



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02709/2018

THE IMMIGRATION ACTS

Heard at Field House
On 10 August 2018

Decision & Reasons Promulgated
On 22 August 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[S B]

(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs. K. Degirneçnci of counsel, instructed by Yemets Solicitors

For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Ukraine. It is his case that he arrived in the United Kingdom on 19 August 2017. He was then encountered by the Immigration Service on 3 January 2018 and applied for asylum on 12 January 2018. His application was refused on 7 February 2018.

2. He appealed against this decision and First-tier Tribunal Judge Cooper dismissed his appeal in a decision promulgated on 27 April 2018. The Appellant sought permission to appeal and First-tier Tribunal Judge Murray granted him permission to appeal on 4 June 2018.

ERROR OF LAW HEARING

3. The Home Office Presenting Officer submitted that the First-tier Tribunal Judge was not required to put every adverse point to the Appellant but accepted that in the current appeal the number of issues which were not put to the Appellant had the effect of materially undermining her decision. He also accepted that there was merit in paragraph 14 of the grounds. As a consequence, it was not necessary for counsel for the Appellant to do more than rely on the Appellant's grounds of appeal.

ERROR OF LAW DECISION

4. It was the Appellant's case that he received a notice that he was liable to be called up for compulsory military service and was asked to attend for a medical examination in April 2017. However, at that time he was still at college and, therefore, he obtained a certificate from his college to confirm that he was still a student and gave this to the military office. It was also his case that he then failed his exams and was not able to continue his education. As a consequence, he was sent a further summons on 23 August 2017. He was already in the United Kingdom by that time and his mother had been given the summons.
5. The Appellant also submitted a court decision which stated that on 26 January 2018 he had been sentenced to two years imprisonment for failing to attend for military service. The Home Office Presenting Officer accepted that this document was central to the Appellant's appeal.
6. In paragraph 90(iv) of a very detailed decision, First-tier Tribunal Judge Murray found that, although the Appellant was of an age at which he would be liable to undertake military service, he had not been served with any summons to do so, was not a reservist and had not been convicted of any offence.

7. However, I find that the manner in which she reached that decision disclosed a number of errors of fact and law. For example, in paragraph 64 of her decision, the First-tier Tribunal Judge noted that the Appellant had not mentioned the summons received by and signed for by his mother in August 2017. However, in his response to question 49 of his substantive asylum interview he said that he received a first summons in Spring 2017 and the second one was sent in the Autumn after he had left Ukraine. In paragraph 86(viii) the First-tier Tribunal Judge also found that there was a discrepancy between the summons which stated that it was from Pystomyly PBK and the court decision that stated that he had signed for a summons from Lychaikiv-Zaliznychny. When doing so she failed to take into account that at paragraph 82 of her decision she had previously noted that the expert, Professor Galeotti, had confirmed that the Pystomyly District Court was in the Lychaikiv-Zaliznychny United Military Commissariat and that she had given this weight. (More precisely, Professor Galeotti had explained in paragraph 15 ii of his report that the Appellant's home village was within the catchment area of Pustomyty District Court and also the Lychaikiv-Zaliznychny United District Military Commissariat.)
8. In addition, and arguably more importantly, First-tier Tribunal Judge Cooper relied on a number of inferences drawn from the evidence when she had failed to put potential discrepancies to the Appellant or require the Home Office Presenting Officer to put them to him. For example, at paragraph 53, she accepted that there may be a plausible explanation for the Appellant's parent's names being on the tenancy agreement for the address at which he lived with his girlfriend. She stated that she accepted that the discrepancy had not been put to the Appellant in cross-examination but did not explain why she had not given permission for more evidence to be taken on this point when this came to light or why she proceeded without taking further evidence.
9. In addition, the Appellant had not been asked to explain why the second summons had not been sent to the United Kingdom at an earlier date and yet the failure to provide such an explanation was taken against him in paragraph 64 of the decision. In his substantive asylum interview he said that he had not known that he needed to provide the second summons at that point but no question was posed at the hearing about why the documents had only been sent to him three weeks before the hearing date.

10. The First-tier Tribunal Judge also relied upon the fact that the expert had not been asked to comment on the second summons; the implication being that this was deliberate and undermined the validity of that document. Again, no questions were asked in relation to the instructions given to the expert.
11. In paragraph 66 the First-tier Tribunal Judge also relied on the fact that the summons contained no warning regarding the consequences of non-compliance when paragraph 5.3.2 of Country Policy and Information Note *Ukraine: Military Service* stated that it should have. Again, the Appellant was not asked about this and given any opportunity to comment.
12. The First-tier Tribunal Judge also drew her own inference from the contents of the question 96 and response 96 of the Appellant's substantive asylum interview. When asked whether he understood that the Refugee Convention did not offer protection for those who are draft evaders, he replied, "But they didn't hand me a letter about a criminal offence". The First-tier Tribunal Judge inferred from this that the Appellant was aware that evidence of a criminal conviction might result in a successful grant of asylum, although he confirmed at Q 97 that he was only claiming on the basis that he had been called up for MS". There was no evidential basis for this inference. Without asking for clarification, the finding made by the First-tier Tribunal Judge was mere speculation.
13. In addition, in paragraph 83 of her decision the First-tier Tribunal Judge relied on the fact that Article 336 of the Criminal Code contains the offence of evading a mobilisation and Article 335 contains the offence of evading the draft. However, I noted that in paragraph 15 iii the expert refers to Article 336 as relating to evading a mobilisation call up and states that two years is the appropriate tariff for an Article 336 offence.
14. As a consequence, there were errors of law in First-tier Tribunal Judge Cooper's decision.

Decision

- (1) The appeal is allowed.

- (2) The decision of First-tier Tribunal Judge Cooper is set aside.
- (3) The appeal is remitted to the First-tier Tribunal at Taylor House to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Cooper.

Nadine Finch

Signed

Date 10 August 2018

Upper Tribunal Judge Finch