



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04549/2017

THE IMMIGRATION ACTS

Heard at: Manchester Piccadilly
On: 28th March 2018

Decision & Reasons Promulgated
On: 26th June 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Oleh Kharytonsv
(no anonymity direction)**

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Schwenk, Counsel instructed by Howe & Co
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Ukraine date of birth 12th May 1987. He appeals with permission the decision of the First-tier Tribunal (Judge Knowles), dated the 26th September 2017, to dismiss his protection appeal.
2. The substance of the appeal before the First-tier Tribunal was that the Appellant has a well-founded fear of serious harm in Ukraine arising from his former role working for the security services. He claims that he gave evidence against a prominent criminal and that as a result he is at risk of harm from the gang that

the man was involved with, as well as corrupt officers who were working with them. The feared harm included being subjected to false accusations and prosecution for criminal offences that he did not commit, such prosecutions amounting to persecution.

3. The Respondent had accepted that the Appellant had been convicted of fraud in 2012, but not that this conviction arose in the manner claimed. The matter in issue before the First-tier Tribunal was, it would appear, simply one of credibility.
4. The First-tier Tribunal did not believe that the account was true, and the appeal was dismissed. The substance of the appeal before me is that in so doing the Tribunal erred in applying too high a standard of proof.

Standard of Proof

5. This was a protection claim, and as such the standard of proof applicable to all aspects of the claim was one of 'reasonable likelihood'. This can also be expressed as a 'real risk', and it is uncontroversial that in these circumstances the Tribunal was not looking at the normal civil standard, but applying a far lower threshold.
6. At paragraph 27 of the decision the Tribunal considers the Secretary of State's submission that adverse inference can be drawn from the fact that the Appellant managed to leave the Ukraine on his own passport, and the Appellant's evidence in response to this point:

"After the Respondent relies on this in their refusal letter as indicative of the state not being interested in him, the Appellant suggests that the visa was obtained illegally through an agent, through a fast track process which he paid for. However, **I think it is reasonable likely that this is untrue** and is simply a development to his account of his situation fabricated to counter the Respondent's conclusions"

7. Mr Schwenk correctly points out that this is a reversal of the standard of proof. The question for the Tribunal was whether it was reasonably likely that the Appellant's explanation was true, rather than whether it was reasonably likely that it was *not* true. As Mr Bates fairly accepts, that was an error. The question for me is whether it is material, or rather whether it is an error such that the decision may be set aside.
8. I am not satisfied that the error identified in the grounds is material. Of some significance is the fact that the Tribunal has directed itself to the appropriate, lower, standard: see paragraph 18. Of greater significance is the fact that the offending paragraph plays only a small part in the overall assessment of credibility. At paragraph 24 the determination rejects, on the grounds of internal inconsistency, the Appellant's claims that he avoided jail by bribing the judge in his trial. At paragraph 25 the Tribunal finds that the documents do not support the Appellant's claims that he was unlawfully denied legal redress. At paragraph

26 the Appellant is found to have materially embellished his evidence to answer legitimate criticisms of it levelled by the Respondent. The Appellant's evidence as to his journey to the UK is found to be inconsistent at paragraph 29. Taking all of those findings into account, and reading the determination as a whole, I cannot be satisfied that a) the Tribunal applied the wrong standard throughout the assessment or b) that the error at paragraph 27 is of such gravity as to infect the decision as a whole. Even if the Tribunal had accepted the Appellant's evidence that he had obtained his visa etc illegally, it unarguably would have reached the same conclusions as to the rest of the claim.

The Evidence of the Appellant's Mother

9. The Appellant sought permission to appeal on a second ground, namely that the Tribunal erred in law when it stated the following in respect of a witness statement produced by the Appellant's mother:

"I cannot question the Appellant's mother on a matter of inconsistency between her account and the Appellant's such as whether or not the alleged fraud was satisfied and if so how. I attach little weight to the statement".

10. The complaint made is that the Tribunal had no business wanting to question anybody given that this is an adversarial process and it is up to the Respondent to conduct the cross-examination of witnesses.
11. Permission was refused on this ground by Judge Nightingale and rightly so. It has no arguable merit. The point that the Tribunal makes is that there is limited weight to be attached to a written statement which contains material inconsistencies with the Appellant's own evidence, in circumstances where the deponent is not available to speak to those inconsistencies. Absent perversity weight is a matter for the Tribunal, and here the Tribunal did no more than state the obvious: that more weight might have been attached to the witness' evidence had she been able to attend the hearing in person (or otherwise appear) to be cross examined.

Decision

12. For the reasons set out above I am not satisfied that the decision of the First-tier Tribunal contains a material error of law. The decision is upheld.
13. I was not asked to make an order for anonymity and on that facts of the case I see no reason to do so.

Upper Tribunal Judge Bruce
2nd June 2018