



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

Appeal Number: PA/00188/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2021**

**Decision & Reasons Promulgated
On 18 October 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**RS
(ANONYMITY DIRECTION MADE)**

and

Appellant

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Yemets Solicitors

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

DECISION AND REASONS

The appellant is a citizen of Ukraine, born on 30 October 1958. He is appealing against the decision of Judge of the First-tier Tribunal Housego ("the judge") promulgated on 3 December 2020.

Before the First-tier Tribunal, the appellant claimed, inter alia, that if returned to Ukraine, he will face imprisonment in conditions that breach article 3 ECHR because he is a convicted draft evader.

To support his claim, the appellant submitted several Ukrainian documents. These were:

An extract from a reservist's list;

two call-up summonses;

a court summons; and

a court determination.

I will refer in this decision to these documents as "the documents".

The documents were assessed in an expert report by Professor Galeotti dated 18 January 2020 ("the original report"). Following consideration of photocopies of the documents, Professor Galeotti expressed the opinion that they were authentic. This opinion was based on an assessment of a range of factors, including their nature, their appearance, their layouts and corroborating details.

In a subsequent report dated 11 March 2020 ("the addendum report") Professor Galeotti considered the originals of the documents. He stated that he was instructed to consider whether his original opinion on the authenticity of the documents remained the same in the light of an examination of the originals. He stated in respect of each of the documents that his opinion was unchanged.

The judge stated, in paragraph 19 of the decision, that Professor Galeotti's "reports are measured, and I accord them respect". In paragraph 38 he stated:

"there is expert evidence that the documents supplied are consistent with the accounts given. I give it full weight."

Despite giving the report "respect" and "full weight", the judge did not accept Professor Galeotti's opinion as to the authenticity of the documents. One of the reasons given by the judge for this was that Professor Galeotti only considered poor quality copies of the documents. This is referred to in paragraphs 19 and 39.13 of the decision. In paragraph 19 the judge stated:

"he was clear that the documents he examined were not of good quality, and that hampered his opinion of them".

The judge gave multiple reasons (including his finding in respect of the documents) for not finding the appellant credible and dismissed his appeal.

There are four grounds of appeal. It is not necessary to consider all of them because there is a single error which renders the decision unsafe such that it will need to be remade. The error, which is identified in the first ground of appeal, is that the judge reduced the weight he attached to the opinion of Professor Galeotti on the authenticity of the documents because Professor Galeotti had assessed only poor quality copies when, as is clear from the addendum report, Professor Galeotti had in fact reviewed the originals.

The error is material because (a) the judge's apparent misapprehension that Professor Galeotti had seen only copies of the documents was a significant reason the judge rejected his opinion on their authenticity; and (b) the authenticity of the documents was a material consideration in the judge's assessment of whether the appellant's account was credible.

I asked Ms Panagiotopoulou and Mr Melvin for their views on the disposal of the appeal. Ms Panagiotopoulou argued that the appeal should be remitted to the First-tier Tribunal to be made afresh, given that the error I had identified was central to the overall credibility of the appellant. Mr Melvin submitted that the appeal should be retained in the Upper Tribunal and noted that there is at present a country guidance case pending which will consider documents from the Ukraine.

In my view, this is a case where it is appropriate for there to be a remittal to the First-tier Tribunal. The overall credibility assessment undertaken by the judge cannot be separated from the finding in respect of the documents and therefore, in order for a decision to be remade, it will be necessary for credibility to be considered afresh. This is likely to entail significant fact-finding and in these circumstances it is appropriate for the appeal to be remitted. It will be a matter for the First-tier Tribunal whether or not the hearing should take place after the pending country guidance case referred to by Mr Melvin.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

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.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 17 September 2021