Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06990/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 January 2020	**On 3 February 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

IURII [T]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, instructed by PGA Solicitors
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ukraine born on 30 May 1987. He has been given permission to appeal against the decision of First-tier Tribunal Judge Swinnerton dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant claims to have arrived in the UK in April 2015. On 4 April 2018 he and his wife were encountered during an immigration visit and were served

with documentation as illegal entrants and were detained pending removal. The appellant made an asylum claim on 10 April 2018, as a result of which removal directions were cancelled. His claim was refused on 16 May 2018.

3. The appellant's asylum claim was made on the basis of being the subject of charges for military evasion and at risk of being sent to war or imprisoned in Ukraine if returned there. He claimed that he had previously served in the military as a junior sergeant between 2007 and 2008, completing his service in Autumn 2008. He received a call-up notice on 6 March 2014. Representatives from the military recruitment office and the head of the village council came to serve him with the documentation, but he was not at home at the time and they did not leave a call-up notice with his parents. The military recruitment office attempted to serve the documentation on him again on 10 March 2014 but again he was not at home and he learned of the visit from his parents. The military unit came again a week later and then every month, but he was never at home as he had a second home provided by his employer, in a hostel. He then registered as living at his friend Victor's vacant property, in order to avoid further call-up notices. In March 2015, 20 people from the military office conducted a raid on his place of employment and the police came to assist them. Some people were arrested but he and others managed to escape. His friend Victor received documentation for him in 2014-2015, in the form of three court summonses and a court decision charging him with military evasion, which he gave to his parents. He then left Ukraine in April 2015 and travelled to Poland, and then through Germany and France to the UK.

4. In the decision refusing the appellant's claim, the respondent considered that a refusal to participate in military service was not viewed by the Ukraine government as an act of political opposition and that persons who had evaded or absconded from national service did not form part of a particular social group within the meaning of the Refugee Convention. The appellant's fear was therefore not for a Convention reason. The respondent accepted that the appellant had served as a junior sergeant in the Ukrainian army. However, the respondent considered that the appellant's claim to have registered as falsely living in a vacant property was not consistent with the background information and did not accept that three court summonses and a court decision had been sent to such an address. The respondent did not accept the appellant's account of being charged with evading military service and did not accord weight to the documents he had provided. The respondent considered in any event that the appellant feared prosecution and not persecution and that any punishment he may receive would not amount to persecution. The respondent considered that the appellant's removal to Ukraine would not breach his human rights.

5. The appellant appealed against that decision. His appeal was initially heard on 3 July 2018 and allowed in a decision promulgated on 26 July 2018 by First-tier Tribunal Judge Coutts. Judge Coutts did not find the appellant's claim to be credible. He did not accept that the appellant's refusal to participate in military service would be viewed by the Ukraine government as an act of political opposition, but considered that he would be subjected to a criminal sanction. He found that the appellant's claim was for a non-Convention reason and that

he was not a member of a particular social group and he dismissed the appeal on asylum and humanitarian protection grounds. However the judge accepted that the court judgment and summonses were genuine, he accepted that the appellant had been sentenced to two years' imprisonment for his failure to mobilise for the Ukraine army when called up and, following the guidance in VB and Another (draft evaders and prison conditions) Ukraine CG [2017] UKUT 79, he concluded that there was a risk of detention on arrival in Ukraine and that the conditions of such detention would breach the appellant's Article 3 human rights. He allowed the appeal on that basis.

6. Following the respondent's application for permission to challenge the decision on Article 3 and the grant of permission, Deputy Upper Tribunal Chana found, at an error or law hearing in the Upper Tribunal, that the judge had erred in law in his assessment of the documentary evidence and she accordingly set aside Judge Coutts' decision. The matter was remitted to the First-tier Tribunal.

7. The appellant's appeal was then heard by First-tier Tribunal Judge Swinnerton on 22 August 2019. The judge did not find credible the appellant's account of the authorities continuing to visit his parents' home after such a lengthy passage of time and considered the appellant's level of knowledge of the court sentence to undermine his credibility. The judge accorded little weight to the copy court summons produced by the appellant as it was undated and accorded little weight to the court judgment given his concerns about its origin and authenticity. He found the appellant's delay in claiming asylum to undermine his credibility. The judge did not accept the appellant's account of being prosecuted for military evasion and concluded that he would not be at any risk on return to Ukraine. He accordingly dismissed the appeal.

8. The appellant sought permission to appeal on various grounds in relation to the judge's assessment of the documentary evidence and a failure to give adequate reasons for rejecting the appellant's claim. Permission was granted on 17 October 2019, primarily with regard to the judge's treatment of the court summons.

9. At the hearing, both parties made submissions. Mr Karim submitted that the judge had made irrational findings in relation to the court documents, that he had failed to engage with the other documentary evidence confirming the appellant's change of registered address and that he had applied too high a standard of proof to the evidence. Having given little weight to the court documents but not rejected them entirely, and having not rejected the other documentary evidence about the appellant's registered address, the judge ought to have accepted the evidence and allowed the appeal. Mr Singh, in response, submitted that even if the judge's individual concerns and findings were insufficient to reject the appellant's claim, he was entitled to make the decision that he did on an assessment of the evidence taken as a whole. Mr Karim, in reply, disagreed with Mr Singh and reiterated the submissions made previously.

Discussion and conclusions

10. As Mr Singh properly submitted, the judge's conclusion at [25] makes it clear that his decision was based upon an assessment of all the evidence in the round and an accumulation of the individual concerns addressed in the previous paragraphs, at [20] to [24]. The appellant's grounds seek to challenge individual findings made by the judge, whereas it is not the case that the judge rejected the appellant's claim on the basis of any individual concern., but rather on the cumulative effect of those concerns. Whilst the grounds criticise the judge for making an adverse finding at [20] on the appellant's claim that the authorities were looking for him after such a lengthy period of time, it is clear that that was one of several concerns raised by the judge when assessing the evidence as a whole and it seems to me that he was entitled to take that into account. Likewise, at [21] the judge was entitled to have regard to the appellant's lack of clarity in regard to a material matter, namely the length of the court sentence. The grounds assert that the judge applied too high a standard of proof by expecting the appellant to be certain about the length of his sentence, but the judge was simply observing that the appellant's lack of knowledge was significant, which he was entitled to do.

11. The grounds challenge the judge's approach to the documentary evidence in several respects. Mr Karim made much of Judge Swinnerton's reference, at [22], to Deputy Upper Tribunal Chana stating that it was for the appellant to verify the documents provided, and submitted that that was a fundamental and material error of law which infected his overall findings. However Judge Swinnerton was clearly referring to Deputy Upper Tribunal Chana's finding at [15] of her decision, that the previous First-tier Tribunal had erred by reversing the burden of proof in relation to the documentary evidence. Deputy Upper Tribunal Chana properly found that the previous First-tier Tribunal had erred by requiring the respondent to verify documents; it was not her finding that the appellant was required to verify his documents, but merely that the appellant had the burden of proving his case. In so far as Judge Swinnerton's comments at [22] may suggest otherwise, his choice of words is unfortunate. However there is nothing in his findings at [22] to indicate that he understood it was for the appellant to provide verification of his documentary evidence, or that his conclusion as to the weight to be given to the documents was influenced by his failure to verify them; he was simply reinforcing the fact that the burden of proof lay upon the appellant and he went on to give reasons for concluding that the documents could not be afforded weight.

12. It was Mr Karim's submission that the judge acted irrationally by using the fact that the court judgment was dated to undermine the reliability of the court summons which was undated. However, it seems to me that there is nothing irrational about the judge having concerns about the fact that an official court document was undated. I do not agree with Mr Karim that the judge's concern was addressed by the fact that the document contained a date, given that the date to which Mr Karim referred was not the

date of issue of the document but was the date of the court hearing. Mr Karim submitted that the judge, in according little weight to the court summons, did not properly engage with the other documentary evidence which provided consistent information about the appellant's registered address. However the judge was not required to make specific findings on all the documents. It is clear that he considered all the evidence in the two bundles to which he referred at [19] and it is also clear that he was aware of the appellant's evidence of having re-registered his place of residence and indeed asked the appellant to clarify his evidence in that regard, as he recorded at [14].

13. Neither do I find that any error was made by the judge failing to recognise that Deputy Upper Tribunal Chana was unaware of the original of the court judgment having been submitted to the respondent as part of his claim. It is clear that Judge Swinnerton was fully aware of the fact that an original had been submitted with the claim, as referred to at [21], and that a further original version was obtained subsequent to the Upper Tribunal hearing. He specifically referred, at [23], to the appellant's evidence in that regard in his most recent statement of 22 July 2019 and clearly was aware that there were two versions of the document.

14. Mr Karim submitted that the judge had erred by failing to engage with the features and content of the court judgment, including the hallmark and stamp on the document. However the judge was not required to make findings on every aspect of the documentary evidence. It is clear from his findings at [23] that he had full regard to the document and properly assessed its reliability, noting the appellant's significantly inconsistent evidence about how he obtained the first version of the judgment and the lack of supporting evidence about his acquisition of the second version and drawing adverse conclusions as he was entitled to do.

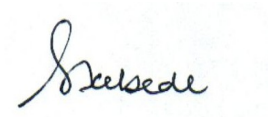
15. As for the suggestion that the judge's finding of "little weight" with respect to the court judgment and the court summons, when taken together with the fact that the other documentary evidence was not specifically rejected, was an indication that the appeal should have been allowed, I simply do not agree. The judge plainly had concerns about the authenticity and reliability of the court documents for the reasons cogently given. Whilst he did not make specific findings on the certificates of non-compliance from the village council and the registration details in the appellant's passport, the fact is that he did not accept that the appellant had been prosecuted for, or found guilty of, military evasion and did not accept that he was wanted by the Ukraine authorities and his conclusion in that regard was based upon an accumulation of properly held concerns about the reliability of the evidence as a whole.

16. Mr Karim did not make submissions in relation to ground 6 in regard to the judge's findings on Article 8, and properly so, since the findings at [27], albeit brief, adequately addressed the relevant issues and were properly open to the judge on the basis of the evidence before him.

17. For all of these reasons I find no merit in the grounds of challenge. The judge gave detailed consideration to all relevant matters and properly assessed the evidence in the round, drawing together his observations in his conclusion at [25]. He provided clear and cogent reasons for reaching the conclusion that he did. The grounds are essentially a disagreement with the weight the judge accorded to the evidence, whereas the judge was fully entitled to make the adverse findings that he did. The judge's conclusions were fully and properly open to him on the evidence before him and he was entitled to dismiss the appeal on the basis that he did. He did not make any errors of law in doing so.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede Dated: 29 January 2020