



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

Appeal Numbers: AA/09957/2015
PA/04301/2016

THE IMMIGRATION ACTS

**Field House
On 9th April 2019**

**Decision & Reasons Promulgated
On 11th April 2019**

Before

**THE HON. MR JUSTICE ANDREW BAKER
(sitting as an Upper Tribunal Judge)
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

A S (1)

E S (2)

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum, of Counsel, instructed by Raymond Saul Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants are citizens of Russia, they were formerly a married couple, have legally divorced due to the first appellant's difficulties in

Russia but remain a couple. They have two daughters. The appellants left Russia and went to Northern Cyprus in 2011. In 2014 the second appellant went back to Russia where her eldest daughter was being cared for by her parents. In December 2014 the first appellant left Northern Cyprus on a false Latvian passport, travelled to the UK, and claimed asylum on arrival. In December 2015 the second appellant arrived in the UK and claimed asylum on arrival in this country. Both claims were refused by the respondent. Their appeals against the decisions were dismissed by First-tier Tribunal Judge A D Baker in a determination promulgated on the 24th February 2017.

2. Permission to appeal was granted by Upper Tribunal Judge Grubb on 21st April 2017 on the basis that the second and third grounds only were arguable, and thus that it was arguable that the First-tier judge had erred in law in failing to consider the risk of mistreatment or lack of healthcare if the first appellant was imprisoned or detained in Russia and whether this exposed him to a real risk of treatment contrary to Article 3 ECHR, and further it was arguable that, if the issue of extradition was raised before the First-tier Tribunal, there was an error also in relation to the treatment of this issue. It was found that the first ground of appeal was not arguable and thus permission was not granted in relation to contended errors in relation to a claim under the Refugee Convention.
3. A hearing was listed for August 2018 but was adjourned by Sukhi Bakhshi, Upper Tribunal Lawyer, on 26th July 2018, so that the appeal hearing would take place after the final determination of the extradition proceedings in relation to the first appellant by the High Court. The High Court gave its judgement in Shmatko v Russian Federation [2018] EWHC 3534 (Admin) on 19th December 2018.
4. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

5. The second ground of appeal is, in summary, as follows. The First-tier Tribunal was alerted to 11 cases of the European Court of Human Rights involving Russia which detailed mistreatment contrary to Article 3 ECHR for those in pre-trial custody (SIZO) and the neglect of those with medical conditions which amounted to Article 3 ECHR breaches. It had been found that the first appellant had been beaten in custody. It was therefore incumbent on the First-tier Tribunal to consider whether there was a future risk of such treatment if he was returned to Russia. There was also medical evidence that the first appellant suffers from pancreatitis which was accepted by the First-tier Tribunal. As this is a condition which has a significant risk of mortality from severe attacks and requires a low-fat diet, and may require pancreatic enzymes for treatment of symptoms, it was also incumbent on the First-tier Tribunal

to consider the potential for an Article 3 ECHR risk in prison/detention in Russia on this basis too and this risk too had not been examined.

6. The third ground of appeal is that first appellant is subject to extradition by the Russian authorities and the second appellant is a witness in these proceedings. The first appellant, it is asserted, has a procedural right under Article 8 ECHR to be present and give evidence at his extradition hearing, see RS (immigration and family court proceedings) India [2012] UKUT 00218. It is also contended that to remove the first appellant prior to the extradition proceedings reaching a conclusion would render null the protections of the Extradition Act 2003.
7. The second ground is conceded as an error of law by the respondent in the Rule 24 notice of 9th May 2017. In a further Rule 24 notice dated 19th March 2019 the respondent conceded, in light of the decision in Shmatko v Russian Federation [2018] EWHC 3534 (Admin), that the removal of the first appellant engages Article 3 ECHR due to prison/detention conditions in Russia.
8. Mr Jeserum informed us that he would not be pursuing an Article 8 ECHR appeal argument on behalf of the second appellant, which had historically been run and which he would have re-argued before us in light of the new position of the respondent in relation to the first appellant, since Mr Melvin had provided an assurance that she would be granted leave in line with the first appellant by the respondent. He therefore submitted that there was no need for us to hear any further argument on any issues.

Conclusions – Error of Law

9. As the error of law on ground two is conceded it is not necessary to give extensive reasons however it is clear that it was argued before the First-tier Tribunal that the appellant would suffer ill-treatment contrary to Article 3 ECHR if returned to Russia due to detention as a result of the criminal proceedings brought against him, and that the summary decisions of the European Court of Human Rights were placed before the First-tier Tribunal, see paragraphs 16 and 42 of the decision. It was also agreed by the respondent that the first appellant would be subjected to pre-trial detention and implementation of a suspended sentence as a result of breaching his bail conditions if returned to Russia, see paragraph 48 of the decision. At paragraphs 91-94 the First-tier Tribunal finds that the first appellant has shown that he was severely beaten by two officials in July 2010 whilst being subject to pre-trial detention but concludes that this was “general ill-treatment” and not targeted at the first appellant. The First-tier Tribunal fails to make a finding as to whether the first appellant is at real risk of such treatment happening again in the future on the evidence before it, simply saying that the country of origin information and expert evidence shows that “such incidents do happen”, and also fails to consider the European Court of Human Rights cases when finding that there is sufficiency of

protection due to there being a complaints process. The conclusion that the appeal does not succeed on Article 3 ECHR grounds on this basis therefore errs in law for being insufficiently reasoned. There is also no consideration of the first appellant's medical condition and the contention that he would not receive the necessary treatment for that condition, and thus the dismissal of the Article 3 ECHR claim errs in law for failure to consider or reason the decision on this issue.

10. The challenge in ground 3 regarding procedural breaches of the ECHR due to the extradition proceedings is no longer a live one as those proceedings have been concluded in the High Court in the first appellant's favour.

Conclusions - Remaking

11. It is conceded by the respondent in light of the findings in the extradition proceedings before the High Court that the first appellant would face treatment contrary to Article 3 ECHR in detention and/or prison if returned to Russia. We find that the first appellant is at real risk of treatment contrary to Article 3 ECHR if returned to Russia for the reasons set out by the High Court in Shmatko v Russian Federation [2018] EWHC 3534 (Admin).

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 re-make the decision in the appeal by allowing the appeal by the first appellant on Article 3 ECHR grounds.
4. The appeal of the second appellant was not pursued before us at the remaking stage and so is dismissed.

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 appellants from the contents of this protection claim.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 9th April 2019