



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

Appeal Number: AA/11491/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 July 2016**

**Decision & Reasons Promulgated  
On 26 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**S D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Panagiotopoulou, Counsel, instructed by Yemets Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of the Ukraine born on [ ] 1964. He arrived on the most recent occasion on 15 February 2015 and claimed asylum on arrival. The basis of his claim is that he was a colonel in the Ukraine military labour forces based in Crimea and had been in the forces for over 30 years. However, he resigned in October 2014 as a result of an event that had befallen him, namely that following the Russian takeover of Crimea in late 2014, initially his wife received threatening text messages and telephone calls as a consequence of which she fled the country.

Subsequently the Appellant was advised by a member of the SBU, the Ukrainian security service, that he would be in difficulty if he continued to make clear his criticism of colleagues in the military including senior officers whom he considered to be traitors because they supported and assisted the Russian forces, despite their public claims otherwise.

2. The Respondent refused his application for asylum on 7 August 2015 and the Appellant appealed against this decision. His appeal came before Judge of the First-tier Tribunal Mill for hearing on 21 April 2016. In a decision dated 4 May 2016 the judge dismissed the appeal.
3. An application for permission to appeal was made on 16 May 2016 in time on the basis of the following grounds: firstly, that the judge made material errors of fact and failed to have regard to relevant factors. It was asserted that the judge erred in his understanding of the Appellant's claim for seven reasons.
  - (i) at paragraph 30.a. the judge considered that the Appellant had failed to adequately explain his move from Crimea to Odessa. However, in so finding the judge failed to take account of the Appellant's response at 4.2 of his screening interview that he and other naval officers were evacuated from Crimea to Odessa after the crisis unfolded
  - (ii) at 30.a. the judge regarded it as important that the Appellant did not seek to flee from Ukraine after the initial threats that he received but in so doing failed to have regard to the Appellant's account that he would disappear if he did not resign from the armed forces and that having resigned he considered that the threat to himself had been eliminated
  - (iii) at 29.k. of his decision the judge finds that the Appellant had been unable to explain why he had not contacted anyone in Ukraine to provide information regarding him speaking out against those who had acted to support the Russian cause. However, the Appellant in oral evidence stated he had no family remaining in Ukraine and he did not believe that his SBU source would be able to assist him as he would be concerned about his own safety and had only agreed to meet the Appellant in person in Kiev in February 2015.
  - (iv) at paragraph 30.b. the judge states that the Appellant believed if he resigned he would not receive any threats but failed to advise as to any specific threat that he had received. The point was made that this is incorrect as the Appellant had specifically stated he had been threatened if he did not resign and that he would be sent to Luhansk or Donetsk where he would disappear, which he perceived as implying he would be killed in the conflict or something more sinister.
  - (v) it was submitted that the judge erred in failing to assess the Appellant's credibility in the round. Nowhere in the judge's assessment is there any consideration of the answers given by him in interview or indeed his screening interview which were highly consistent with the account as set out in his statement.

- (vi) the judge erroneously assumed that the Appellant ought to have known why his attendance at the public prosecutor's office had been requested [30.h.] but the Appellant was not asked by either of the parties or the judge at the hearing to speculate as to the reason for such a request and it was unjust for the judge to make an adverse credibility finding on this basis;
  - (vii) the judge's conclusion at 30.n. that the Appellant is one of many thousands of people that may have or have criticised those who defected to support the Russian cause in Crimea fails to have regard to the Appellant's prominent position in the naval forces in Ukraine and it cannot rationally be said that his criticism of those who defected would carry the same weight as an ordinary civilian.
4. The second of the grounds of appeal is that the judge failed to give any or any adequate reasons for his findings, in particular rejecting the Appellant's claim to have spoken publicly against specific individuals, in finding that the Statement of Additional Grounds is not consistent with the Appellant's stated position in the Asylum Interview Record, in finding that the Appellant is not wanted by the Ukrainian government because this is not evidenced, e.g. by an arrest warrant, and in finding that the Appellant had been vague in relation to a range of other matters at 30.k.
  5. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 27 May 2016 on the basis that it was arguable that too much emphasis was placed by the judge on (a) the Appellant's failure to obtain corroborative evidence from the Ukraine, which he has no requirement to do; (b) his wife's failure to give evidence, which may not have been helpful if she was here at the relevant time and (c) his failure to clarify matters that had not been put to the Appellant and accordingly there was a material error of law in the way the evidence was assessed.

### *Hearing*

6. The appeal came before me for hearing on 7 July 2016 where I heard submissions from Ms Panagiotopoulou on behalf of the Appellant and Mr Whitwell on behalf of the Home Office. Ms Panagiotopoulou made submissions in line with the grounds of appeal. She drew my attention to the fact that the judge had accepted material parts of the Appellant's claim, in particular that he had been a high-ranking naval officer and served in the Ukraine military for 33 years and that latterly he had been head of fuel supplies in the Ukraine and at 29.k. of his decision the judge expressly accepted that the Appellant was likely to have criticised those generally who assisted the Russian cause and did defect.
7. The judge then went on to find that he was not satisfied that the Appellant had made such criticism publicly or to any source that would cause him any difficulty and the judge relied on an absence of documentary evidence to support his claim and on that basis, amongst others, found the Appellant not to be credible.

8. I found that the First tier Tribunal Judge erred materially in law and announced my decision at the hearing. I now give my reasons.

*Decision and reasons*

8. I find the judge erred materially in law because, having accepted that the Appellant had a high profile in the Ukrainian Navy and that he was likely to have criticised individuals who assisted the Russian cause and did in fact defect, I do not find that it was properly open to the judge to go on to say that the Appellant did not make any such criticism either publicly or to any particular source that would cause him difficulty. There would have been little point in the Appellant's criticism, for example, of individuals of lower ranks and I accept that the targets of his concern and criticism would have been his fellow officers of relatively high rank.
9. I also note in this respect that the Appellant named specific individuals in his asylum interview and, as is recorded by the judge at 29.a. and at 29.d. two online petitions were produced and translated at pages 25-31 of the Appellant's bundle in which two of these individuals are named and identified as having betrayed Ukraine. The judge appears not to place any weight on these because of the fact that the petitions were only initiated in 2016, which postdates the Appellant's claim. However, in my view it adds substance to the Appellant's claim in terms of supporting what he says as being likely to be true that those two high-ranking Ukrainian officers, Commander Admiral Gayduk and Admiral Tymchuk, had indeed supported Russia as opposed to Ukraine. I further find that the judge erred materially in law in failing to clarify matters with the Appellant and then taking the point against him in respect of his credibility. This is arguably in breach of natural justice and does render as a whole the judge's credibility findings unsound.
10. In relation to this second point Mr Whitwell did not seek to argue that the judge was justified in so doing, if indeed this is what he had done. In light of my conclusions above, I find that there is a material error of law which vitiates the findings and conclusions of the First-tier Tribunal Judge.

**Notice of Decision**

11. Therefore I allow the appeal to the extent that it is remitted back to the First-tier Tribunal to be heard by a judge other than First-tier Tribunal Judge Mill.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date **26 July 2016**

Deputy Upper Tribunal Judge Chapman