reference to Colonel Platanov in the screening interview. I note that this issue was also not taken in the Respondent's refusal letter dated 8.7.16.
- 13 A further potential issue therefore arises, that the point taken by the Judge at paragraph 20, 26, and 27 about the absence of a reference to Colonel Platanov in the screening interview, does not appear to have been one which was raised by the Judge with the Appellant at the hearing. Mr McVeety did not object to Mr Holmes seeking to raise this matter as a challenge to the Judge's decision on the grounds of procedural fairness. Indeed, Mr McVeety agreed that, given the significance that the Judge had clearly attached to the absence of a reference to Colonel Platanov in the screening interview, when considered with the clear reference to a person of military rank in the screening interview, and a reference at page D10 of the Respondent's bundle to the full name Platanov within the Appellant's documentation, all amounted to a material error of law on the part of the Judge, in failing to have adequate regard to the evidence before him, and/or proceeding unfairly.
- 14 I find that such errors exist within the Judge's decision. I also find that the Judge's decision that the other two documents in the Appellant's bundle, referring to V B Platanov, gave no assistance to the Appellant, was an approach which, if not necessarily irrational, at least represented a failure to have proper regard to the evidence before the Judge. Documentation identifying a V B Platanov, apparently associated with some sort of veterans association for servicemen, is clearly capable of lending weight to the Appellant's submission this was a reference to Colonel Platanov, an FSB government agent.
- 15 I also find that the Judge failed to make specific findings of fact as to whether the Appellant had been attacked in 2012, 2014, and 2015.
- 16 Although, as mentioned above, the Judge gave other reasons for dismissing the appeal, I find that the errors of law I have identified above are such that it cannot be said that the Judge would inevitably have made the same decision, had such errors not been made.
- 17 With agreement of both parties, therefore, I find that the decision of the Judge involved the making of a material error of law.
- 18 I set aside the decision of the Judge.
- 19 Again, with the agreement of the parties, I direct that the findings of the Judge at paragraph 26 and 27 of the Judge's decision as set out in paragraph 5 above, are not vitiated by any error of law, and are to be retained, notwithstanding the setting aside of the Judge's decision.

- 20 Clearly, however, further findings of fact need to be made in the present appeal in order to determine any risk of harm that may arise to the Appellant. I find that the degree of fact finding required is such that it is appropriate to remit the appeal to the First-tier Tribunal, subject to the findings of fact set out at paragraph 5 above being retained.
- 21 The matter is to be listed before a Judge of the First-tier Tribunal, other than Judge I F Taylor.

Decision:

- 22 The decision involved the making of a material error of law.
- 23 The decision is set aside.
- 24 The matter is remitted to the First tier Tribunal.
- 25 Findings at para 5 above are to be retained.

Anonymity Direction

A protagonist in this account is said to be an officer of the Russian Federation FSB. I have anonymised the Appellant in this decision, but it has been unavoidable to name the alleged FSB agent. Until such a time as this appeal is finally determined, at which time the relevant Judge may at their discretion review the direction I now make, I find that it is in the Appellant's best interests to make an anonymity direction in this matter.

Thus, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed:

Date: 14.8.17



Deputy Upper Tribunal Judge O'Ryan