Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10813/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 March 2020	**On 19 March 2020**

Before

UPPER TRIBUNAL JUDGE PITT

Between

TY
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, Counsel, instructed by Yemets Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

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 her or any member of her 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.

This is an appeal against the decision issued on 17 December 2019 of First-tier Tribunal Judge Froom which refused the protection and human rights claim of the appellant.

The appellant is a citizen of Ukraine born in 1991. She came to the UK on 27 November 2014 with a visit visa valid for 24 hours. She overstayed that visa. Her next contact with the authorities was on 26 July 2018 when she was arrested and found to be in the possession of a Latvian identity document which the respondent considered she was using to find employment. On 26 July 2018 the appellant claimed asylum and had a screening interview. On 5 February 2019 she was charged with possession with intent of a false ID document and obtaining leave to enter (LTE) by deception. She was convicted and sentenced to six months' imprisonment. Her asylum interview took place on 26 June 2019. On 22 October 2019 her protection and human rights claim was refused. The appellant appealed and her appeal came before First-tier Tribunal Judge Froom on 6 December 2019.

The appellant's protection claim had two limbs. Firstly, she claimed that she would face mistreatment in Ukraine from her husband, who had abused her in the past. Secondly, she maintained that her ex-husband had become involved in an arms deal with the Russian Mafia and owed the Mafia significant sums of money. As a result, the Russian Mafia had threatened her parents, who remained in Ukraine, in order to put pressure on the appellant's ex-husband. Her ex-husband went into hiding to avoid the Mafia. On one occasion, in December 2016, the appellant's son (from her marriage to her ex-husband) who had been living with her parents was kidnapped. He was released because the appellant's brother helped to raise US$3,000 to obtain his release. In total the appellant's parents paid the Russian Mafia $10,000 in order to protect themselves and the appellant's son. Given this pressure, it was agreed that the son should go to live with the appellant's ex-husband's parents, who, because of influential family members, were able to live with him in hiding.

First-tier Tribunal Judge Froom set out the appellant's protection claim in paragraphs 5 to 17 of the decision. The judge set out the relevant legal provisions in paragraphs 27 to 28. In paragraphs 29 to 36 he considered the country evidence before him which included a Country Policy and Information Note (CPIN) entitled "Ukraine: Gender-based violence" dated May 2018. The judge also had reference to another CPIN entitled "Ukraine: Organised crime and corruption" dated September 2019. He also had before him an expert report from Professor Mark Galeotti dated 17 November 2019.

The judge's findings on the appellant's protection claim are set out in paragraphs 37 to 78 of the decision. In summary, accepted that the appellant had suffered domestic abuse in her past from her husband; see paragraph 37. He did not accept that there would be a risk of this treatment reoccurring on return to Ukraine; see paragraphs 45 to 47. In paragraphs 63 to 78 the judge provided his reasons for finding that there would be sufficient protection for the

appellant from her ex-husband. In paragraphs 48 to 62 the First-tier Tribunal indicated why the claim to fear harm from the Russian Mafia on return was not found to be credible.

The grounds of appeal only challenged the judge's findings on the protection claim. Ground 1 maintained that the judge did not apply anxious scrutiny to the protection claim where four documents capable of supporting the appellant's claim to fear the Russian Mafia were not taken into account. These documents were:

photographs of the appellant's ex-husband showing him to have been assaulted; see pages 42 and 43 of the appellant's supplementary bundle;

social media message from the appellant's mother dated 19 April 2019 at page 49 of the appellant's supplementary bundle;

social media messages from the appellant to her ex-husband blaming him for their son's hospitalisation in December 2016; see page 52 of the supplementary bundle;

correspondence to the appellant's ex-husband showing that he had taken out bank loans; see the respondent's bundle immediately before the refusal letter on 22 October 2019.

The grounds maintained that these documents were not taken into account by the First-tier Tribunal and that, either individually or in combination, had they been taken into account, could have led to a different outcome regarding the credibility of the appellant's claim to have been at risk from the Russian Mafia.

When considering this ground, I referred to the guidance provided by Brooke LJ in R (Iran) v SSHD [2005] EWCA Civ 982 on "unjustified complaints" as to an alleged failure to give adequate reasons. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.

I also referred to the comments of the Supreme Court in MA (Somalia) v SSHD [2011] UKSC in paragraphs 44 and 45:

> ""[44] … The role of the court is to correct errors of law. Examples of such errors include misinterpreting the Human Rights Convention (or in a refugee case, the Refugee Convention or the Qualification Directive (Council Directive (EC) 2004/83 (OJ L304 p 12)), misdirecting themselves by propounding the wrong test on some legal question such as the burden or standard of proof; procedural impropriety such as a breach of the rules of natural justice; and the familiar errors of omitting a relevant factor or taking

into account an irrelevant factor or reaching a conclusion on the facts which is irrational.

[45] But the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the [Asylum and Immigration Tribunal's] assessment of the facts. Moreover, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account."

1. The Court of Appeal in UT (Sri Lanka) V SSHD [2019] EWCA Civ 1095. In UT (Sri Lanka) the Court of Appeal addressed similar issues in paragraph 19:

> "… it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in *AH (Sudan) v Secretary of State for the Home Department* at [30]:
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> > "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

2. The Court of Appeal in UT (Sri Lanka) went on to state in paragraphs 26 and 27:

> "26. … If an error of law based on inadequate reasoning is to be identified, however, one must venture beyond general, literary criticism of this kind. In *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19, Lord Hope said (at paragraph 25):
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> > "It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it."
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> 27. In *R v Immigration Appeal Tribunal, ex parte Khan* [1983] QB 790 (per Lord Lane CJ at page 794) it was explained that the issues which the tribunal is deciding and the basis on which the tribunal reaches its decision may be set out directly *or by inference*. If a tribunal fails to do this then the decision may be quashed. He continued:
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> > "The reason is this. A party appearing before a Tribunal is entitled to know, *either expressly stated by it or inferentially stated*, what it is to which the Tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the Tribunal; in other cases it may not. Second, the Appellant is entitled to know the basis of fact on which the conclusion has been reached. Once again in many cases it may be quite obvious without the necessity of expressly stating it, in others it may not." (emphasis supplied)"

3. After applying this guidance, I was satisfied that the First-tier Tribunal did not disclose an error where it omits explicit consideration of the documents set out in paragraph 6 above. In paragraph 25 of the decision, First-tier Tribunal Froom indicates that he took into account the documents filed by the parties. There is nothing elsewhere in the decision suggesting that he did not do so and he can therefore properly be assumed to have considered the documents set out in paragraph 6 above. He set out a correct direction on the approach he should take to the evidence in paragraph 28. Those matters indicate that his approach to the evidence was lawful and not in error for omitting express consideration of every piece of evidence put forward by the appellant.

4. He went on to make the following findings regarding the appellant's claim to be at risk from the Russian Mafia:

> "48. As seen, the respondent does not accept the appellant's account of being at risk as a consequence of her ex-husband's involvement with the Russian Mafia. I accept this aspect of the claim is plausible, as confirmed by Prof. Galeotti. However, I must resolve whether the appellant has established the facts to the lower standard of proof.
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> 49. Mr Collins asked the appellant why she did not mention her fears about the Mafia until her substantive interview in June 2019, eleven months after she was encountered. The Home Office minute sheet recording that encounter refers to the appellant's concerns about her violent ex-husband, who was demanding money from the appellant if she ever wanted to see her again. She gave a similar account at the screening interview.
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> 50. Ms Revill pointed out the minute sheet is not a contemporaneous note and there appears to have been no interpreter provided. However, I do not consider these arguments undermine the evidential value of the appellant's recorded statements. Part of what became her full account was accurately recorded. This begs the question why the rest of it could not have been so recorded. I find the appellant did not mention the Russian Mafia.
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> 51. The appellant's answer to Mr Collins's question was that she was scared to mention the Russian Mafia. She did not know how it might affect her parents if enquiries were made with the police.
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> 52. Mr Collins also asked the appellant why she had not claimed asylum earlier if she was afraid to return to Ukraine. She said she was scared she would be sent back. She also mentioned that she and her ex-husband had taken legal advice about their options for remaining in this country and been told their chances were slim. The appellant gave a similar account in her witness statement.
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> 53. Various section 8 issues were raised in the reasons for refusal letter. The safe third country point is self-evidently based on a misunderstanding. The appellant travelled to the United Kingdom, she says, with her ex-husband and the latter did not get involved with the Russian Mafia until after he returned to Ukraine.

54. Ms Revill asked me to find the appellant's explanations for the late claim and the late revelation of the fear of the Russian Mafia were understandable. I do not agree. The appellant claims that her son was kidnapped by the Russian Mafia in December 2016 and that very large sums of money were paid to secure his release. Although the evidence was not entirely clear, it appears that the child was released after only part of the debt was repaid. Such is the risk to the child that she has agreed for him to live with her ex-in-laws, whom she also fears, in hiding.

55. The appellant has disclosed that she obtained legal advice about her options for remaining in the United Kingdom and that she was told that her chances were slim. I understand her to be saying that she was afraid of claiming asylum because she had been advised that her chances of being allowed to remain lawfully were slim and the consequence would be that she would be removed. That is difficult to understand because she was, at the time, with her ex-husband and the threat from the Russian Mafia had not yet arisen. It is self-evident the legal advice which was given was not based on the same claim now being advanced by the appellant. The explanation offered is not relevant to the question of why she did not claim asylum earlier.

56. In any event, the appellant chose instead to remain in the United Kingdom unlawfully which means she remained vulnerable to removal. Her case must be that she had simply hoped that she would not be detected. However, once that happened, it is self-evident that she had to make a full disclosure of her case in order to maximise her chances of success. If she feared being returned to Ukraine, it makes no sense not to have disclosed the main reason for that fear.

57. The appellant's evidence that she feared disclosing the threats from the Russian Mafia because this might affect her parents' safety also appeared to me to be contrived. There is no reason for her to believe that anything she told the authorities here would come to the notice of the Russian Mafia in Ukraine. It is unclear why she would believe the authorities here might contact the Ukrainian police given the appellant claims that the kidnapping of her son and the ensuing extortion threats were not reported to the police.

58. I find the timing of the appellant's asylum claim, after she had been encountered, and the late disclosure of the main facet of that claim significantly undermine her credibility.

59. I note the appellant claims not to have used the Latvian ID which was found in her possession in order to work. That stretches credulity to breaking point. As an overstayer from Ukraine, she would have had no entitlement to work. She must have shown some form of ID to her employers. If, as she claims, her husband procured the documents for her but she did not use them to work, it is unexplained why she was carrying them when she was encountered. She was convicted of an offence of deception. I treat the appellant's evidence with considerable caution.

60. The appellant does not claim to have been personally threatened by the Russian Mafia, although I accept what Prof. Galeotti says about the practice of organised criminals of going after relatives in order to force repayment. The appellant's bundle contains a statement signed by her mother, which confirms her account. However, the statement does not record anywhere that it was read over to the appellant's mother before she signed it in a language which she can understand. The appellant confirmed her mother does not speak English. I cannot therefore give it any weight.

61. It is fair to say the appellant knew very little about how it came about that her ex-husband had become indebted to the Russian Mafia. I recognise she was estranged from him and living in another country. However, the notion of an arms deal which went wrong sounds extremely far-fetched given this would presumably require her ex-husband to have had access to expertise and financing, whereas he had, according to the appellant, just returned from living unlawfully in the United Kingdom for the best part of two years.

62. For these reasons I find the appellant has not established to the lower standard that her ex-husband is indebted to the Russian Mafia or that her son was kidnapped by them. I find this part of the appellant's claim is a late embellishment and a fabrication."

These paragraphs set out a number of reasons for finding the appellant's claim to be in fear of the Russian Mafia not credible. She failed to lodge a claim on this basis when the alleged risk arose. She failed to mention it in her initial contact with the respondent's officers or in her screening interview and only a year later in her asylum interview. The appellant's evidence concerning her Latvian identity document showed her to be an unreliable witness and led the judge to treat her evidence "with considerable caution". The statement of appellant's mother was not reliable. The appellant's evidence on how her husband came to the in debt to the Russian Mafia was limited and not credible given her evidence on her ex-husband's profile. These reasons are cogent and sufficient for the appellant to know why this part of her claim was not accepted.

Further, on examination, the documents on which this grounds relies do not readily show the potential probative value the appellant seeks to place on them. The photographs of her ex-husband at their highest show that he received injuries but can say nothing about how those injuries were incurred. The social media message from her mother on page 49 of the supplementary bundle, identified to me as being sent in 2019, makes no reference to the Russian Mafia and gives no indication of the identity of the people who were asking for money. It refers to the appellant being asked to contact her ex-husband when it was her evidence elsewhere that she had not had any contact with her husband since November 2017; see paragraph 38 of her witness statement on page 6 and 7 of the appellant's main bundle. Further, the witness statement of the appellant's mother, set out on pages 23 to 26 of the appellant's main bundle indicated in paragraph 27 that they were not contacted again by the Russian Mafia after the appellant's son went into hiding which was in January 2017; see paragraph 40 of the appellant's witness statement. The social media message from the appellant to her ex-husband at

page 52 of the appellant's supplementary bundle does not refer to her son being kidnapped or to his having been harmed by third parties. The documents in the respondent's bundle showing that the appellant's husband had taken out bank loans are merely that. They do not show any connection to the Russian Mafia or basis for a threat of extortion and kidnapping.

In conclusion, therefore, the First-tier Tribunal took a correct approach to the evidence, was not required to address each piece of evidence on which the appellant relied and the documents underpinning this grounds were of limited probative value in any event.

The second ground of appeal was not pursued with any vigour at the hearing. The appellant accepts that she did not mention the Russian Mafia when interviewed by an Immigration Officer when she was arrested so no issue as to the absence of an interpreter or improper recording of her comments at that time arises.

Ground 3 maintains that the judge erred in placing weight on paragraph 23 of Professor Galeotti's report, that paragraph being set out on page 34 of the appellant's main bundle. Professor Galeotti said this:

> "23. That said, I see little reason to believe [TY]'s ex-husband is likely to pose a running, serious threat. As I understand her account, he was above all abusive when drunk, and his attacks represented a crime of the moment: no less reprehensible for that, but unlikely to lead to the kind of calculating, planned venture that tracking her down would require."

The difficulty for the appellant in this ground is that the First-tier Tribunal Judge had other entirely rational reasons for not accepting that there would be a future risk from the appellant's husband and did not merely adopt paragraph 23 of Professor Galeotti's report as the basis for rejecting this part of the appellant's claim. In paragraph 43 the judge does not accept that in the circumstances of this abusive marriage the appellant would have agreed to come voluntarily to the UK with her husband. Further, as indicated in paragraph 44, the judge did not accept that the appellant's ex-husband would want to continue to harm her because he blamed her for his removal from the UK. The judge accepted that the appellant's marriage had broken down acrimoniously but also, in paragraph 66, found that it was her husband who had commenced divorce proceedings and that she had had no contact with him for two years at his instigation as he had prevented her from contacting him.

Further, the judge's references to Dr Galeotti's opinion are by way of agreement after reaching his own conclusions on the basis of other material before him rather than merely relying on the expert opinion. The judge states in paragraph 46:

> "Little turns on this because I accept there is acrimony and that he is a violent man whom the appellant fears. The documents set out above

> certainly confirm the impression of Prof. Galeotti that the root of the appellant's ex-husband's problems lay with the abuse of alcohol."

It was therefore my conclusion that ground 3 had no merit.

Ground 4 concerns whether there would be sufficient protection for the appellant from her husband were she to return to Ukraine. As above, it is my view that the First-tier Tribunal Judge's conclusion that the appellant does not face a risk of mistreatment from her husband on return is lawful. Any challenge to the findings on sufficiency of protection is not material, therefore. Ground 4 therefore has no merit.

Ground 5 maintains that the judge takes an incorrect approach to the weight to be attached to the accepted fact of the appellant having been subject to domestic violence by her husband in the past. As set out above, the judge gave clear reasons for finding that the appellant would not be at risk of mistreatment from her ex-husband on return now and was not obliged to find such a risk merely because his past abusive behaviour was accepted.

For all of these reasons therefore, I did not find that the grounds of appeal had merit and the decision of the First-tier Tribunal does not disclose an error of law.

Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 9 March 2020

Upper Tribunal Judge Pitt