Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000312
[PA/02669/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 September 2022	**On 1 November 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

IT
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Panagiotopouloul, Counsel instructed by Yemets Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, as the appellant seeks international protection and publication might endanger his safety if returned to Ukraine, the appellant continues to be granted anonymity. No-one shall publish, or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

2. In a decision promulgated on 1 May 2021. First-tier Tribunal Judge Hussain (the judge) dismissed the appellant's appeal, under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act), against a decision of the respondent, dated 6 June 2019, to refuse the appellant's application for asylum.

3. In a decision on error of law and directions dated 12 August 2022, a panel comprised of Upper Tribunal Judge Perkins and Deputy Upper Tribunal Judge Chapman found an error of law capable of affecting the outcome of the appeal and set aside the decision of the First-tier Tribunal, with certain findings preserved.

4. The matter came before this panel, pursuant to a transfer order given by the Principal Resident Judge of the Upper Tribunal, to be remade, under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

Factual Background

5. The appellant is a citizen of Ukraine, aged 39. He claims to have arrived in the UK in October 2018 and although he initially agreed to return voluntarily to Ukraine on 2 May 2019, he applied for asylum on 8 May 2019. This was on the basis that he had in April 2013 signed up for military service for 3 years. The appellant served four and half years in total, finishing his service on 17 October 2017, including serving in the war against Russia (although not on the front line). The appellant was then in the reserves and did not want to serve in the military again as he had already served and claimed to have seen unlawful shootings and young men suffering from an 'unlawful' situation'. The appellant claimed a military call-up notice was delivered to his father, with his father only telling the appellant two weeks before the appellant's asylum interview.

Scope of Resumed Hearing

6. The Upper Tribunal set aside the First-tier Tribunal decision, on the basis that the judge had not adequately engaged with the argument that the appellant was more than a draft evader, someone with an enhanced obligation to do military service, due to the fact of him being a reservist, which the appellant maintained made a difference. Secondly the judge had written off evidence produced by the appellant from his father, supporting his claim to have been convicted of offences, with the reasons given for discounting the father's evidence inadequate. Cumulatively the First-tier Tribunal had not given proper reasons for rejecting the appellant's case and the panel directed that it be heard again in the Upper Tribunal.

7. The Upper Tribunal panel which found the error of law, was satisfied that the matters set out in paragraphs 51, 52 and 53 of the First-tier Tribunal were established. In summary the following findings were preserved:

   a. The appellant has previously served in the Ukrainian army.

b. The appellant has received a number of sets (four) of further call-up papers (between September 2018 and April 2019) with the judge seeing no reason to doubt the call-up documents provided.

c. The judge accepted therefore that the appellant has been the subject of call-ups.

8. We had before us the appellant's and respondent's bundles which were before the First-tier Tribunal. The respondent produced an updated, June 2022 Country Policy and Information Note (CPIN), Ukraine: Military service with the appellant producing a supplementary bundle containing the same CPIN, together with a further June 2022 CPIN, Ukraine: Security situation, a news article and skeleton argument.

9. As a preliminary matter, the appellant's counsel sought to rely on three separate, unrelated Ukrainian appeals, where it was claimed that concessions from the respondent had been made, with a view to granting Humanitarian Protection in light of the humanitarian position in Ukraine at present. The respondent presenting officer indicated that she had sought instructions and confirmed that there was no policy and that it was her understanding that the cases in question were based on private life (which Ms Panagiotopouloul disputed). As we indicated at the hearing, whilst it would not have surprised the Tribunal had the respondent taken a position on the appellant's appeal, that was not the case and it was incumbent on the Tribunal to hear and decide the appellant's appeal.

10. We heard oral evidence from the appellant Mr IT, who adopted his witness statement dated 24 March 2021 and gave evidence and was cross-examined on that evidence with the assistance of a Ukrainian interpreter. We ensured that the appellant and the interpreter understood one another. Both representatives made submissions. At the end of the hearing we reserved our decision, which we now give.

Discussion

11. We considered the starting point, of the preserved findings, that the appellant has previously served in the Ukrainian army and has been subject to call up papers. It is the appellant's claim that he was convicted in his absence by a Ukrainian court.

12. The appellant's father, in a witness statement dated 25 March 2021 had indicated that an officer from the court in Ternopil had come to the family home in December 2020 indicating that the appellant had to attend the court on 11 December 2020. The appellant's father's witness statement (Appellant's Bundle (AB) page 11) asserted that he went to the hearing and the appellant being sentenced to two years imprisonment. His father's witness statement indicated that he had asked the court secretary for a copy of the decision but they said that they could only give it to the appellant.

13. The appellant's father also stated that he felt that if the appellant was not in the country, then 'they could not do anything to him'. The appellant in oral evidence before the Upper Tribunal, was cross-examined about the fact that his father knew he had no legal right to be in the UK and therefore was asked why his father would be unconcerned about the court appearance in Ukraine when he, his father, could not be certain that the appellant was safe in the UK, due the appellant's lack of legal right to remain. The appellant told the Tribunal that his father thought the appellant would be safe in the UK 'far from home but safe from war'.

14. The appellant told the Upper Tribunal that his father had sought legal advice before the 11 December 2020 hearing, but that his father was told that without the appellant nothing would be decided. The appellant was asked if, when his father heard that the appellant had in fact been sentenced to 2 years imprisonment, whether his father had again sought legal advice. The appellant stated that his father approached the secretary of the court and was told that without the appellant present he could not obtain a copy of the decision. In addition, the appellant told the Upper Tribunal that his father had again sought legal advice (confirming that as far as he was aware his father had sought legal advice twice). The appellant indicated that the lawyer had stated that without the appellant 'nothing can be decided, no document given or issued'.

15. It was the appellant's evidence that he has spoken to his father who maintains that without the appellant nothing can be done and as the appellant has lost his passport in the UK, without it, the appellant claimed he cannot arrange a letter of authority for his father to conduct his affairs for him.

16. The appellant also told the Tribunal that he thought his father had asked the lawyer for a letter saying he had spoken to the appellant's father on two occasions and setting out the advice the lawyer had given his father. It was the appellant's evidence that with the war ongoing, 'nobody is dealing with it' and no one gives weight to such matters.

17. It was the respondent's case that it was lacking in credibility that the appellant's father would not have sought to obtain evidence from the lawyer, from whom he had sought advice, including if that advice had been simply to say there was nothing that he could do in the appellant's absence. The appellant had produced evidence to support his claim to have completed military service, including certificates of involvement and photographs. He has also produced call-up papers and is someone who is aware therefore that evidence was necessary for his case. Ms Nolan submitted that the fact that evidence in relation to his conviction, if only from the lawyer the appellant indicates his father spoke to, is missing, is a clear indication that the appellant was not in fact convicted to imprisonment.

18. Ms Nolan relied on the June 2022 CPIN, Ukraine: Military service, paragraph 6.9.1 which indicated that not a single draft evader has been

imprisoned according to 2021 judicial statistics and 6.9.3 which confirmed that of 295 draft evaders, none was imprisoned with eight persons placed in semi-open prisons, 175 receiving suspended sentences and 73 fined. Ms Nolan relied on **PK and OS [2020] UKUT 00314** which provided that although the Ukrainian criminal code provides for sentences of imprisonment, absent some special factor, it was highly unlikely that a convicted person will be sentenced to imprisonment.

19. Ms Nolan further relied on **VB and Another (draft evaders and prison conditions) Ukraine CG [2017] UKUT 00079 (IAC),** authority for the position that it is 'not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings'. **VB** further provides that it is a matter for any Tribunal to consider in the light of developing evidence whether there were aggravating matters which might lead to an immediate custodial sentence.

20. **VB** confirmed that there is a real risk of anyone returned to Ukraine as a convicted criminal, sentenced to a term of imprisonment in Ukraine, being detained on arrival although anyone convicted in absentia would probably be entitled to a retrial. **VB** confirmed that there is a real risk that the conditions of detention and imprisonment in Ukraine would breach Article 3 ECHR. It was not disputed before us that the findings in **VB** in respect of prison conditions, remain undisturbed by **PK and OS.**

21. It was Ms Panagiotopouloul's case that the appellant was someone who had served in the army, not merely as a driver, as he had reached the level of sergeant and had evidenced awards for honourable service. It was her submissions that he was someone who would be valuable, which makes it more likely that the authorities would convict and imprison the appellant. She also relied on the fact that the appellant had received 4 sets of call up papers, showing an extended period where he had disobeyed the call-up, which she submitted was potentially aggravating. Ms Panagiotopouloul submitted that the fact the appellant went into the reserve force as a war veteran was an aggravating feature.

22. Ms Panagiotopouloul further submitted that the appellant had provided a reasonable explanation as to why there was no documentary evidence of his conviction, i.e., that no documents are given unless the defendant is present. Whilst she accepted that there was no evidence from the lawyer whom the appellant indicates his father spoke to, she submitted that this issue only came to light after the First-tier Tribunal and given that the war with Russia commenced in February 2022, it was now impossible to obtain documents.

23. Ms Panagiotopouloul submitted that there were two distinct issues to be considered, whether firstly the appellant would likely be convicted, which she said the answer was likely to be yes, and secondly whether he would be likely subject to imprisonment due to aggravating features. Ms Panagiotopouloul conceded that there was no independent or expert

evidence, that the appellant was at higher risk due to his previous service and position in the reserves. However, she referred the Tribunal to the current prohibition on all males aged between 18-60 leaving the country and that all reservists have to serve and all those served previously are expected to return, with a proposed amendment to the criminal code of Ukraine, establishing the criminal liability of Ukrainian citizens for non-compliance with the requirements of the law on returning to Ukraine of those subject to conscription. The appellant has not returned.

Findings

Asylum/Article 3 ECHR

24. As recorded by the judge in the First-tier Tribunal, the appellant's counsel conceded before the First-tier Tribunal that the appellant's claim does not fall within the Refugee Convention and the skeleton argument before the Upper Tribunal argued only, in relation to the appellant's draft evader claim, that he would be imprisoned on return to Ukraine and thus be exposed to prison conditions which would violate his rights under Article 3, ECHR. We accept therefore that there was no asylum appeal before us.

25. Whilst the judge of the First-tier Tribunal erred in failing to given adequate reasons for rejecting the appellant's case, we had the benefit of further oral evidence from the appellant and detailed submissions from the parties, in relation to the specific points in dispute, namely the claimed conviction and whether there were any aggravating factors which might lead to an immediate custodial sentence, it being accepted that such would be in breach of Article 3 ECHR, due to prison conditions in Ukraine.

26. It emerged for the first time before the Upper Tribunal, in the appellant's oral evidence, that his father had sought legal advice on two occasions, surrounding the claimed conviction which the appellant and his father say he was subject to in December 2020. Whilst we do not require corroboration, the Tribunal is entitled to draw adverse inference where an appellant might reasonably be expected to have produced such information.

27. Having considered all the evidence in the round, we are not satisfied to the lower standard that the appellant provided a reasonable explanation for his failure to provide any documentary information in relation to the claimed conviction, even if such information had been no more than a letter from the lawyer, whom we accept that his father had consulted twice at the time, in and around December 2020.

28. Although Ms Panagiotopouloul submitted that the issue only came to light after the decision of the First-tier Tribunal and relied on the war in Ukraine, which commenced in February 2022, that argument does not assist the appellant. The First-tier Tribunal decision was promulgated in May 2021,

where the judge indicated (paragraph 60) that if it was indeed the case, that court officials were not prepared to release the judgment to his father and only to the appellant, then the appellant ought to have appointed a lawyer in Ukraine to see whether a copy could be obtained, with the appellant stating to the First-tier Tribunal that he had not done so.

29. Whilst it is now the appellant's case that, in fact, his father had consulted a lawyer twice (once before and once after the 11 December 2020 court date) in relation to the 2 year sentence imposed in December 2020, it is not credible in our view, that the appellant would not have obtained documentary confirmation of this advice, either at the relevant time, or at the very latest after the First-tier Tribunal decision in May 2021, when the judge pointed out the gaps in the appellant's evidence. The decision of the First-tier Tribunal was promulgated in May 2021, nine months prior to the commencement of the Russian invasion of Ukraine. We are not satisfied therefore, that the 2022 war has any bearing on the appellant's failure to provide documentary evidence of, at the very least, the lawyer's advice to his father, where such ought reasonably to have been available significantly in advance of February 2022.

30. In the absence of such evidence or any independent confirmation that might have supported his claim (and that of his father) to have been convicted and sentenced to two years imprisonment, where again we are satisfied that such ought reasonably to have been available, the Tribunal is not satisfied that the appellant has demonstrated to the lower standard, that he has been convicted in Ukraine, in absentia, for failing to answer the call-up papers.

31. We have gone on to consider the issue of whether there are any aggravating matters in the appellant's case which might lead to the imposition of an immediate custodial sentence, rather than a suspended sentence or the matter proceeding to an administrative offence and a fine being sought by a prosecutor.

32. We have considered this in light of the preserved findings that the appellant is a veteran reservist who has ignored four sets of call-up papers, but who in our findings, has not established that he has been convicted in Ukraine in absentia. As such, the appellant is not at real risk of a term of imprisonment in Ukraine as a convicted criminal as he has failed to establish to the lower standard of civil proof, that he has been convicted.

33. We have gone on to apply the country guidance to the facts as we have found them. We have considered what was said in **VB,** that it was not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings. This is borne out in our findings by the fact that the appellant has received four sets of call-up papers but has not in our findings been either subject to prosecution or conviction for draft evasion.

34. Although Ms Panagiotopouloul reminded the Tribunal that there are two separate questions to be answered, whether the appellant would be convicted and whether if so, he would then be imprisoned, given that **VB** confirmed that both prosecution and imprisonment are rare occurrences, it is significant that the appellant was unable to point to any background country information or expert evidence that might support the appellant's claim that he, as a veteran reservist who had served as a sergeant and been awarded commendations for honourable service, would be at real risk, due to any aggravating matters, of receiving an immediate custodial sentence.

35. As discussed in **VB** (see paragraphs 65-72) there is a stark contrast in Ukraine between the penalties provided in law for avoiding military service and the evidence of what is happening in practice. Failure to answer call-up papers has historically been a major problem and the country guidance notes that the Ukrainian government had, to that date, preferred to try to persuade parents to encourage their sons to cooperate and taking a number of other measures including regulating the borders to prevent people escaping, rather than attempting to come down heavily on large numbers of evaders through criminal proceedings. **VB** advised that of the less than 30,000 draft evaders against whom some investigation or initial proceedings may have been instigated, those steps would appear mostly to have been at a very preliminary stage with the information about the tens of cases known to have an outcome, indicating that these are mostly dealt with by fines or suspended sentences.

36. We take into account that the updated CPIN Ukraine: Military service, dated June 2022 confirmed, as relied on by Ms Nolan that not a single draft evader was imprisoned in 2021.

37. The Tribunal in **VB** discussed that it was possible that doing more to avoid the call-up might lead to harsher sentencing as an aggravating circumstance and that leaving Ukraine might be seen as such an aggravating circumstance. However the Tribunal in **VB** noted that it was still unclear when this would be in the context of criminal proceedings or when this would be in the context of administrative proceedings and that it seemed to the country guidance panel that 'there is a major factor of unlucky chance involved before any particular draft-evader finds himself identified for any proceedings at all'.

38. In terms of the appellant's case, there is no credible evidence in our findings that he has been identified for draft evasion proceedings (whether criminal or administrative) notwithstanding his four call-up papers.

39. In the first instance therefore, taking into account the country guidance case law and the background country information including the lack of evidence, in the vast majority of cases, to support prosecutions of draft evaders we are not satisfied to the lower standard that this appellant will be prosecuted on return.

40. If we are wrong in that finding we have gone on to consider the appellant's case. Although the appellant claimed his profile as a veteran reservist who had been promoted to sergeant and had been recognised for honourable service was an aggravating factor, we take into account the appellant's oral evidence to this Tribunal that when he completed his military service he had to have his army book signed to confirm he was a reservist and that this was something all military personnel had to do on completion of military service. We are of the view that there is nothing particular in the appellant's own service that might have constituted an aggravating factor. Although we take into account his promotion to sergeant and his commendations, again we are not satisfied that there was anything particular to the appellant's service that might constitute an aggravating factor.

41. Although, as noted above, **VB** discussed the possibility of ignoring multiple call-up papers and leaving Ukraine, being potential aggravating factors, despite the passage of time since **VB** we were not pointed to any background or other evidence that might indicate that this has indeed been the case for other draft evaders or would be the case for the appellant. We are not satisfied that the appellant has established to the lower standard that it would be. In so finding, we have considered the intervening circumstances of the Russian invasion of Ukraine in February 2022, and take into account that prior to the invasion, on 21 April 2021, President Zelensky signed a law which introduced a new type of military service, for the conscription of persons from amongst the reservists in a special period. However, we take into account, that it is accepted that the appellant had already received his call-up papers prior to this amendment of the law. We also take into account the draft law, reported on 14 April 2022 which proposed to introduce a new article into the law of Ukraine, regarding the obligation of person subject to conscription during mobilisation, to establish liability for non-compliance of the requirements of the law on the return to Ukraine after the introduction of martial law. There was no evidence before us to establish that such a law has been passed. Even if it has, there was no evidence relied on by the appellant to suggest that such a law, if passed, has led to an increased risk of the appellant being imprisoned on return to Ukraine.

42. We also take into account, in considering the approach of the Ukrainian authorities to draft evaders, in addition to what has been said in the country guidance case law, what was said in the June 2022, CPIN Ukraine: Military service. This documents cases of bribery and attempts by Ukrainian citizens to illegally exit Ukraine. The CPIN (6.5.1) notes that:

> 'the police officers proposed, after compiling the necessary procedural documents, to send these person to military registration and enlistment offices for draft evasion (or mobilization). The State Border Guard Service urges citizens not to try to offer money to border guards, because this is a criminal liability.'

Whilst we note the criminal liability, the reported approach of the Ukrainian authorities, to those seeking to illegally leave the country and therefore evade military service, appears to be to send those individuals back to the military, rather than pursue criminal cases against them.

43. Paragraph 6.7.2 of the Military service CPIN advises that between 2014 and 2018, investigators had 'sent to court more than 11.3 thousand indictments under articles 'Desertion' and 'Arbitrary leaving of military service'. However, as already noted, in November 2021, the Danish Immigration Service published a report which advised that not a single draft evader was imprisoned according to judicial statistics for 2021 and that prisons for military personnel are for those who have committed disciplinary offences and not draft evaders.

44. In conclusion, whilst it is not in dispute that criminal sanctions do exist for draft evaders, there was no compelling evidence which might suggest any departure from the conclusions of the country guidance case law, including that it remains not reasonably likely that a draft evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative sanctions. We have found that the appellant has not established that he will. Even if we are wrong in that conclusion and the appellant did face prosecution, having considered the particular facts of the appellant's case, we are not satisfied that he has established that such would put the appellant at enhanced risk of either conviction or, more importantly, imprisonment.

45. The First-tier Tribunal failed to adequately consider the issue of the effect of any aggravating factors on the appellant's case. Having done so ourselves and having considered the most up to date background country information we are not satisfied that the appellant has established that there is a real risk of the appellant being prosecuted and imprisoned on return to Ukraine. We rely on what was said by this Tribunal in **PK and OS**, that 'it is highly that a draft-evader would be detained pending trail at the border, given that the enforcement focuses on fines rather than custody'.

46. We find therefore that the appellant has not demonstrated to the lower standard that there is a real risk of a breach of Article 3, ECHR of him being imprisoned in Ukraine on return.

Humanitarian Protection

47. That is not however, the end of the matter for the appellant. The situation in Ukraine has evolved considerable since the decision of the First-tier Tribunal.

48. Whilst Ms Nolan confirmed that there was no respondent policy in relation to the grant of humanitarian protection, we had the benefit of the respondent's June 2022 CPIN Ukraine: Security situation. Ms Nolan referred us in particular to paragraphs 2.4.2, 2.4.4 and 2.5.7.

49. The pertinent question to address is whether the appellant will face a real risk of serious harm as a result of a severe humanitarian situation and/or a state of civil instability and/or where law and order has broken down. Paragraphs 339C and 339CA(iv) of the Immigration Rules provide that a real risk of serious harm can include a 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'.

50. It is accepted, at paragraph 2.4.2 of the respondent's CPIN that there is an international armed conflict taking place within Ukraine and at 2.4.4 it is confirmed that there is evidence that indicate that Russian forces are carrying out indiscriminate attacks across a number of regions in Ukraine. Despite Russian claims that attacks have been only directed against military facilities, as documented at 2.4.5, civilian infrastructure across Ukraine has been deliberately and repeatedly attacked by Russian heavy missiles and airstrikes, with reports of schools, hospitals and residential buildings all being deliberately shelled. Paragraph 2.4.6 documents reports of Russian troops systematically abducting civilians in occupied areas, with reports of torture from those released. There have also been reports, following withdrawal of Russian forces from areas such as Bucha, of Russian troops having carried out extra-judicial killings of civilians together with reports of sexual violence against Ukrainian citizens in occupied areas. War Crimes investigations have been initiated as a result of the concerns.

51. Paragraph 2.4.7 of the 2022 CPIN Ukraine: Security situation, advises that it is considered that there is a real risk of serious harm by reason of indiscriminate violence in Zaporizhia, Donetsk, Luhansk, Kharkiv, Kyiv and Kyiv City regions.

52. As Ms Nolan for the respondent submitted, the Tribunal also has the appellant's evidence of what happened in his area: the appellant provided a newspaper article dated 6 September 2022 documenting a rocket attack on the Western Ukrainian city of Chortkiv with four missiles hitting the city and partly destroying a military facility with 22 people injured including a 12 year old child, according to a report from the governor of the Ternopil region. Four apartment buildings were damaged. Whilst Ms Nolan did not specifically concede the appellant's case, it was her submission that it was a matter for the Tribunal whether or not the appellant qualified for a grant of humanitarian protection.

53. Whilst the Tribunal takes into account that the appellant's home region of Ternopil (with the appellant having signed up for military service in 2015 in his city of Chortkiv in Ternopil) was not specifically listed in the areas listed at 2.4.7 of the June 2022 CPIN, which noted that the vast majority of the violence has been in the northern, eastern and southern regions of Ukraine, we also note that this was 'at the time of writing' in June 2022. The appellant has provided more up to date, independent evidence of a rocket attack in his home area. It was also the appellant's oral evidence, which we accept, that he is in regular contact with his family, that there

are air raid warnings every day due to a threat of air bombardment and that his family have to go to air raid shelters every day. He indicated that there is a military base not far from his house where equipment and hardware are stored, which increases his concern for his family.

54. Whilst, for the reasons set out above, we have not accepted that the appellant has established to the lower standard that he has been convicted in absentia as his father as claimed, we have considered this in the round, in the context of the appellant having documented a large part of his claim, and been found credible in the majority of that claim, including in relation to his prior military service and his subsequent call-up papers. We take into account that Ms Nolan did not specifically challenge the appellant's oral and written evidence in relation to the current humanitarian situation in the appellant's home region. We accept to the lower standard that it is as claimed by the appellant.

55. We are therefore further satisfied to the lower standard, including given the oral and written evidence of indiscriminate air bombardment in the appellant's home region. We find that there is a real risk of serious harm (by way of a serious and individual threat to his life as a civilian) to the appellant by reason of indiscriminate violence in a situation of armed conflict. We take into account, as set out at paragraph 2.5.1 of the June 2022 CPIN Ukraine: Security situation, that due to levels of indiscriminate violence in certain regions, protection from the state is unavailable and, at 2.6.1, due to the levels of indiscriminate violence in certain regions and the unpredictable and fast moving nature of the conflict, internal relocation within Ukraine is not considered reasonable at the time of writing.

56. At paragraph 7.2.1 it is reported that on 21 April 2022 the UNHCR published a fact sheet documenting that as of that date 'more than 5 million refugees have fled Ukraine, making this the fastest growing refugee crisis since World War II', with a further 7.7 million people internally displaced with some 13 million people estimated to be stranded in affected areas.

57. The Tribunal is satisfied, considering all the evidence in the round that substantial grounds have been shown for believing that the appellant, if returned to Ukraine would face a real risk of suffering serious harm and is unable or owing to such risk, unwilling to avail himself of the protection of that country. The appellant is entitled to a grant of humanitarian protection.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law such that it is set aside. We substitute our decision re-making the decision allowing the appellant's appeal on humanitarian protection grounds.

Signed M M Hutchinson Date: 21 September 2022

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee is payable. Therefore no fee award is made.

Signed M M Hutchinson Date: 21 September 2022

Deputy Upper Tribunal Judge Hutchinson