



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

Appeal Number: IA/06732/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 April 2015**

**Determination
Promulgated
On 22 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MR EVGENY KALACHEV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel instructed by Arlington Crown Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Russia and his date of birth is 22 February 1974.
2. The appellant came to the UK on 6 June 2013 having been granted entry clearance as a visitor on 13 May 2013. He returned to Russia on 11 June 2013 and re-entered the UK on 30 August 2013. He made an application for discretionary leave outside the Immigration Rules on 19 November

2013. The application was refused by the Secretary of State in a decision of 16 January 2014.

3. The appellant appealed against the decision of the Secretary of State and his appeal was dismissed by First-tier Tribunal Judge M R Oliver in a determination that is dated 3 September 2014 which followed a hearing at Richmond on 12 August 2014. Permission was granted to the appellant to appeal by Judge of the Upper Tribunal Kopieczek on 10 February 2015. Thus the matter came before me.
4. The appellant's evidence is that in May 2013 when he was living in Moscow with his mother he was approached by two men who introduced themselves as police officers and they informed the appellant that they were aware that the appellant's mother was in the process of dividing a valuable country home between the appellant and his sister. They attempted to extort money from the appellant. The appellant believes that the men are corrupt members of the Russian police force or at least have very strong connections to the Russian authorities because of their knowledge of the appellant and his personal affairs. The appellant and his mother decided that he should move out and rent a flat in the northern part of Moscow in order to avoid these people. The appellant hoped that they would be unable to locate him there.
5. The appellant returned to Russia from the UK on 11 June 2013. On 13 June 2013 whilst the appellant was at work the door of his flat was forced open. The appellant returned to find the same two men inside. They asked the appellant for money. He was threatened by the men who told him that they had found a photograph of the appellant with his ex-boyfriend and they informed the appellant that they would disclose his sexuality and put the appellant in prison should he not pay them money. The appellant was again threatened by the two men on 22 June 2013 when he was driven to an unknown place and threatened with a gun.
6. The appellant was scared and he borrowed money in order to pay the men in the hope that he would be left alone. On 20 July 2013 he was able to give them 3,000 euros and on 1 August 2013 he gave them 300,000 rubles. The men assaulted the appellant and demanded that he should give them more money. The appellant returned to the UK (his visa did not expire until 13 November 2013). The men have visited his mother's home since the appellant fled Russia demanding to know of the appellant's whereabouts.

The Decision of the First-Tier Tribunal

7. The judge heard evidence from the appellant and a witness Ms Channon both of whom had prepared witness statements.
8. The judge made findings at [17] - [21] of the decision. The judge found that there was no evidence that the police as a force were institutionally involved in the claimed crime. He found that the appellant did not know if

the men were police officers or simply had contact with corrupt police officers. He found that the appellant had not availed himself of the opportunity of seeking the protection of the police, despite his lawyer's advice the appellant delayed making an application until 19 November 2013 despite having returned to the UK on 30 August 2013 and he did not explain why he delayed making an application. The appellant's claim to believe that the men had connections with the police was based on his assumption that the information they had had came from the confidential police database but he has been vague about what information they had obtained from this source.

9. The judge found that the appellant had described "in general terms that it was his financial situation, which included his mother's plans to settle property in part upon him". The judge found that no reason had been advanced for the interest in the disposition of the appellant's mother's personal property and that the explanation given by the appellant for the lack of attention paid by the men to his mother was unconvincing. The judge found that the men were happy to use violence on the appellant but not his mother who had ownership of the property.
10. The judge found that the fact that the appellant recognised that he does not satisfy the criteria of the 1951 Refugee Convention did not explain why he did not avail himself the opportunity of making an application for humanitarian protection (see [20]). The judge found at [21] that the appellant's evidence relating to his sexuality was an "afterthought".

The Grounds Seeking Permission to Appeal and Oral Submissions

11. I heard oral submissions from Ms Holmes who submitted that she was not in a position to defend the determination because it was clear that the judge had not made findings of fact in relation to the evidence of Ms Channon and secondly that the judge was wrong to conclude that the appellant's sexuality was an afterthought because this was an issue that the appellant had raised in his initial application to the Secretary of State.

Error of Law

12. In my view the judge made an error of law for the reasons identified by Ms Holmes. It is clear that Ms Channon's evidence is capable of being corroborative and the judge did not make any findings in relation to this evidence. It is also a fact that the appellant raised sexuality in his initial witness statement which was submitted along with his application and the judge made a factual error in concluding that it was an afterthought. The errors identified above impact on the judge's assessment of credibility generally. The error is such that I set aside the decision of the Judge pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and remit the case to the First-tier Tribunal to be heard afresh pursuant to Section 12(2)(a)(i) having heard representations about venue and having had regard to paragraph 7 of the Practice Statement of the IAC of the FtT and UT of Senior President of Tribunals of 13 November 2014.

Signed Joanna McWilliam

Date 15 April 2015

Deputy Upper Tribunal Judge McWilliam