



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

Appeal Number: PA084892016

THE IMMIGRATION ACTS

Heard at Bradford

**Decision &
Promulgated
On 27 June 2017**

Reasons

On 26 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**RM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering of Counsel

For the Respondent: Mr Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum and ancillary protection on 4 August 2016. His appeal was dismissed by First-tier Tribunal Judge Fox ("the Judge") following a hearing on 4 October 2016.

2. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as this was an asylum and ancillary protection claim.

The grant of permission

3. Upper Tribunal Judge Gill granted permission to appeal (25 April 2017) on the grounds that it is arguable that the Judge erred in relation to;
 - (1) a lack of finding on his Catholic faith,
 - (2) a lack of finding on the availability of an alternative for him to military service,
 - (3) the failure to consider determinations from the First-tier Tribunal or New Zealand, and
 - (4) whether he may be required to participate in war crimes.

Appellant's position

4. Miss Pickering conceded that there was no merit in (1) as the Judge did consider his Catholic faith [41], and the issue was not what faith he had, but what the risk was for not performing military service.
5. Miss Pickering conceded that there was no merit in (3) above given the lack of evidence that [11] of the President's Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal had been complied with, and there was plainly no error if not following a decision from outside the jurisdiction.
6. Miss Pickering conceded that there was no merit in (4) given the lack of evidence of war crimes.
7. The only point from the grounds she submitted was arguable related to a lack of finding on the availability of an alternative for him to military service. She submitted that VB and another (draft evaders and prison conditions) Ukraine CG [UKUT] 00079 (IAC) was not relevant as that was not promulgated until 1 March 2017 even though it was heard on 31 October 2016 which was 4 weeks after this appeal was heard.

Discussion

8. In my judgement, there was no material error of law for the following reasons.
9. VB considered evidence 4 weeks after this appeal was heard by the Judge. There is no evidence they had more or fresher evidence than he did. On his assessment of the evidence before him he reached the same conclusion as the Upper Tribunal did in VB, which he was entitled to do. The fact the Judge did not have VB is not relevant as it is the evidence and not the determination that is the key. He can not be said to have erred in his assessment of risk given the proximity between the

hearings. Therefore, whether there was an alternative to military service or not is not the key as even if he had to perform military service, the punishment for a failure to perform it does not amount to persecution. In this case the Judge was entitled to find for the numerous reasons he gave that the authorities had no adverse interest in him despite him coming to their attention on a number of occasions and there were therefore no aggravating factors that enhanced his risk.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
26 June 2017