



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/05352/2017

THE IMMIGRATION ACTS

Heard at Newport

On 10th May 2018

Decision and Reasons Promulgated

On 21st May 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Mr R P

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher instructed by Sterling & Law Associates
LLP

For the Respondent: Mrs Eboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ukraine born on [] 1979 and he sought permission to appeal against First-tier Tribunal Judge Wooley's decision to dismiss his appeal against the respondent's decision of 31st of May 2017 to refuse his asylum and human rights claim.
2. The appellant asserts that, like the appellant in **VB & another (Draft Evaders and prison conditions) Ukraine CG** [2017] UKUT 0079, he has received mobilisation papers requiring his attendance with a military commissar. His failure to attend because he had already fled to the UK had resulted in a summons to appear before a military prosecutor for the offence draft evasion. To compound the danger faced by the appellant in Ukraine he was a well-known supporter of the Party of the Regions the party of Viktor Yanukovich, and a high ranking civil servant in the fisheries Department as well as a member of the Special Board for Corruption and Organised Crime Counteraction.

Application for Permission to Appeal

3. The application for permission asserted that the determination contained material errors of law specifically that
 - (i) there was a failure to take relevant evidence into account in relation to the appellant's political involvement. At the hearing the judge was directed to specific evidence about the ill-treatment of the Kiev regime's political opponents and paragraph 23 of the judge's decision contained the relevant references specifically [202] *"Amnesty International has found that both sides arbitrarily holding civilians who have not committed any crime, but who sympathise with the opposing side. The organisation spoke to civilians who were detained and beaten merely for having photographs from the EuroMaydan protests on their mobile phone, over having telephone numbers of separatist contacts"*. The Radio Free Europe report at [205] contained similar evidence about the detention of Kiev's political opponents especially those considered to have pro-Russian sympathies. The judge recorded, however, that the evidence "does not reveal any persecution of former or present political opponents". The judge was specifically taken to this evidence but appeared not to have taken it into account. That failure amounted to an error of law.
 - (ii) There was a failure to place the appellant's religion and role in the fisheries ministry in the context. The appellant's case summary was that he was a relatively high-ranking part of law enforcement apparatus of the ancient regime in Ukraine and he was known to be a political supporter of that regime which was pro-Russian. He was also a member of the Russian Orthodox church rather than Ukrainian Orthodox Church. It could be seen that having ties to Moscow and therefore separatist was a dangerous issuing Ukraine.

The judge was required to consider how those factors taken cumulatively would affect Ukrainian authorities approach to the appellant's draft evasion. The failure to do so was an error of law.

4. Permission to appeal was granted on the basis that the judge had arguably failed to take into account country background evidence.
5. The Secretary of State submitted a rule 24 response arguing that the judge did not make specific reference to the relevant two paragraphs of the country guidance, but the judge did consider the country guidance relating to the persecution of former present political opponents. The judge found that the date of the appellant's membership card undermined his claim to be involved in the presidential election in early 2010 and dealt with the appellant's involvement in the military service fully in paragraph 35 onwards. It was submitted that the judge directed herself appropriately.

The Hearing

6. At the hearing, Miss Fisher submitted that the appellant was a draft evader and his political background should have been considered in the round. There were a number of documents including a court summons to which no proper evidential weight had been accorded. Albeit that there was a discrepancy in the date of the membership card, nonetheless, the appellant had a political background and he did not necessarily need to be a member of the party to be a supporter. The judge had accepted the appellant's appointments in Ukraine and at paragraph 23 had specifically noted the pages in the evidence that counsel for the representative had drawn to her attention.
7. The judge recorded at paragraph 32 that what was absent from the US State Department report was any mention of politically motivated prosecutions or persecution of supporters of opposition parties. At paragraph 37 the judge stated "*I have discussed the country guidance information above. This does not reveal any persecution of former or present political opponents*". Miss Fisher referred me to the US State Department report at pages 66 and 68 which did so identify reports of persecution. Further, she submitted, the appellant's background in the fisheries Department suggested that he was indeed involved in politics and this would have raised his risk profile. As set out in the grounds, being a supporter of the Russian Orthodox church indicated that he was pro-Russian. She added that there was also no mention of any persecution because of religion. The appellant's profile should have been taken in the round. There was, at paragraph 47 of the decision no finding regarding the risk of draft evasion and inadequate reasoning in that respect.

8. Mrs Eboni advance that the first-tier Tribunal judge had directed herself appropriately and had made adverse credibility findings. There was a discrepancy date with regards the membership card this was a late embellishment of his claim. The evidence was considered paragraph 37.
9. In reply Miss Fisher advanced that the judge did not deal with the full substance of the case, the appellants political engagement despite the membership card issue. Even if he was not a member that did not indicate that he was not a supporter with no political profile. It was not sufficient to merely recite the evidence; it had to be incorporated into the reasoning. There was an inadequacy of key findings and the matter should be remitted to the first-tier Tribunal.
10. Both advocates agreed that should an error of law be found the matter should be

Conclusions

11. The judge at paragraph 34 identified that there were various elements to the appellants claim and that her the judge should make a global conclusion on all the elements. This acknowledges that there was an interaction of the elements of the claim. At paragraph 36 the judge indicates that she does not accept that he was a *member* of the Party of the Regions, but appears to fail to make a clear finding as to whether he was a *supporter*. The argument made by Counsel was that lack membership did not signify a lack of political profile. At paragraph 45, the judge appears to find there 'no aggravating factors' including political involvement.
12. The judge had recorded paragraph 32 that the US State Department was
"silent on recent political changes and whether supporters of alternative parties to the ruling party will be subject to persecution. There is no mention of the party of the regions (perhaps unsurprisingly if that party no longer exists) but more importantly there is no mention of persecution for political belief"
13. Paragraph 37, however, is the crucial paragraph and whereby the judge records and notes that
"I have discussed the country information above. This does not reveal any persecution of former or present political opponents. The elections in 2014 were free and fair. The appellant has mentioned high-profile leaders of his party... But there is no country information on their persecution or indeed any other leader of the party of the regions. If this was happening there could be expected to be reports of it but there are none. The date on the appellant's membership card undermined his claim to have been involved in the presidential elections in early 2010" ... "I find that the appellant has not established a well-founded fear of persecution on account of his involvement in the party of the regions"

14. As Miss Fisher indicated, the judge had been specifically taken to the pages of the reports which had indeed indicated persecution of former or present political opponents. This was not alluded to in or referenced by the judge in her cumulative findings. Nor did she deal with the clear submission made by Counsel at the hearing that membership of a political party should not be confused with political opinion. It would also appear that the judge has taken the elements of the claim separately and for example at paragraph 40, she states *'I find that the appellant has not established a well-founded fear of persecution on account of his activities with the fisheries department'*.
15. As Miss Fisher submitted it was not each separate element that needed to be assessed but the various elements cumulatively. The case was not that the appellant would be targeted solely because of his religious persuasion but this had to be factored into the whole assessment of his profile.
16. Between paragraph 44 and paragraph 45 there is some contradiction as to whether the judge accepts that the draft summons was indeed issued and a clear finding on this needed to be made. The question the judge needed to make clear findings with reasons, and to ask was whether, taking into account all the relevant evidence including the evidence relating to the persecution of supporters of alternative parties, his profile relating to religion, the appellant would be of interest to the authorities on return to Ukraine applying, where relevant, **VB** and considering whether he was an 'ordinary draft evader'.
17. For the reasons given I find the Judge erred materially. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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.

Signed

Helen Rimington

Date 15th May 2018

Upper Tribunal Judge Rimington