



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00175/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 16th June 2022**

**Decision & Reasons Promulgated
On the 23rd August 2022**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**YF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J E Norman, instructed by Sterling & Law Associates LLP

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ukraine. He appealed to the First-tier Tribunal against the respondent's decision of 9 December 2019 refusing his protection claim.
2. The appellant's appeal was heard by a Judge of the First-tier Tribunal on 5 February 2020. The appellant claimed to be at risk on return to Ukraine on account of being a draft evader.

3. The appellant has been in the United Kingdom since November 2003. He had previously lived in Portugal and had used a counterfeit Lithuanian card for entry to the United Kingdom in 2003. Previous representations had been considered and refused in 2016 and 2017. In the 2016 representations he claimed to be ethnically Russian. He had been encountered by immigration officials in April 2015 and was served with illegal entry papers. When asked what he had been doing for the previous twelve years he said he was simply residing in the United Kingdom. He said he had not worked illegally but was supported by friends in the Ukrainian community in London.
4. The judge noted that the claim to be ethnically Russian only came about in the further representations which were rejected in August 2017, not having been mentioned in his screening interview, asylum interview or further correspondence. The judge found that the appellant had failed to mention this because he was, as the judge put it, "very good at not telling the truth".
5. Nor did the judge accept that the appellant had simply been residing for twelve years between 2003 and 2015. The judge noted that he had managed to meet his partner and wife and that they had a child together, which would not have been contemplated if he had no income to look after his own needs, let alone the needs of others. The judge found the claim not to have been working damaging to the appellant's credibility.
6. The judge noted that the appellant had not mentioned being exempted from military service at all until sometime towards the end of cross-examination. He had not referred to any previous exemption in his screening interview, asylum interview or further representations or in the judicial review proceedings. His case had been that he was a draft evader who had been called upon to serve but there was no mention of the fact that he was previously exempted and given a driver role instead but since the country was now at war he had been asked to serve in a conflict. The judge found this to be a fundamental difference.
7. The judge also attached weight to the fact that the appellant was prepared to use false documents and had used them in the past. He did not accept the appellant's explanation that some random people overheard him talking and agreed to help him and that that was how he obtained the Lithuanian passport. The judge was satisfied that this was a pre-arranged method to allow him to come to the United Kingdom, knowing there would be very few checks on an EU passport holder. The judge agreed with the Secretary of State that the ease with which the appellant had access to such a document showed he could produce other documents as well in order to remain in the United Kingdom. The judge was satisfied that the appellant was well aware of the corruption in Ukraine and the ease with which things could be done for money.
8. The judge also did not find the appellant's evidence on the issue of call-up papers to be plausible. Several times in cross-examination he could not

say which call-up papers were obtained by his mother and which were merely posted to him. One time he had said he needed to think. The judge accepted that the appellant was not there when this happened but given that he was in touch with his mother regularly, he would have thought it reasonable that he would have known what had been received and when, as it concerned his life and future.

9. The judge also referred to the appellant's evidence that documents from Ukraine were sent to him by his sister via a delivery courier who delivered them in person to him. The judge did not accept that something as highly sensitive as call-up papers, a temporary certificate and copy passports from his mother would be sent in this way to the appellant. Though this might be a prudent and cost-effective way, these were highly confidential and sensitive documents which could cause great trouble if they landed in the wrong hands. The judge found that this sort of method of sending such sensitive documents would only be requested by someone who was not really concerned about the contents getting into the hands of others.
10. As regards draft evasion, the judge did not accept that the appellant was wanted on return as a draft evader or was being sought after by the authorities at all. He was satisfied, given the appellant's previous exemption during peacetime based upon medical reasons and therefore being given a driver role as opposed to combat, that the authorities were not remotely interested in him and did not require him to return. He accepted that the situation in Ukraine generally had changed after 2014 and that call-ups for reservists could take place up to the age of 60. He observed that, however, on the appellant's own evidence he was not deemed fit for combat during peacetime and that now that he was 38 and past the compulsory conscription age of 20 to 27 the authorities would not be remotely interested in him or require him to assist as a reservist during wartime. The judge did not accept that he would be forced to engage in any conflict, given that he had no combat experience and was deemed not suitable previously, thereby being given a driver role. The judge did not consider that the authorities would even be interested in giving him a driver role again, given his age and previous difficulties.
11. The judge had regard to the call-up papers and did not accept that they were genuine or reliable. He was satisfied, given the ease to which the appellant had been able to obtain and rely upon a fake passport not belonging to him and given that he had been able to survive for over twelve years in the United Kingdom that this showed he was capable of producing self-serving documents which, taken in the round, were unreliable.
12. The judge observed that the expert had considered the call-up papers to be genuine but remarked that the appellant himself at interview had said that, given the corruption in the country, bribery was not uncommon, and found the appellant had obtained the call-up papers in order to bolster his fictitious claim for asylum in the United Kingdom.

13. The judge went on to reinforce that he did not accept that the appellant had been genuinely called up by the authorities. He did not accept that the authorities would send notifications which the appellant's mother could just pick up from the village council and on other occasions merely leave call-up papers for him, knowing he was not in the country. His last notification was sent in November 2018, meaning he had not received anything for over fourteen to fifteen months. The judge found the call-up papers had been conveniently received around the time of the asylum claim and its rejection and the subsequent fresh claim and further representations in order to add credibility to it.
14. The judge looked at the call-up papers in some detail. He noted that the obvious elements including the appellant's name and the dates had been manually inputted with the rest of the information being standard. He found the documents were not reliable in the round. The expert said he had made a full assessment based on scans. The judge did not accept that this was a valid basis upon which an expert could reasonably conclude that these were genuine documents, given that the scan itself could be a manipulation and open to such. The judge also agreed with the respondent that if the expert compared this scan to other scans he had for comparison he ought reasonably to have produced all the data on which he came to that conclusion including the comparative scans he used as the foundation for his findings. The judge observed that while the expert's credentials on the Ukraine were not in doubt, he was not a document expert and, given the ease with which such documents could be obtained and without sight of the originals, he did not place much weight on the expert's report.
15. The judge had other concerns about the expert report, noting that the expert had not been given the latest refusal letter or copies of the appellant's statement or his temporary certificate. The expert therefore did not know how the appellant obtained these documents beyond what was said by others. He noted that the expert did not interview or question the appellant and though an interview was not always necessary, the expert's duty was to the court and in fulfilling this duty he was required to rule out the possibility of there being other causes or explanations for any of the documents produced before arriving at a firm conclusion in accepting the veracity of the call-up papers or the account he had been given.
16. The judge had read the appellant's mother's letter and supporting evidence and found it was self-serving evidence sent to assist her son's asylum application from abroad. He was satisfied that this was a case of economic betterment. The lengthy delay in claiming asylum was such as to damage the appellant's credibility under section 8 of the 2004 Act.
17. The judge found that since he did not accept the call-up papers he did not find that the appellant was at any risk on return as a draft evader. If he were wrong in this, then he found that although punishable in law by up to three years' imprisonment, in practice, the penalty the appellant would

face was a fine or suspended sentence and did not accept he would face prosecution leading to his imprisonment or detention, given that he had genuinely had an exemption previously given to him by the authorities. He noted that even the expert accepted that the majority of draft dodgers were not in prison. The appellant was not likely to be prosecuted or imprisoned or forced to engage in anything which was against international humanitarian law.

18. As a consequence, the appeal was dismissed in terms of international protection and also under Article 8 of the European Convention on Human Rights.
19. The appellant sought and was granted permission to appeal on the basis of six grounds, each of which was relied upon and developed by Ms Norman in her submissions. In general, the credibility findings were challenged.
20. Ground 1 comprised a classic Mibanga challenge in that the judge had made findings on credibility and then considered corroborating documents and background evidence in light of the view he had already reached. This was a sur place claim. It was irrelevant to focus on the appellant's Russian ethnicity since it made him no less at risk on return. It was unfair to hold against him as regards the credibility of the call-up that he was an overstayer. It was wrong to criticise the appellant for not recalling which of the summonses were physically signed for by his mother and which he had requested to be sent on. The claim was not a memory test. In addition, it was an error to hold against the appellant that an in-person delivery was regarded by the judge as being less secure than national post.
21. The point arising from ground 2 was in respect of paragraph 50 of the judge's decision. The appellant's claim was that he was eligible for the draft and that that might arise in respect of a person such as him who was exempted during peacetime as the exemption did not apply in times of war. He had received call-up papers and had failed to answer the draft and was therefore a draft evader and it was the evasion which put him at risk. The initial basis of his eligibility, whether as someone exempt in peacetime and no longer exempt or someone who had never served, was not material.
22. In particular, the judge had erred in finding that the appellant was not eligible for call-up at all. This was at odds with the respondent's case as could be seen from page 9 of the refusal letter. This finding was not open to the judge.
23. The judge had erred as contended in ground 3 in attaching excessive weight to the appellant having used a false document in the past. The finding that it followed that his documents were false because he had previously used a false passport was a material error of law.

24. In ground 4 it was argued that the judge had erred in his approach to the expert evidence. The Tribunal was reminded of the point made in ground 1 in this respect and in addition, it was argued that the judge's decision was unreasoned in regard to such matters as Professor Galeotti's finding that the call-up papers were genuine, ignoring the fact that his ability to distinguish genuine papers was accepted in the country guidance case of VB, disregarding his opinion that the manner in which the call-up notices were sent and the length of time between them were consistent with the background material and disregarding his expert opinion that the appellant's particular characteristics including being from a sparsely populated area made it more likely that he would indeed have been called up.
25. The judge had not referred to the police summons on which Professor Galeotti had given an expert opinion. This was the point at ground 5, which comprised a challenge to a failure to take into consideration material evidence. Finally, at ground 6, the section 8 finding was erroneous in that although the appellant had not claimed asylum for over twelve years he was not at risk until called up to the draft in 2015.
26. In his submissions Mr Clarke reminded the Tribunal of the factual background of the appellant having been in the United Kingdom since 2003. The main substance of his original claim was concerning a conflict with a businessman which had led to him fleeing the Ukraine in 2003. It was not a point pursued at the hearing as that proceeded the 2015 call-up.
27. There was, it was argued, nothing to ground 1. The judge made it clear that he had carefully considered all the evidence at the start of the section of his decision concerned with his findings of fact and reasons. He had also made it clear at paragraph 56 of the decision that he had taken the evidence in the round. There were a number of points where credibility was regarded as relevant, from paragraph 57 onwards. The judge had not considered the expert evidence separately. It could be seen from page 7 of the refusal letter that the appellant had made a claim of risk on return on the basis of his Russian ethnicity. The point made in the grounds about overstaying was disagreement only. The judge was entitled to draw adverse inferences where there was evidence that could have been provided and had not been. The appellant had dropped the earlier claim and there was a relevant absence of evidence to corroborate. There was no irrationality in the memory test point. The judge's observation about the documents was not determinative.
28. As regards ground 2, the judge had noted the certificate the appellant was given to replace his military card that had not been put before the Secretary of State. The appellant had been cross-examined on that, so clearly issue was taken by the Home Office with regard to this evidence. What was said in PK was not relevant as the judge could not be criticised for findings made in a later case. In light of the evidence set out at paragraph 40 concerning the appellant's previous health issues and being sent to the reserve, the findings at paragraph 50 were open to the judge.

He was perfectly entitled to take that evidence into account. It was also relevant to note the judge's observation at paragraph 55 that the appellant was now 38 and past the compulsory conscription age of 20 to 27.

29. As regards ground 3, the judge's findings at paragraph 56 were sound. He had clearly considered many factors in assessing credibility and there were the findings for example at paragraphs 51 and 52 in respect of false documents and bribery and the judge was entitled to find as he did.
30. With regard to ground 4, the guidance in Tanveer Ahmed was important to recall. A document might be genuine but that did not mean the contents were. The question of whether a document was reliable or not was the issue, rather than whether it was genuine. The grounds did not bear in mind the contrast between substance and content of documents. The expert had not seen all the documents. The judge was entitled to distinguish between the reliability of a document and its genuineness.
31. As regards ground 5, it was the case that the judge had not addressed the police summons but given the findings including the fact of the appellant not previously being conscripted because of health grounds and his age as well as the adverse findings, it was a finding open to the judge. Ground 6 ignored the earlier basis of the claim as referred to earlier in Mr Clarke's submissions.
32. By way of reply, Ms Norman argued that with regard to the initial entry to the United Kingdom the claim was dropped but the interview showed that military service was relied on at interview and it was an issue in the asylum claim. At interview the appellant had described his fear including that his child would be kidnapped and no finding was made about that as the claim was dropped but it did not mean that it was not a real fear, even if it was not an asylum issue. It was therefore a real fear at the time.
33. With regard to the call-up papers and the conclusions at paragraph 56 of the judge's decision, the documents could not properly be said to have been taken in the round and the judge did not refer to the police summons.
34. In regard to ground 2, Mr Clarke said it would be necessary to show that support would be provided but if a helicopter mechanic could do so, a driver could also provide indispensable support. It was a central issue as conscriptions up to the age of 27 and mobilisation now was up to the age of 60 and the Secretary of State had accepted that the appellant was eligible for mobilisation. In the CPIN it was said that exempt people such as the appellant were eligible for mobilisation in times of conflict and if the exemption certificate moved that, the Secretary of State needed to be clear that she was departing from what was said in the refusal letter. It was an issue of unfairness.
35. We reserved our decision.

Discussion

36. As regards ground 1, we consider that no error of law is made out. The judge set out his views on the various elements of the claim including the Russian ethnicity issue, the activities of the appellant in the United Kingdom over a twelve year period, the exemption issue, the use of false documents in the past and the ease by which bribery was possible in the Ukraine and the appellant's evidence on the issue of the call-up papers. We do not consider that the judge put the cart before the horse in coming to conclusions and then approaching the documents and the country background evidence. The remarks at paragraph 53 on the call-up papers are specifically in relation to the appellant's evidence and the judge then went on to consider that they were not genuine or reliable, in light of the ability of the appellant in the past to obtain false documentation. The judge took into account the expert's views on the call-up papers but had concerns about the call-up papers and the expert evidence, as set out at paragraphs 59 and 60. The reasoning in that regard is sound.
37. The Russian ethnicity point is essentially a neutral matter. It is, as Ms Norman argued, not a material point and it is not a matter to which the judge returned, though he clearly regarded it as a part of the overall credibility evaluation. It was open to the judge to conclude that the appellant had likely worked during the time he had been in the United Kingdom when he claimed to have been "simply residing". The reasoning at paragraph 49 of the decision is sound. The third point in ground 1 concerning the contention that the judge treated the claim as a memory test is not a major issue in terms of adverse credibility but a matter which it was open to the judge to observe. The same point had been made with regard to paragraph 53.
38. Moving on from this to ground 3, we consider that the particular matter which concerned the judge was the use by the appellant in the past of false documentation and the ability to obtain such documents in the Ukraine. It was clearly relevant to take into account the past use of false documentation, to reject the reasons given for the use of the Lithuanian passport, at paragraph 51 of the decision, and to regard this as an adverse matter.
39. Returning to ground 2, there is an element of confusion, we think, at paragraph 50, bearing in mind that the appellant's claim was that he was now liable to mobilisation, but that is not a matter that goes in any major way to credibility. The judge may have overemphasised the adverse nature of this. However, taken in the round, we consider that the judge was entitled to come to the adverse credibility findings that he did.
40. With regard to the evaluation of the expert evidence, we have already referred to paragraphs 59 and 60 and the concerns the judge had about the expert evidence. It was open to the judge to disagree with the expert evidence for the reasons that he gave. Ground 6 is not a matter of major significance in our view. It is the case, as the judge noted, that the

appellant did not claim asylum for over twelve years until encountered by officials and being served with enforcement papers and it is clear that the basis of the earlier claim was fear of the businessman rather than a claim to be in need of international protection on grounds of draft evasion. As against that there is the point that the matter is a sur place matter and therefore we consider the judge did to a minor, but not material extent err in that regard.

41. There are two further issues of potential concern. The first is the fact that although the respondent in the decision letter accepted the fact that the appellant might have to complete military service, yet the judge found that he was not wanted by the authorities to carry out military service. This, however, has to be seen in the context of what was said in the decision letter, quoting from the country guidance in VB and in PK, that it was not reasonably likely that a draft evader avoiding conscription or mobilisation in the Ukraine would face criminal or administrative proceedings for that act. Also there is the quotation from PK where the Upper Tribunal stated that it doubted whether a fine, probation or a suspended sentence would be sufficiently serious to amount to persecution and had earlier found, from VB, that there was no real risk of a draft evader being imprisoned for refusing to be conscripted. The judge addressed this point at paragraph 62 of his decision where he considered the matter in the alternative, noting that the penalty the appellant would face if he were at risk on return as a draft evader would be a fine or suspended sentence. He noted that the expert evidence supported him in this view. And he bore in mind also that the appellant had previously had a genuine exemption given to him by the authorities. Accordingly, we see no error of law in that regard either.
42. The final point is ground 5 and the failure by the judge to address the police summons. Although the judge erred in not addressing this, it has to be seen in light of our comments above with regard to the judge's alternative findings and the risk the appellant would face if there had been a police summons. The evidence is sufficiently clear, as borne in mind by the judge, that the appellant would not face imprisonment but a fine or suspended sentence and therefore would not face a real risk of serious harm.
43. Therefore, bringing all these matters together, we consider that the judge has not been shown to have erred in law in any respect and his decision dismissing this appeal is maintained.

Notice of Decision

The appeal is dismissed.

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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 21 July 2022

Upper Tribunal Judge Allen

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 8 July 2022

Upper Tribunal Judge Allen