



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006643
UI-2022-006644
First-tier Tribunal No:
PA/00828/2021
PA/00829/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MK
DK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, of Counsel, instructed by Freeman Solicitors

For the Respondent: Ms A Everett. Senior Home Office Presenting Officer

Heard at Field House on 5 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellants are citizens of Ukraine. They are husband and wife born in September 1962 and February 1967. They arrived in the UK in August 2016. They made a protection claim on 19th December 2019. Their protection and human rights claim was refused on 29th March 2021. Their appeal against the decision was dismissed by First-tier Tribunal Judge Farrelly in a determination promulgated on the 13th April 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Hatton on 19th May 2022 on the basis that it was arguable that the First-tier judge had erred in law in assessing the appellants' protection claim, and in particular in refusing to consider whether they were entitled to humanitarian protection under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any such error was material and thus whether the decision should be set aside and remade.

Submissions – Error of Law & Remaking

4. In the grounds of appeal and the skeleton argument it is argued for the appellants, in brief summary, as follows.
5. Firstly, it is argued, that the First-tier Tribunal erred in law because at paragraph 58 the judge did not make a finding on the humanitarian protection claim. It was not sufficient that the respondent had offered a grant of limited leave for 30 months, as this was not equivalent to a grant of humanitarian protection which would have led to a five year grant of leave. It is argued that this was material due to the dire country conditions in Ukraine
6. Secondly, it is argued, the First-tier Tribunal erred in law at paragraph 57 of the decision in finding that the appellants would not have very significant obstacles to integration by overlooking the context of the dire country conditions and state of war which exists in Ukraine.
7. Thirdly, it is argued, the First-tier Tribunal erred in law at paragraph 47 of the decision in failing to determine the claims with reference to the country of origin materials if the accounts of the appellants were disbelieved. Further in disbelieving the appellants the First-tier Tribunal failed to engage with the psychiatric report, which it should have done as it was not lawfully possible to find that the doctor's conclusions were totally undermined by a finding that the appellants were not credible witnesses, and consideration also needed to be given to the state of healthcare facilities in Ukraine. It is also argued that the finding that the appellants were not credible was itself unsound, particularly with

respect to their having lived in a caravan provided by Polish people and in not believing the death certificate of their son without good reason.

8. In the Rule 24 notice for the respondent it was accepted that there was a material error of law identified in the first ground of appeal. The other grounds were not conceded. However, as it was accepted by Ms Everett on behalf of the respondent that the appeal should be remade allowing it on humanitarian protection grounds it was agreed by Ms Ferguson that there was no need to consider these grounds further.

Conclusions – Error of Law & Remaking

9. There is no need for us to give reasons as an error of law is found by consent, however we record that we agree with the parties that it was an error of law by the First-tier Tribunal not to have made findings and a decision on the ground of appeal that the decision of the respondent was wrong as the appellants were entitled to humanitarian protection.
10. The respondent agrees that the appellants are entitled to humanitarian protection by virtue of there being a serious and individual threat to their lives in Ukraine by reason of indiscriminate violence in a situation of international armed conflict. We agree that this is the case and find that the appeal should be remade allowing it on this basis, and for the same reasons on human rights grounds.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal.
3. We remake the appeal by allowing it on humanitarian protection and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of their protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th December 2023