



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

Appeal Number: PA/04035/2017

THE IMMIGRATION ACTS

**Heard at Manchester
on 27 March 2018**

**Decision and
promulgated
On 28 March 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE HANSON

Between

LV

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk instructed by Broudie Jackson Canter

For the Respondent: Mr Harrison Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Caswell, promulgated on 8 June 2017, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. The appellant's case was based upon not only the oral evidence but a considerable amount of documentary evidence. Mr Schwenk

submitted that the case may appear convoluted but the documentary evidence did assist with an understanding of the case and supported the appellant's assertions, warranting a finding in her favour.

3. The Tribunal was referred to the finding at [26] in which the Judge writes:

"26. I have considered all the verbal and documentary evidence together in this appeal. I accept that the Appellant may have told her former husband she was having problems in Ukraine, and I find she may well have had some problems, but I cannot accept that she had the problems she has related, since the central core of her account, namely the reason for why she will be attacked by the gang and threatened, does not make sense. I therefore find also that the documents she has put forward in support of her case are not genuine or reliable. Even if the account were credible, (which I do not find) I do not accept that the Appellant could not reasonably and safely relocate within Ukraine to avoid any problems from a gang based in Odessa. Her account is that her sister in Kiev also had problems, but there are other more remote areas of Ukraine where the Appellant has not tried to move to, even on her own account."

4. Permission to appeal was granted by the Upper Tribunal on a renewed application in the following terms:

"3. The grounds of appeal content, in summary, that firstly the First-tier Tribunal failed in the credibility assessment of the appellant as it failed to consider the documentary evidence in the round before concluding that the appellants claim of threats by a gang was not credible, see paragraph 26 of the decision; and because it found that the appellant could relocate to a remote area of Ukraine, see also paragraph 26 of the decision, but this finding is not lawful as she should not be forced to live an abnormal life with her two children in a remote area; and because there was no appreciation of the supporting country of origin materials brought to the attention of the First-tier Tribunal in the decision. Secondly it is argued that the First-tier Tribunal failed to properly apply paragraph 352D refugee family reunion for the children to the appellant's son as he did, it is argued, form part of his father's family unit when his father left his country of habitual residence to claim asylum. Thirdly it is argued that the conclusion that the appellants children's father could go and live in Ukraine, where he had been previously a student, was one which had no factual basis.

4. The grounds are all arguable: those relating to the asylum claim may not be ultimately material given the findings at paragraphs 24 and 25 of the decision of the First-tier Tribunal but permission is given for all to be argued."

5. The Court of Appeal have made it clear that an error of law will only arise in relation to a challenge to the manner in which a judge is considered documentary or other evidence if it is shown there has been an artificial separation between the evidence from different sources i.e. oral and documentary. The obligation upon the Judge was to consider the evidence as a whole, i.e. in the round, before arriving at her findings. Mr Schwenk submitted that the wording in [26] clearly indicates that such artificial separation has occurred in this case. Mr Schwenk relies upon the use of the words "I therefore find also....". That wording does suggest that the Judge arrived at her conclusions in relation to credibility, which was that the claim was not credible, and as a result found that the documents were not genuine or reliable. It is argued this wording does not show that the Judge took the contents of the documents into account and assessed the weight that could be given to the same before arriving at the credibility conclusions.
6. Mr Harrison, when his view upon these submissions was sought, conceded that a reading of the decision did arguably make out that artificial separation had occurred.
7. On the basis of this concession and the submissions made by Mr Schwenk I find the appellant has made out her case that there has been such artificial separation amounting to a failure by the Judge to properly consider the evidence in the round as required in an appeal of this nature. Accordingly, the adverse credibility findings cannot be said to be safe and are therefore set aside.
8. The grounds relating to the reasonableness of internal relocation also appears to be infected by arguable error for the reasons set out in the grounds seeking permission to appeal and the grant of permission, in relation to which arguable material legal error is also found.
9. As the evidence has not been considered adequately and errors have been made in relation to internal relocation; I find it is appropriate for all findings of the Judge to be set aside with there being no preserved findings. As the appellant has not received the hearing to which she is properly entitled I find it is appropriate, and in accordance with the practice direction relating to remittals of appeals, for this matter be to be remitted to the First-tier Tribunal sitting at the hearing centre appropriate to the appellant's place of residence in Bolton to be heard afresh by a judge other than Judge Caswell. There shall be no preserved findings.

Decision

- 10. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at either Manchester or Bradford**

**(according to the operational requirements of that Tribunal)
to be heard afresh by a judge other than Judge Caswell.**

Anonymity.

11. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 27 March 2018