IB (Propiska-update and corruption) Ukraine UKIAT 00095

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
On : 15th February 2005
Prepared : 18th February 2005

Determination notified :
20th April 2005

Before :

Mr P.R. Moulden (Vice-President)
Mr R.A. McKee
Mr R. Hamilton

Between :

Secretary of State for the Home Department

Appellant

And

Respondent

Representation :

For the appellant : Miss K. Pal, Home Office Presenting Officer

For the respondent : Mr Peter Jorro of counsel, instructed by O'Keeffe Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals, with leave granted as long ago as 11th February 2003, against the determination of an adjudicator, Mr B.S. Grewal, promulgated on 18th December 2002, allowing the appeal of the respondent (hereafter referred to as 'the claimant') against the refusal on 16th May 2001 to vary his leave to remain in the United Kingdom, consequent upon the refusal of his asylum application.

2. As we indicated at the outset of the hearing before us, it was not altogether clear what the decision was against which the claimant had appealed to an adjudicator. What appears to have happened is that the refusal to vary leave was not communicated to the claimant by his then solicitors, and that he did not get to hear about it until he was detained a year later at Haslar Holding Centre. His new solicitors, Duncan Lewis & Co., then lodged an appeal out of time on 25th July 2002, with an explanation for its lateness. The Home Office could either have treated the

appeal as having been given in time, or have made an 'out of time' allegation to the Appellate Authorities, who would have dealt with the matter as a Preliminary Issue under the Procedure Rules 2000. The Home Office in fact did neither of those things, but instead issued a notice on 2nd August 2002 telling the claimant that he was now an overstayer, and that directions had been given for his removal to the Ukraine, the country of his nationality.

3. It seemed to us that, by skipping one stage in the process, the Home Office had purported to deny the claimant an opportunity of having his appeal heard under s.69(2) of the 1999 Act, leaving him instead with an appeal under s.69(5). But the claimant could not have given notice of appeal on 25th July 2002 against a decision which was not taken until 2nd August 2002. Miss Pal took instructions on the matter, and helpfully withdrew the notice of removal issued on 2nd August 2002, accepting the late notice of appeal against the refusal to vary the claimant's leave, as decided on 16th May 2001.

4. The claimant in fact arrived here as a visitor as long ago as December 1996, and waited for four and a half years before a decision was taken on his asylum claim. As well as being refused, the claim was also certified under the Immigration and Asylum Act 1999 as disclosing no 'Convention reason'. The adjudicator, however, did not agree with the certificate, and believed the claimant's account in its entirety.

5. In brief, his account was that he was growing vegetables on what had been a state-run collective farm. The chairman of the collective demanded bribes for letting the claimant continue with his work, and when the claimant reported this to the authorities, they all ganged up against him. The town mayor turned out to be a personal friend of the farm chairman, the court procrastinated and eventually threw out his case, the GAI traffic police even stopped the claimant in the road and prevented him from taking his vegetables to market. The farm boss called in the mafia to 'put the frighteners' on the claimant, and make him pay up the money which he was said to owe. The claimant was beaten so badly that his ribs were broken, but the man who was holding the documentary evidence which the claimant and other tenants on the farm had got together to incriminate the farm boss fared even worse. He was murdered, and his house was burned down. The police, who were in cahoots with the mafia and the farm boss, did nothing.

6. This was how the adjudicator saw it. *"I am firmly of the view that the persons harassing and intimidating the appellant and who were making it impossible for him to earn a livelihood were colluding with the authorities and in fact were agents of persecution. Having perused the objective evidence I have concluded that the appellant had a well-founded fear of persecution by state and non-state agents, the police, the Mafia and the Ukrainian government. The appellant was expected to bribe the landlord and when the appellant complained to the court the result was that his land was taken away and he was prevented from earning a living as the market road was blocked. The chairman of the collective farm used his links with the Mafia to threaten and intimidate the appellant. The appellant sought the help of the militia and the mayor of the town. The appellant went to the courts but as there was obviously a link between the court, the police and the Mafia there appeared (*sic*) that the case was closed. Eventually the appellant started collecting evidence and take*

*(*sic*) the case to the regional Adjudicator but his evidence was destroyed when the person who was retaining the evidence was killed and his house was burnt down.*"

7. The adjudicator found the claimant to be a credible and reliable witness who was telling the truth. The cumulative effect of the ill-treatment he had suffered amounted to persecution, against which there was "*total absence of sufficiency of protection*", and the Convention reason was 'imputed political opinion'. The adjudicator noted from the CIPU Assessment for October 2002 which was before him that "*since independence, the level of organised crime and corruption in the Ukraine has risen sharply,*" there being "*a close working relationship between corrupt officials and organised crime.*" After citing copious examples of this from the background evidence, the adjudicator went on to find that the claimant would still face a real risk of persecution or Article 3 ill-treatment on return.

8. The Grounds of Appeal to the Tribunal do not contest the adjudicator's credibility findings. Instead, they contend :

(1) that after such a long absence from the Ukraine, his former persecutors would no longer "*have an issue*" with the claimant ;
(2) that no political opinion would have been imputed to him ;
(3) that the adjudicator had not considered internal flight ; and
(4) that the adjudicator had not taken account of the fact, noted in the refusal letter, that the claimant had left the Ukraine through the normal channels with a properly-issued passport, which showed that the authorities had no adverse interest in him.

9. The Vice-President, who granted leave to appeal on all four grounds, was particularly impressed with grounds (1) and (4). At the hearing, however, Miss Pal did not rely on grounds (2) and (4), and based the Secretary of State's appeal on the effluxion of time since the claimant left the Ukraine in December 1996, and the feasibility of an 'internal flight option' to a different part of the country from his own Donetsk region.

10. That neither of these would avail the claimant on return to the Ukraine was the expert opinion of Dr Robert Chenciner, who has provided two expert's reports, the first dated 8th January 2004, the second completed on 12th February 2005, just before the hearing. Dr Chenciner also gave oral evidence before us, in which he repeated the gist of his reports in-chief, and defended his views in cross-examination. A senior associate member of St Anthony's College, Oxford, and an honorary member of the Russian Academy of Sciences, Dr Chenciner has first-hand knowledge of the Caucasus region, and has been an OECD election observer in Russia, Kazakhstan and Belarus, in which countries he has become familiar with the *propiska* system inherited from the Soviet Union, and its relationship to the electoral register. He has not himself been to the Ukraine, but is familiar with the problem of corruption throughout the successor states to the old Soviet Union, a problem which he has studied with Professor Louise Shelley, "Director of TraCCC, the US transnational crime quango". His main informant in the Ukraine is Dr Roman Zyla, who now resides in Kiev but holds a doctorate of London University on corruption in the Ukraine.

11. We can conveniently set out Dr Chenciner's evidence in summary form. Victims of extortion in the Ukraine, such as the claimant was put through, are not allowed to

get away with it if they refuse to pay up. Debt-forgiveness would set a bad example to the many others who have to pay bribes and protection-money. Although Ukrainian gangsters do not have the efficient record-keeping systems of Chinese gangs, they have long memories, and would indeed remember the claimant if he were to return to his native Donetsk region. He would be made to pay his "debt" with compound interest over the intervening years, amounting to tens of thousands of dollars. The local police, who are hand-in-glove with the mafia, would do nothing to protect him, as his past experience has already shown.

12. But what if the claimant were to relocate to another part of the Ukraine? In the old days, a *propiska* was needed (a stamp in one's internal passport). The *propiska* system has now been officially abolished, but that is just a cosmetic measure, introduced in order to comply with the requirements of the longed-for EU membership. In practice, something very like the old system is still in place, and indeed provides an extra opportunity for police and officials to demand bribes for the extra paperwork involved. One must still *de-register* from one's old place of abode, and *re-register* with the police and Interior Ministry officials in one's new locality. (These normally share the same building, along with the SBU ~ the old KGB.) The police in the new location will check with the police in the old location. In the claimant's case, the police in Donetsk are likely to pass on what they have been told by the police in the new location to their friends in the mafia, who will either track down the claimant to his new abode, or 'sell him on' to the local mafia there. After eight years' sojourn in the West, the claimant will be assumed to have amassed considerable wealth, of which he should be relieved forthwith.

13. Miss Pal considered this scenario very far-fetched, and drew our attention to 4.6 of the Writenet Report dated November 2004, which was commissioned by the Protection Information Section of the UNHCR and boasts the (not exactly catchpenny) title, 'Ukraine : Situation Analysis and Trend Assessment'. Here we read, "*The **propiska** system, a carry-over from the Soviet era when registration at the place of residence was required to procure jobs and social benefits, in practice has not been exercised since 2001.*"

14. However, Mr Jorro pointed to the result of a request by a Senior Presenting Officer to the British Embassy in Kyiv, "*as to the practice of the Ukrainian government regarding the registration of citizens following the abolition of the propiska system.*" The reply, dated 15th April 2004, confirms, "*It is indeed correct that the original 'propiska' law was replaced by the law of Ukraine 'On Freedom of Movement and Choice of Place of Residence' effective 11/12/03. … The new law indeed eliminates the propiska system, which basically provided formal permission to live and work in a particular place. Now, under the new law, such permission is no longer required. However, the legal imperative for registration of citizens remains very much in place. On the basis of the foregoing, the citizens resident in Ukraine must be registered somewhere, such registration no doubt being absorbed into the Ukrainian central databases. We are not able to comment on the integrity or otherwise of these databases, nor on the possibility of information 'leaking out' to those who may seek to gain advantage from it.*"

15. We agree with Mr Jorro that this backs up what Dr Chenciner says about the necessity for the claimant to register with the police wherever he decides to relocate in

the Ukraine, and the likelihood of information about him "leaking out" to those who would wish to settle their account with him. In one respect, the letter from the British Embassy goes further than Dr Chenciner, who told us about criminals keeping records in their heads or on the back of envelopes, whereas they would appear to have access, through corrupt officials, to central databases.

16. In cross-examination, Miss Pal put it to Dr Chenciner that, according to his informant, Dr Zyla, "*there are many Ukrainians that live in Ukraine without propiskas. They pay regular small amounts to the local police and SBU secret police to leave them alone. But that applies only to the people who are not of interest to the SBU for other reasons.*" Could not the claimant simply refrain from registering in the part of the Ukraine where he chose to relocate, and keep the local police happy with small bribes?

17. Dr Chenciner's rejoinder was that the people who do this are mostly migrant workers in the black economy, while the claimant, returning from the West, would arouse greater interest. Besides, as he goes on to say in his report, "*To survive without propiska [the claimant] would have to pay repeated bribes to the corrupt police and be denied accommodation, work, healthcare, education and police protection, such as it is.*" It seems to us that a parallel can be drawn with the *muhtar* system considered by the Tribunal in *IK [2004] UKIAT 00312* when giving 'country guidance' on Turkey. The Tribunal held that, given the range of basic activities and services for which a 'certificate of registration' was required, it would in most normal circumstances be unduly harsh to expect even a young, fit, unmarried person to live without appropriate registration for any great length of time, as a means of avoiding persecution.

18. On this issue, Miss Pal prayed in aid *VS (Registration on Relocation) Ukraine CG* [2004] UKIAT 00242, where the Tribunal also had the benefit of a report by Dr Chenciner. For this and from the CIPU Report, the Tribunal concluded that "*although the old Soviet propiska system has officially been abolished in Ukraine, something very similar to it is still in place. Moreover the registration is not computer based at national level but depends upon local records. The need for registration relates essentially to accessing public services, but apparently many Ukrainians live without due registration, and pay a small bribe to their local police to avoid problems.*" The Tribunal go on to find that a bribe would have to be paid to the police even if one does apply to register, but that the amount – perhaps around $200 – is not excessive. "*We do not consider that the need for registration or the cost involved if bribes are required are sufficient to prevent internal relocation or to make it unduly harsh.*"

19. The Tribunal in that case did not have the benefit of the information from the British Embassy about centralized databases, but in any event this would seem to make little difference if the police in the new area check with the police in the old area when a person seeks to register his new abode. The appellant in *VS 242* had no fear of criminals or of being tracked down to his new place of abode, but was arguing that simply living somewhere else would be unduly harsh. That is not this case, which turns on the risk to the claimant of being tracked down by his former persecutors even if he does move elsewhere.

20. The adjudicator's determination in the present case was promulgated well before 9th June 2003, therefore we are guided by the Court of Appeal in *Subesh* [2004] EWCA Civ 56 that, if we are to set aside his determination, we must find the adjudicator to have been so 'clearly wrong' in his conclusions on fact and/ or law that we are required to adopt a different view. We do not find the adjudicator to have been clearly wrong. His credibility findings have not been challenged by the Secretary of State, and on the background evidence before him the "*close working relationship between corrupt officials and organised crime*" had, if anything, increased since the claimant's departure from the Ukraine. We agree with Dr Chenciner's opinion in his recent report that, despite the election victory of President Yushchenko in the 'Orange Revolution', progress in reforming the organs of the state, with their endemic corruption, is likely to be slow, and does not at present remove a real risk to the appellant should he return to the Ukraine.

DECISION

The Secretary of State's appeal is dismissed.

Richard McKee

18th February 2005