Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03752/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Oral decision given following hearing	
On 10 October 2019	**On 26 November 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR M
(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 N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of Ukraine who appeals against the decision of First-tier Tribunal Judge Greasley promulgated on 12 July 2019, following a hearing at Hatton Cross two days earlier on 18 July in which the appellant's appeal against the respondent's decision refusing asylum and was dismissed on Article 3 human rights grounds.

2. Put very briefly, the basis of the appellant's application was that he would be at real risk on return of being imprisoned for draft evasion.

3. The grounds, while succinct to the extent of concentrating on the relevant issues are nonetheless lengthy, because there are a number of areas where the judge is said to have fallen into error. When granting permission to appeal, First-tier Tribunal Judge Landes also gave lengthy reasons for finding that the majority of the grounds are arguable. It is not necessary, by reason of what is set out below, to list Judge Landes' reasons in any detail.

4. At the hearing before this Tribunal, on behalf of the respondent, Mr Bramble very fairly stated as follows:

> "I agree with the error of law as set out in the grant of permission, on grounds 1, 2, 6 and 5 in that order.
>
> The first ground regards the adverse credibility findings on the evidence. This ground relates to the judge's finding regarding when the appellant's sister became aware and what actions she took with regard to the appellant's case. The sister's account was consistent with what was said by the appellant, and so this was not in fact an inconsistency [as the judge had found].
>
> With regard to ground 2, that the judge had failed to take into account when dealing with problems arising out of having a Russian interpreter within the screening interview the evidence recorded within the interview itself that problems had arisen. That was an error also.
>
> It is accepted on behalf of the respondent that the judge applied a higher standard of proof than required in protection cases for example where the judge had found that the appellant 'could not find' his actual call up papers (see at paragraph 53).
>
> Finally, with regard to ground 5, that the judge failed to consider the relevant country guidance, the premise of this ground is that if there had been a finding that he would go to prison, the judge has ignored what prison conditions are like in the Ukraine (with reference to paragraph 67). This ground is also accepted."

5. In my judgment, Mr Bramble was correct to make these concessions. I have in mind in particular that at paragraph 53 the judge had stated in terms his finding "that credibility issues are especially live in this appeal". Accordingly, it was very important that his credibility findings were sustainable because in a case which might be finely balanced it is always difficult to know precisely what material tips the balance one way or another. At paragraph 54 the judge found that the appellant had changed his evidence significantly about when he had learnt about the sentence on him, but as Judge Landes when granting permission to bring this appeal correctly stated:

> "The evidence at [54] which the judge said seriously damages the appellant's credibility is not in fact an inconsistency. This is because there is no inconsistency between the appellant's sister obtaining the court verdict in January [and] the appellant [not] being informed about it until one month later. The appellant does not appear to have changed his evidence about when he was informed of the verdict."

6. Also with regard to the difficulties concerning the interpreter, the appellant had immediately in his screening interview corrected his answer by explaining that Russian was not his first language and he also had stated that he had difficulties at the interview itself and gave his explanation as to why it was that he said he could speak Russian. This is dealt with at paragraphs 11 and 12 of the grounds, where there is reference to paragraph 4.1 of the interview where the appellant had stated "it is very difficult. Russian is not my first language I probably did not understand the interpreter". He was asked at the substantive interview why he had said he could speak Russian, and had stated that "during the time I was here I attempted to get a Ukrainian interpreter it was not possible so that is why I said Russian. I apologise. I probably overestimated my Russian." It seems that the judge failed to take this explanation into account. With regard to ground 6, there is in my judgment force in this argument as well.

7. With regard to the final ground, that the judge had failed to take into account relevant country guidance, that goes to the alternative finding at paragraph 67, which as Mr Bramble stated would only come into play in the event that the judge had found the appellant to be a truthful witness, as follows:

> "67. Having considered those individual facts, I find that the appellant has not provided a genuine and credible claim for international protection, but even if his account was in fact truthful, and for the avoidance of doubt I find it is not, I nonetheless conclude, for the reasons stated, that removal would not give rise to a risk of Article 3 protection on return."

8. Although at paragraph 63 the judge has mentioned the country guidance case of *BB and Another (draft evaders in prison conditions: Ukraine)* CG [2017] UKUT 79 and at paragraph 65 has referred to the decision in *PK (Draft evader); punishment, minimum severity) Ukraine* [2018] UKUT 00241, there is no detailed consideration of the effect of these decisions and in particular the conclusions that have been made that prison conditions within Ukraine are sufficiently harsh that if this appellant was to be sentenced to a term of imprisonment that would be likely to be in breach of his Article 3 rights.

9. For these reasons, I consider that this decision must be set aside as containing material errors of law and must be remade.

10. Although a previous decision in respect of this appellant was also set aside and the appeal was remitted back to the First-tier Tribunal, regrettably because there will have to be completely fresh findings I consider it

appropriate to remit this case yet again for reconsideration in the First-tier Tribunal. However, because this is a second remittal I shall make a direction that the appeal should now be heard by a Designated Immigration Judge to give the best opportunity for the parties to have hopefully a concluded and sustainable decision made in respect of this appeal. I accordingly make the following decision.

Decision

I set aside the decision of the First-tier Tribunal as containing material errors of law, and remit the appeal back to the First-tier Tribunal, sitting at Hatton Cross, where it should be heard before a Designated Immigration Judge.

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 their 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:

Upper Tribunal Judge Craig Date: 20 November 2019