Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09914/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 October 2018	**On 08 November 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

[S M]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Nnamani, Counsel, instructed by Yemets Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 27 September 2017 the respondent took a decision to refuse the appellant's protection claim. The appellant, a national of Ukraine, based his claim on his fear that if returned he would be imprisoned and ill-treated for evading military service. The appellant appealed to the First-tier

Tribunal (FtT). On 8 August 2018 Judge Greasley of that Tribunal dismissed his appeal.

2. The appellant's grounds are essentially twofold, both focusing on the judge's treatment of the documentary evidence, in particular two military summons dated 25 February and 31 March 2016 and a decision of a court in Ukraine sentencing him in absentia to four years' imprisonment. The first ground takes issue with the judge's treatment of the expert evidence inasmuch as it relied on an unduly stringent requirement that the professor who wrote the expert report demonstrate that he had based his findings on a much wider comparative sample of military summons; the second assails the judge's reasons for finding the summons documents not genuine.

3. I consider the appellant's grounds are made out. In relation to the expert's report from Professor Galeotti dated 26 October 2017, the judge stated this at paragraphs 65–68:

> "65. I have carefully considered the expert report of **Prof Galeotti** dated 26 October 2017, which, for reasons that follow, I afford limited evidential weight. The author of this report indicates that his instructions only included consideration of the two call-up papers (or summons), and the court ruling of 25 November 2016. He has not been provided with the detailed refusal decision of the respondent, nor indeed any records of interview provided by the appellant. I find that these are significant and surprising evidential omissions. The Professor has not been provided with all relevant material, which is critical in cases such as this if an overall assessment is to be made.
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> 66. The author has not had the advantage of considering the appellants claims more widely, and makes no specific reference or analysis in relation to the concerns regarding timings appearing particularly within the two summonses. I find that again these are important evidential omissions.
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> 67. In addition, the professor bases his comparative analysis only on consideration of 25 other summonses and 12 other court determinations. I find these are not significant numbers. He explains that he has considered these and that such documents have been provided from both military and judicial officers, but he provides no information whatsoever as to in which capacity, or indeed in which context, such documents were provided, and how they have been analyzed.
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> 68. Nor has the author provided by way of any annex any redacted comparative documents which he claims he has analyzed, when making comparisons between those documents and the questioned documents in the appeal before me."

The judge's criticisms clearly drew on his summary of the expert's findings at paragraphs 39–41, in particular paragraph 43:

> "43. In relation to the court ruling document, this was again found to be typical of that dispatched to record a sentence and appeared to be genuine. The author had handled more than 12 determinations in this format including some shown to him by military and judicial officials and did retain six for comparison. The professor found that there was some variety in the format used by different court's to record judgements but this document followed one of three main approaches. The documents style, language, Crest, stamp, font and format were the same of those in such determinations. The document also included correct legal terms and sighted legal clauses in the Criminal Code and Procedure Code."

4. In defence of the judge's treatment of the expert evidence, Ms Everett highlighted that the judge's reasons for finding the report deficient went much further than the lack of a wider database for the purposes of comparison and noted that the expert had not seen the reasons for refusal decision or other relevant file documents. I would agree with Ms Everett that in many cases the failure of an expert to have looked at the Reasons for Refusal Letter and related documents significantly reduces the weight that can be attached to an expert report, but it was clear in this case that the professor was primarily tasked with carrying out document verification, which is a relatively self-contained issue. And in discounting the report's findings on the documents, the judge's criticisms do in my judgment impose too onerous a standard. The professor's credentials as an expert in this area are impressive by anyone's standards and the professor's expertise in relation to such documents comprised not just his comparison with twelve other similar documents, but drew on his contacts with a wide range of Ukrainian law enforcement personnel. He had also handled thirteen other such documents in the past. Hence, whilst his report was not written with sight of the reasons for refusal, the judge's reasons for rejecting it do not do justice to the expert's demonstrated knowledge base.

5. I also consider that the appellant has made out the second ground of challenge to the judge's treatment of the documentary evidence. It is clear from paragraph 63 that the judge attached significant negative weight to the perceived inconsistency between the appellant's evidence that the court summonses were hand-delivered via a postman and background country evidence to different effect as set out in a 2013 report by the Canadian Immigration and Refugee Board (IRB). The difficulty with such reliance is on the IRB analysis as regards hand-delivering is that it was expressly doubted by the Upper Tribunal in paragraph 98 of **VB and Another (Draft evaders and prison conditions)** Ukraine CG [2017**]**.

Since at paragraph 71 the judge sought to rely in this appeal on the guidance set out in **VB**, this was a significant error.

6. Taken together, these errors constitute a material error of law since if the judge had not made them it may be he would have assessed the evidence differently and reached a different outcome. Ms Nnamani also disputed the accuracy of the judge's reference to the second summons stating "4.30", but that is not a matter I need deal with having found a material error of law.

7. I do not consider that I can preserve any of the judge's findings of fact and for that reason I see no alternative to remitting the case to the FtT.

Direction

8. In order to better assist the next judge in assessing this case**, I direct that the appellant's representatives produce a supplementary report from Professor Galeotti by end of November 2018 which addresses the issues which concerned Judge Greasley relating to the times given in the documents (see paragraphs 60–62 of the judge's decision). The professor should also be sent the SSHD's Reasons for Refusal Letter and interview record and asked to say whether these cause him to revise any of his original findings**.

9. To summarise:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Greasley).

The appellant's representatives must comply with my direction to produce a supplementary expert report by end of November 2018.

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 their 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 Date: 26 October 2018

Dr H H Storey

Judge of the Upper Tribunal