Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08396/2018

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 25 October 2021	**On 18 November 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

VB (UKRAINE)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Ukrainian male who was born on 25 April 1987. He appeals, with permission granted by Upper Tribunal Judge Allen, against First-tier Tribunal Judge Cassel's decision to dismiss his appeal against the respondent's refusal of his protection and human rights claims.

Background

2. Judge Cassel (heareafter 'the judge') correctly described the appellant as having a lengthy immigration history. At [1]-[2] of his decision, he distilled the salient parts of that history in the following way:

> [1] He claimed to have entered the UK in 2010 in the name of Mr Serge Klimov, as an EEA national claiming to be a Lithuanian national. On 13 January 2012 he first came to the adverse notice of the authorities when he was convicted at South-Western Magistrates Court for theft for which he was given a 12 month conditional discharge. On 5 September 2013, he was notified of his liability to deportation, in signifying that he wished to return to Lithuania on 1 October 20134 a Deportation Order was signed and an attempt was made to remove him to Lithuania but he was returned and confirmed that his correct details were as above. He first claimed asylum on 12 December 2013 and made a further application on 11 February 2014. On 14 October 2014 he was arrested for theft and sentenced to one month 26 days imprisonment. He had accumulated an aggregate three sentences in the preceding five years that amounted to 11 ½ months' imprisonment and on 7 November 2014 notice of liability to deportation was served on him. On 21 October 2015 he was made subject to a signed Deportation Order and on the following day his asylum claim was refused. Removal directions were made and cancelled and on 30 January 2017 further submissions were submitted in respect of his protection claim. These were rejected on 28 February 2017 and following the submission and rejection of further submissions on 16 May 2018 he submitted a Pre-Action Protocol ("PAP" letter in which further submissions about his deportation were made.
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> [2] On 27 June 2018, the appellant was notified of a decision to refuse his protection and human rights claim. Extensive reasons were provided in the decision letter.

3. The appellant's protection claim is based on his claimed fear of conscription on return to Ukraine. He stated that he had been summonsed to attend for conscription and presented documents in support of that claim which, he said, had been brought from Ukraine by his brother OB.

4. The respondent did not accept that the appellant had been summonsed for conscription. In any event, she did not accept that a requirement to complete military service was in itself objectionable under either the Refugee Convention or the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal (hereafter 'the FtT') and his appeal was heard by the judge, sitting at Hendon Magistrates' Court, on 27 June 2019. The appellant was represented by counsel, instructed by Sterling Lawyers of London EC4. The respondent was represented by a Presenting Officer. The judge heard evidence from the appellant and submissions from the advocates before reserving his decision.

6. In his reserved decision, the judge undertook a detailed analysis of the appellant's claim. Having done so, he endorsed the respondent's conclusion that the appellant's claim for asylum was nothing more than a 'last ditch attempt' to

frustrate his removal from the United Kingdom. He did not accept that the appellant was at risk of being called up on return to Ukraine. His appeal on protection grounds was consequently dismissed. In relation to the appellant's human rights claim against the respondent's refusal to revoke the deportation order, the judge found that the appellant was a persistent offender who showed a particular disregard for the law, having accrued 19 convictions for 36 offences. He did not accept that there were any applicable statutory exceptions to deportation and although he accepted that the appellant's return to Ukraine would be 'challenging', he did not accept that there were very compelling circumstances which outweighed the public interest in his deportation.

The Appeal to the Upper Tribunal

7. Grounds of appeal against the judge's decision were settled by counsel. The first ground of appeal is that the judge attached undue weight to the circumstances of the appellant's asylum claim, rather than evaluating the substance of that claim. The second ground of appeal is that the judge erred in failing to take account of the seriousness of the appellant's offending in considering the proportionality of his deportation from the United Kingdom.

8. Permission was granted by UTJ Allen in light of the fact that there was shortly to be a country guidance decision on draft evaders from Ukraine. (The guidance in question, given by a panel comprising UTJ Allen and UTJ Stephen Smith is PK & OS (basic rules of human conduct) Ukraine CG [2020] UKUT 314 (IAC).

9. There was some delay in listing this appeal for an effective hearing. It came before me on 22 March 2021 but the appellant did not attend. He was, by that stage, not represented. Enquiries revealed that he might be on remand and I listed the appeal for a case management hearing before me on 2 June 2021. On that occasion, I had ordered that there should be a video link to HMP Wandsworth. I spoke to the appellant (who has good English), who stated that he intended to instruct Stirling Lawyers once again. He said that his brother was able to place the firm in funds. I gave the appellant two months in order to do so and indicated that the appeal would be listed for a face-to-face hearing on the first open date thereafter.

10. In the event, the appellant did not instruct lawyers to represent him at the hearing before me on 25 October 2021. He confirmed that he knew what the case was about and he did not seek an adjournment. I ensured that he had a copy of the grounds of appeal, the judge's decision and other salient documents. I invited Mr Clarke to make his submissions first so that the appellant could hear how the respondent intended to defend the judge's decision first. Whilst an interpreter had attended to assist the appellant, he stated that he would prefer to conduct the proceedings in English, which he spoke fluently. I asked the interpreter to remain in case of any difficulties. There were none.

11. Mr Clarke submitted that the judge had not erred in law in dismissing the appellant's appeal. He submitted that the author of the grounds of appeal had failed to acknowledge the totality of the judge's reasoning, which took into account the appellant's claim as well as the delay in making it. It was correct that the judge had focused on the way in which the claim had evolved and on the

failure of the appellant to provide appropriate corroboration but there was no legal error in his having done so. The absence of the appellant's brother from the hearing before the FtT remained unexplained. There were the most cogent of reasons in the appellant's immigration history to disbelieve his claim. He had advanced different accounts at different times and it was entirely rational for the judge to conclude that the appellant had no fear of being called up. The judge had relied on VB & Anor (Ukraine) CG [2017] UKUT 79 (IAC) but that guidance had been endorsed by the Upper Tribunal in PK & OS. Whilst it was contended in the grounds of appeal that the judge had failed to consider the background material, there was no evidence identifying the materiality of any such failure.

12. As for grounds two, Mr Clarke submitted that the appellant had not challenged the finding that he is a persistent offender. The judge had set out the nature of his offences in his decision and it could hardly be suggested that the nature of that offending had been left out of account. The judge had taken all relevant matters into account, including the amount of time that the appellant had spent outside Ukraine, and had come to a rational conclusion that there were no very compelling circumstances in this claim.

13. The appellant began by saying that he had clearly understood what had been said by Mr Clarke. He knew that he had done some bad things in the past but he had changed. He had not spoken to his brother. He had been in the UK for twelve years and he just needed one last chance to prove that he was a new person. He had received a sentence of 30 months' imprisonment for breaching a restraining order and was due to be released at the start of 2022. He had no mother or father in Ukraine and he had received no money from his brother. He would struggle in Ukraine and he thought he should have another chance in the UK. I asked him whether he wanted to say anything about the judge's decision. He did not.

14. I reserved my decision.

Analysis

15. The grounds of appeal fail to establish a legal error in the decision of the judge. He was entitled to attach great significance to the fact that the appellant had delayed in mentioning the assertion that he was in fear of returning to Ukraine on account of conscription. This was not merely a late claim, it was a claim which was made after other contact with the respondent in which no mention of conscription had been made. The appellant had claimed in 2013 that he did not want to return as he needed treatment for tuberculosis. Later that year he had said that he was in fear of a gang in Ukraine. He subsequently stated that he just wanted to have a better life and that he had gambling debts to dangerous people. It was only after all of these points had been resolved against the appellant that a fear of conscription was raised.

16. Contrary to the assertion in the grounds, the judge did analyse the evidence submitted by the appellant. He considered the documents which purported to originate from Ukraine. He assessed those documents with Tanveer Ahmed [2002] Imm AR 318 in mind and he was entitled to draw on the fact that the appellant's brother had failed to attend or to provide any evidence in response to

what had been said by the respondent in the refusal letter. Equally, the judge was entitled to attach weight to the ability of the appellant's brother to return to Ukraine on five separate occasions without encountering any problems. In all the circumstances, there cannot be said to be anything wrong in law with the judge's analysis of the appellant's asylum claim.

17. Nor is there anything legally wrong with the judge's assessment of the appellant's human rights claim. As he recorded at [38] of his decision, it was not argued before him that there was an applicable statutory exception to deportation. The order having been made and the appellant having remained in the UK, what the appellant had to show was that his deportation was contrary to the ECHR or that there were exceptional circumstances which meant that the continuation of the order was outweighed by compelling factors. The judge was cognisant of that test, as is clear from [38]. The judge was entitled to attach weight to the public interest in the deportation of foreign criminals and to conclude that the appellant's circumstances did not outweigh that strong public interest.

18. It is submitted in ground two that the judge failed to consider the seriousness of the appellant's offending. I accept that this is a relevant consideration and that there is no separate part of the judge's decision in which he considers each of the appellant's offences and reminds himself of what is said in s117C(2) of the Nationality, Immigration and Asylum Act 2002. As Mr Clarke submitted, however, the judge was not required to set out his reasoning in this way and it is apparent from his earlier references to the appellant's offending and from his categorisation of the appellant as a persistent offender that he was cognisant of what the appellant had done.

19. Since the grounds do not establish a legal error on the part of the judge, I have considered for myself whether the decision discloses any other obvious errors of Convention law which might favour the appellant: R v SSHD *ex parte* Robinson [1998] QB 929 refers. I can discern no such difficulties. The reality of this case, as recognised by the judge, was that the appellant had erected a weak asylum claim in an effort to avoid deportation, which was otherwise a perfectly justified course in light of the course of persistent offending which he has pursued for many years in this country. That offending continued after the judge's decision and the respondent is undoubtedly entitled to deport him from this country as a result.

Notice of Decision

The decision of the FtT contains no legal error and shall stand.

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. I make this order in order to protect the confidentiality of the appellant's protection claim lest the publication of that claim serves to increase the risk to him on return.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 November 2021