



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

Appeal Number: PA/11639/2018

THE IMMIGRATION ACTS

**Heard at North Shields (Kings Court)
On 17 January 2020**

Decision & Reasons Promulgated

On 29 January 2020

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**IZ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn, instructed by A. Seelhoff Solicitors
For the Respondent: Ms R Pettersen, Senior Presenting Officer

DECISION AND REASONS

The anonymity order made by the First-tier Tribunal continues in the Upper Tribunal pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. There should be no disclosure of any matter that may lead to the identification of the appellant. Failure to comply with this order may result in contempt proceedings.

Introduction

The appellant is a national of Ukraine, where she was born in 1968. She has been granted permission to appeal the decision of First-tier Tribunal Judge Row who for reasons given in his decision dated 11 September 2019, dismissed her appeal which had been on asylum and human rights grounds (Article 8 not being relied on) against the Secretary of State's decision dated 26 March 2018 refusing the appellant's protection and human rights claim that had been made on 9 August 2017 shortly after her arrival in the United Kingdom on 25 July that year. The appellant had arrived with a visitor's visa in the United Kingdom with her second husband (KT) and younger daughter (SN), both of whom are also Ukrainian nationals. He and her daughter are dependants on that application which was based on a risk from her former husband (VN) who had abused the appellant in the course of their marriage.

The appellant gave a detailed account of those difficulties in an interview on 31 January 2018.

As to that claim, the Secretary of State accepted that the appellant had been employed as a violinist with the National Opera of Ukraine and that she had been dismissed due to her refusal to sign a new employment contract. Her claim was based on her former husband having been responsible for the termination of her employment. The Secretary of State did not accept that there was evidence to show that VN had sufficient influence that the National Opera of Ukraine would amend their human resources policy and lose many talented musicians in order to disguise and target the termination of the appellant's employment.

Judge Row heard evidence from the appellant, KT and ON, the appellant's older daughter aged 27, who had arrived in the United Kingdom in 2013 where she has settled. KT has applied for asylum at the same time as the appellant which had also been refused on 26 March 2018 but he had not appealed the decision. SN (aged 15) is the younger of two daughters the appellant had with VN. The appellant and VN divorced in 2013.

In summarising the appellant's case the judge noted evidence of incidents of conflict between the appellant and her current and former husbands, resulting in the police being called on several occasions. The breakup had been acrimonious. The appellant had become homeless as her former husband had re-occupied the matrimonial home culminating in her attendance at the property in mid-2016 to gain entry. The judge also observed that the orchestra for which she and KT worked had been in dispute with the Ukraine Opera about the terms of new contracts which had resulted in the entire orchestra being dismissed. It was the appellant's contention that her former husband had had something to do with this.

As to the Secretary of State's case Judge Row observed that the respondent had considered the appellant's credibility damaged by her use of a forged

document to leave Ukraine, had told lies in her visa application and had delayed claiming asylum.

In his assessment of the evidence Judge Row explained at [35] to [41]:

- “35. Whilst I accept that the matters raised by the respondent do damage the appellant’s credibility I accept the appellant’s account that she was involved in an unpleasant divorce from her first husband which had led to litigation and to police involvement in Ukraine. The appellant produced numerous documents in her bundle which included a letter from her lawyer, court documents, letters to and from the police in Ukraine complaining about various matters, and medical evidence of minor injuries allegedly received in an assault. These collaborate her claims. [VN] has not had the opportunity to comment on the allegations made against him. He may have had a different interpretation of events had he been able to put his side of the story.
36. The two videos referred to above show an incident on 24 September 2013 apparently filmed by a neighbour. It shows the appellant and [VN] in a room with about four or five police officers. [VN] is doing nothing. The appellant is involved in an argument with the police. The police officers are standing around listening to her.
37. The second video is said to be from June 2014. It is said to have been taken by someone on [VN]’s behalf. It shows him knocking at a door. The door is answered by the appellant. There is a heated exchange. Most of the heat appears to be coming from the appellant. There is pushing and shoving. There is a child crying in the background. The appellant said that [VN] had taken the video in order to show her to be a bad mother. Another view is that [VN] may have taken it to protect himself from allegations of misconduct.
38. That the last allegation of any physical abuse made by the appellant relates to 2014. [KT] in his statement dated June 10 May 2018 [sic] said that there had been incidents in February 2017 when he was threatened by two men concerning the return of some documents and medals. He further says that on 15 April 2017 he was kidnapped by unknown men and kept in custody and mistreated for three days. That was his evidence. I do not believe him.
39. The reasons I do not believe him is that these allegations of serious threats to and kidnap of her husband have never been part of the appellant’s case. She did not mention them in her statement made to the police in Ukraine dated 13 July 2017 at page 33 in the respondent’s bundle. She did not raise them in her asylum interview. She did not raise them in her statement dated 10 May 2018. These are serious allegations and if they had occurred it would be expected that the appellant would have mentioned them. She did not.
40. This was an acrimonious breakup of a marriage in which neither party has behaved well. They have each made spurious complaints in order to cause the other trouble. They have each

inappropriately involved their daughter [SN] in their matrimonial disputes. It is not surprising that this has been to her detriment.

41. I find that the last allegation of physical abuse by [VN] was in 2014. Since that time the appellant has lived in Ukraine with her daughter. She has been involved in litigation concerning property and custody of the child. I do not find that the appellant's dismissal from work had anything to do with [VN]. She was dismissed with the rest of the members of the orchestra because of a dispute about a new contract. I do not find that [VN] has been in any position to influence the police or the courts. The evidence is to the contrary. The courts have intervened to protect the appellant's rights and the police had investigated allegations when they have been made. There is video evidence of that. There is documentary evidence of that."

1. By way of conclusion the judge explained at [42] to [47]:

- "42. The issue is whether there is a real risk of persecution and harm to the appellant from [VN] if she returns to Ukraine. I do not find that there is such a risk. There has been abusive conduct in the past. There has been no serious injury although any injury is unacceptable. The last incident was in 2014. There have been no significant incidents since that time.
43. I do not find that [VN] has any influence either with the courts or the police in Ukraine. The evidence is to the contrary. The documentary evidence produced by the appellant shows that the police have investigated complaints. The courts have adjudicated on matters. I do not find that the appellant is at risk from [VN] in the Ukraine.
44. The background evidence produced by the respondent in **Country Information and Guidance Ukraine: Background information, including actors of protection and internal relocation August 2016** is that Ukraine has an operating police force, laws to protect its citizens, and a judiciary prepared to enforce those laws.
45. This information is confirmed by the appellant's evidence. She has reported matters to the police. The police have investigated allegations of assault. She has reported allegations of misconduct on behalf of [VN] which had been investigated. She has gone to court to secure property rights and to contest custody.
46. Those custody proceedings have not yet been resolved. This is because the appellant chose to leave the country illegally by using a forged document and to take her daughter with her. Even if there were a risk of persecution and harm to the appellant, and I have found that there is not, the background evidence, and the facts of this particular appeal, indicate that adequate protection is available in Ukraine to the standard set out in **Horwath and SSHD [2000] UKHL 37**.
47. The appellant does not succeed in her claim for asylum, on the grounds of humanitarian protection, or under Articles 2 and 3 ECHR which are all argued on the same factual basis."

The grounds of challenge are fourfold. The first ground asserts error by the judge based on a failure to take into account a material fact as to the threat of kidnap of her current husband. The second ground argues error in a failure by the judge to deal with the evidence of the ON, who had provided a statement and gave evidence at the hearing. Ground three argues the judge had erred in his assessment of the video evidence footage and ground four argues a material error of fact by the judge as to the status of VN.

In granting permission to appeal Upper Tribunal Judge McWilliam considered these grounds arguable with a concluding observation at [5] of her decision:

“5. However, without seeing the video I am unable to comment on the accuracy of the judge’s interpretation of it. Should the appellant wish to proceed with this part of the challenge, she should ensure that the footage is available for the judge to consider at the hearing.”

Prior to the hearing on 8 January 2020 application was made to add an additional ground. This was in terms that the judge had failed to take account of all the video evidence.

“In fact five videos were played specifically two videos from 23 September 2013, one dated 3 June 2014 and two dated 7 June 2014. The judge indicates that there was only one video from June 2014 and his summary does not include reference to the video of 3 June 2014 which shows the most extreme assault. It is submitted that he cannot have had regard to all the evidence.”

Ms Cleghorn had not represented the appellant before the First-tier Tribunal. There had been subsequently a change of solicitors and it was not clear why this aspect had not been raised in the earlier grounds. Ms Cleghorn explained that the videos had been shown to the judge on counsel’s device being an iPad or laptop. Judge Row refers only to two videos at [36] and [37] of his decision, the content of which he summarises.

I refused the application after having drawn the parties’ attention to the judge’s note of hearing. This refers to videos 1 and 2 with notes of the content. There follows the following text under the heading “Resume”.

“Two more videos which app has produced over lunch. Can’t see anything on them. Will not show but appellant will explain their context.”

The judge’s note continues with a record of the evidence-in-chief of the appellant, which again refers to two videos. In respect of the latter, there is reference to an aspect of the account which refers to handcuffed and the judge has noted that there was nothing on the video about this. The appellant appears to have been referring to a different video. Her counsel appears to have observed that there is a video that had not been seen which she was going to ask the appellant about. The judge’s note continues: “I’m not prepared to allow her to discuss a video we’ve not seen. She’s been unreliable on the ones we have sent. Ask her to describe the incident and date”.

It is clear to me that the judge was only shown two videos, as is evident from his decision. The grounds of challenge are detailed. There was no explanation why this aspect was not raised in the initial challenge and in any event, having regard to the judge's note, there was no substance in the point.

Following submissions on each of the four grounds, I reserved my decision. Neither Ms Cleghorn nor Ms Pettersen was able to provide a copy of ON's statement which is the subject of ground two and I agree that this should be provided by Monday, 20 January. As it turns out, a further examination of the contents of the file brought it to light and I have not needed to wait for that to be provided. I take each ground in turn.

Ground One

This ground explains that the judge had erred in relation to his findings on credibility of KT in paragraphs [38] and [39] (cited above). KT's statement pointed out in paragraph [10] that he had not told his wife about the kidnapping because of the circumstances and these were things that were difficult for him to speak about. It is argued that the judge materially erred by deciding that the evidence of KT was not true on the basis that his wife had not mentioned this aspect as there was clear and credible evidence that he had not told her. His evidence on this issue was not specifically challenged.

KT explains in his statement that on 15 April 2017 he was kidnapped. This followed a disagreement with the appellant and he had stayed with a friend on 14 April not far from her flat. The statement explains the detail of the assault by individuals in military uniform with weapons. KT understood the reason for kidnap was because of certain documents and medals. Reference is made to the screening interview and the Home Office concerns that there were matters he had not mentioned at that first interview when he had been asked not to give too much detail. His assailants were wearing masks. KT regrets that he had not told his assailants at the time that the documents in question had been destroyed. They had also contacted his father for a ransom payment of \$2,000. He was told to call the appellant to explain that everything was okay with him. He did not call her but his cousin instead. He was released on 18 April in the earlier hours of the morning in a forest.

The documents appeared to have been those that the appellant's former husband VN had taken from the authorities without permission according to KT's statement. In her substantive interview the appellant was questioned about documents when asked about VN. She referred to his "secretiveness and that he had lived a double life". She did not know where he worked at the time of her interview but it appears that her solicitor (in Ukraine) had access to court material and "internal documents". It is not entirely clear from a reading of the interview and the appellant's subsequent statement the precise nature of the contents of those documents, which appears to be different from the documents the appellant referred to in connection with the matrimonial and ancillary proceedings. In response to question 310 when the appellant was asked what the other reasons were for wanting to claim asylum in the United Kingdom she explained:

“After I got divorced I started finding documents in my house belonging to my husband from SBU and the main department of protection of information and also state medals of people who worked for him when he was head of the legal department of when he worked for the secret department of the government there was protecting the government communications he was the head of the legal department of this department of this directorate. When he changed his job he took the documents from this position and it was marked confidential and they were secret files of SBU, there were a lot of them and he had some medals as well that he was supposed to award to people in his department but he didn't. When I questioned him about these medals they were supposed to be awarded to someone else he said they didn't deserve them.”

When asked how this had impacted on the appellant, she explained that she could not explain it shortly. In the course of her answers she explained that she had sent letters to SBU and the prosecution office saying that “... these people should get the medals that they deserved”.

As to how this posed a risk for her, she explained:

“316. I also sent letters about the documents that my ex-husband and they are in my house and I wanted to return these documents officially.”

As to how this affected her, the appellant explained that she had exposed “his illegal” and that he had wanted to kill her. In her statement the appellant explained that based on evidence she had obtained from the web it was confirmed that her ex-husband, VN, was applying for a position as head of chief director at the Ministry of Internal Affairs.

Judge Row explained that he had not believed KT in respect of the kidnap for two reasons. The first was that she had not mentioned them in her statement made to the police in Ukraine in July 2017. The second was that she had not raised them in her asylum interview nor had she raised them in her statement dated 10 May. It is clear the point that the judge was making was the failure by the appellant to refer to this aspect at all, not only in Ukraine but also in her asylum interview and her subsequent statement. That statement dated 10 May 2018 follows refusal of KT's claim on 26 March 2018. The refusal letter is in the papers before me which refers to the kidnap incident. The documents which appear to have been part of the focus of the kidnapping were clearly in the minds of KT and the appellant in the light of the detail of their respective concerns on this described in KT's statement. I consider the judge was entitled to draw an adverse inference from this aspect in the light of the risks it is considered the parties considered possession of these documents and medals had placed them in. I do not consider this ground has any substance.

As I observed to Ms Cleghorn, a reading of the determination shows that the judge in fact accepted the appellant's account of the problems she had with her former husband explained in the passages I have cited above. He concluded in summary:

The last allegation of physical abuse by VN was in 2014 and there had been no significant incidents since then.

The appellant's dismissal from work had nothing to do with VN, who had not been in any position to influence the police or courts; the evidence was to the contrary.

The courts had intervened to protect the appellant's rights and have investigated allegations when they have been made according to the documentary evidence.

But for the kidnap incident, Judge Row accepted the core of the appellant's account of problems that stem from her former husband for which he considered protection had been and would be available were they to continue. With that in mind, I now turn to ground two.

Ground Two

As it became apparent at the hearing, ON has been in the United Kingdom since 2013. Her statement refers to a visit made to Kiev in November 2014 when the appellant was away and when her father showed up. The police did not respond to calls that she had made and although they refused initially to do so they ultimately came. Otherwise ON does not add anything to the claim. Since the judge accepted the appellant's account of acrimony between her and VN, I do not consider his failure to specifically assess her evidence as material. The judge acknowledged that she gave evidence in paragraph [14] and also referred to her evidence in some detail in [19]. I am satisfied that he had proper regard to all the relevant evidence and no error emerges based on the challenge in ground two.

Ground Three

In the light of the clarification from reading the judge's note, the assertion that his assessment of the footage was not accurate falls away, leaving the limb pursued by Ms Cleghorn that the judge had not correctly characterised the evidence. I do not find any merit in this ground. The judge reached a conclusion on what he saw, not on what he had not seen. In the circumstances, there is no requirement for me to examine the videos seen. It is a matter of interpretation and assessment of that evidence, which is a matter for the judge. His note of hearing shows that he had careful regard to what he in fact saw and whilst the appellant may disagree with his inferences from that evidence, this did not result in material error, particularly in the light of the judge having accepted the core of the evidence of acrimony.

Ground Four

Here it is argued that the judge had erred in finding that VN was not a colonel and thus had made an error of fact. The appellant had clearly stated in her evidence that her husband was a colonel of justice, which was confirmed in the police application form appearing in the respondent's appeal bundle which also

confirmed that he had applied for a post of head of the chief directorate of the Ministry of Internal Affairs in the Ukraine.

In the course of submissions on this aspect, I was taken to the relevant document at pages 51 and 52 of the respondent's bundle. It appears to be a web download from the National Police of Ukraine website. From this, it appears that VN was educated at university between 1989 and 1994 leading to qualification as a lawyer. He thereafter held a post at the National Academy of Public Administration under the President of Ukraine between 2009 and 2010 in the faculty of management and public development. Under a further heading Information on Military Records, the military rank is given as colonel of justice. The following chronology shows that VN's role in the military was between 1986 and 1988, thus prior to his years at university. He held a post as a senior consultant in the Ministry of Justice of Ukraine in 1995 and in the five years that followed was senior legal Counsel before becoming head of the legal group of the National Academy of the Security Service between 2000 and 2004. In 2012 he became a consultant with a company called Lotusoft Limited. Below an entry dated April 15, 2014 a number of names are given with reference to the post of the head of the chief directorate of the Ministry of Internal Affairs. VN's is listed (although with a slightly different spelling) as someone who had expressed a desire to take part in the competition.

In her asylum interview the appellant was referred at question 295 to an earlier response that VN was very high up and a colonel. The question was: "You have said your ex-husband is very high up he is a colonel, you have said he is influential and has lots of power, there was no trace of him externally, you think he is well-known in Ukraine, can you explain why there is no information about him?"

The appellant responded:

"I will explain. When I contacted the tax office asking where he was working they said he founded a company in Cyprus. I officially requested the documents and I received an official reply saying I had no reply to receive this confidential information. He works for gaming industry gambling really, Lotsoft and Emist. It's gambling industry it's not legal."

Questioning on this aspect continued and the appellant was unable to give an explanation why she considered the appellant to have been a colonel.

The judge observed in paragraph [30] cited above the appellant's evidence given at the hearing that it was not true that VN was a colonel in the Ukraine Intelligence Service. She explained that he had never been but had worked as a lawyer in a government department. It is not evident that VN was successful in the application in 2014 sdescribed in [31] above.

I am unable to find any merit in this ground at all, particularly in the light of the evidence as recorded that the appellant gave before the judge.

Conclusion

Accordingly, none of the grounds of challenge is made out. I reminded Ms Cleghorn that there was no challenge to the judge's conclusion that protection would be available in the light of the accepted account of acrimony between her and her former husband. She referred in her response to the country guidance decision in *VB and Another* (Draft evaders and prison conditions) Ukraine CG [2017] UKUT 00079 (IAC) in support of her contention that there was acknowledged corruption in Ukraine. Whilst that may be so, I am satisfied however that the judge reached a legitimate conclusion rationally open to him on the particular facts of this case on the availability of protection including reference to the country information. He did not err in deciding that protection would be available to the appellant, an aspect on which no challenge has in any event been made.

Accordingly, this appeal is dismissed.

Signed

Date 23 January 2020

UTJ Dawson
Upper Tribunal Judge Dawson