



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

Appeal Number: PA/12590/2016

THE IMMIGRATION ACTS

Heard at Field House

On 19 June 2017

**Decision & Reasons
Promulgated
On 29 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**DMYTRO NESTEROV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagistopdviou of Counsel

For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant claims to be a citizen of Ukraine, born on 20 March 2016. He appealed against the respondent's decision refusing to grant him asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Seelhoff in a decision promulgated on 30 December 2016, dismissed the appellant's appeal.
2. Permission to appeal was granted by First-tier Tribunal Judge Ford who found that it is arguable that the first-tier Tribunal Judge erred in his findings as to the appellant's knowledge that the Hungarian passport on which he was travelling was not genuine and its findings on the reliability of Ukrainian documents produced by the appellant in support of his claim.

It was further argued that the Tribunal may have erred in its approach to an expert report regarding the authenticity of the documents.

3. The First-tier Tribunal Judge in his decision made the following findings which I set out in summary. The appellant claims to be a Ukrainian national who did basic military training, but no more, while he was studying management at an Institute in Trenopil. He claims to have avoided for military service because he was a professional kayaker from the age of 12 and turned professional when he started his studies in 2005 and was the national champion of Ukraine in 2007.
4. He claims that on 31 July 2014 he received summons to report to the army and to be placed on active duty. He went into hiding and avoided the military who came looking for him at his home. His agent arranged his Hungarian nationality and assisted his wife to travel to the United Kingdom by lorry at a cost of €3000. He claims that a court summons arrived on 27th or 29 January 2015 informing him that there was a hearing set for 3 February 2015. He contacted the agent and it told him to speed up the process of securing his Hungarian citizenship. The appellant prepared to leave Hungary on 25 February 2015. He claims he was booked into a hotel and given the Hungarian text he needed to learn to get his passport. He claims that he attended a citizenship ceremony and gave the oath reciting the text even though he did not understand it.
5. He then went to the passport office to pay €30 fees and three days later, his agent delivered the passport to his hotel. When he examined the passport, he realised that the name and date of birth was wrong. He tried to contact the agent who told him that there had been a mix-up between himself and another person and it would take a lot of time and money to resolve it. On his agent's assurances, he believed that the Hungarian passport was legitimate. He could not afford the time or the money to correct the passport and decided to travel to the United Kingdom through Poland arriving in this country on 1 April 2015.
6. The appellant genuinely believed that the Hungarian passport was genuine and not a forgery. It was only when he made an application to marry did the forgery come to light after he was interviewed by the Home Office. The Home Office officials searched his house, in his and his wife's absence and their housemate with whom had been sharing their flat disappeared on that very day and has not been seen since. The false passports found in their flat belonged to the man and not to them.
7. The Judge did not accept the appellant or his wife's explanation that they believed that the Hungarian passport was legitimate and that they were entitled to rely on it at any stage. There are several reasons for this but the simple reason is that the name and date of birth in the document was completely wrong. The Judge did not believe that the appellant could possibly have believed that the difference in the details was simply a mistake or that he was entitled to use the passport. He found it simply not

believable that the appellant would genuinely believe, that he was legitimately entitled to a passport in a completely different name with a completely incorrect date of birth. The Judge found that the appellant's insistence that he did not know that the Hungarian passport was a forgery, fundamentally undermines any credibility he might have.

8. The Judge found that if the appellant thought that he had a genuine passport, their attempt to marry in the United Kingdom was part of a concerted effort to hide the appellant's Hungarian nationality and the couple's previous legal marriage.
9. The appellant's wife's conduct at the marriage interview also demonstrates that the appellant and his wife knew that the Hungarian passport was a forgery. When his wife was asked her husband's name, she gave the name in the Hungarian passport and not his real name. It was only when the name of the person in the passport was put to her, she said that it was her third cousin and said she was not feeling well.
10. When the appellant was interviewed, he maintained that he was from Hungary and that he had gone to school in Hungary. He maintained his claim that he obtained the Hungarian passport from the Embassy and had not been able to go through an interview in Hungarian. He disclosed that he had entered Hungary using the Ukrainian passport in his current name. When the appellant was asked why the Hungarian passport was in the name of Atilla Gulyas, he said that he had wanted to change his name. The Judge found that it is quite clear that the appellant and his wife both attempted to maintain their deceptions at some length when they were being interviewed by the Home Office about their marriage.
11. If the appellant and his wife believe that the appellant was legitimately entitled to the Hungarian passport and the false name, they would have simply disclosed the details at the outset of their marriage interview. The only explanation for the behaviour of both the appellant and his wife at this stage is that they knew that it was a false passport and that the appellant was not entitled to hold it from the very beginning. If the appellant believed the Hungarian passport was legitimate, he could simply have applied for a residence card for his wife disclosing both names and explaining that he had changed his name as he claimed to have done in the marriage interview.
12. In respect of the documents, the Judge noted that the original documents have never been provided to the Home Office or to the expert who purportedly verified them. The expert who produced the verification report was not made aware of the appellant's history when he was asked to verify the documents and he was not made aware of the specific history of document forgery. The expert does not appear to have considered the possibility of the appellant producing fake documents. At its highest the expert does no more than confirm the documents are superficially consistent with original Ukrainian documents but that is exactly what one would expect of good forgeries.

13. The appellant has not taken any steps to try and legitimately exempt himself from military service as the country guidance case confirms that there are procedures for conscientious objection in Ukraine. The appellant has also not engaged a lawyer to act on his behalf or attempted to try and appeal the sentence given to him given that it states that it is appealable. As Ukraine recognises conscientious objectors, it is likely that the appellant would have avoided been called up for active combat service had he responded to the summons and engaged with the procedures properly.
14. At the hearing, I heard submissions from both parties as to whether there is an error of law in the determination of the First-tier Tribunal.

Is there a material error of law in the determination of the First-tier Tribunal

15. I have taken into account the decision, the arguments of the parties on the evidence and I find that the Judge has made no material error of law in the decision, real, imagined or embryonic. The Judge concluded on cogent evidence that the appellant and his wife were not telling the truth at the hearing about all matters. He also considered that the expert had not been given all the information including the original documents and all he could say is that they are superficially consistent with original Ukrainian documents. The Judge was entitled to say that whether the passport looked original or not is not relevant because good forgeries are meant to look like original documents. Therefore, the fact that the appellant, who is not an expert, thought it looked like the original is not pertinent to the fact that the appellant knew that the document with which he travelled, was not in the appellant's name and not his date and birth. The conclusion that the Judge came to is unassailable for the reasons that he gave in his decision, for why the appellant knew that he was not entitled to use the document to travel.
16. Furthermore, there was no evidence before the Judge that he compared the passport he was given by the agent with any other genuine passports to determine whether it looked like an original passport. The fact whether the passport may have looked genuine as forgeries are meant to look, the conduct of the appellant demonstrated to the Judge that he knew that the passport was not original but a fake. That was the issue in the appeal. The Judge did consider the experts evidence in the round and found that it does not assist the appellant's appeal.
17. The Judge gave many reasons for his findings for not finding the appellant or his wife credible. The first reason was that the passport was in a different name with a different date of birth than that of the appellant. The judge was entitled to find the appellant, could not possibly have believed the passport was genuine with the incorrect name and date of birth. A passport essentially is an identity document and other than showing the identity of the person, does not have much other information on it. Therefore, the name and the date of birth are the most relevant information

in the passport. The Judge also found that the appellant could not possibly have believed he was entitled to travel on this document, notwithstanding the agent's claimed assurances. There is no irrationality or perversity in this reasoning and finding.

18. The Judge found that if the appellant had thought that he had a genuine passport, there would have been no reason for him and his wife to attempt to marry again in the United Kingdom because they were already married in Ukraine. The Judge was entitled to find that this was their plan to hide the appellant's Ukrainian nationality and the couple's previous legal marriage.
19. The Judge also considered appellant's wife's conduct at the respondent's marriage interview because when his wife was asked what her husband's name was, she gave her husband's name on the passport and not his real name. The Judge was entitled to find that if the appellant wife genuinely believed that the appellant was travelling on a valid passport, she would have corrected the mistake instead of lying about her husband's name. This demonstrates that the appellant's wife was attempting to deceive. Furthermore, the Judge did not find credible that when his wife was asked she was the person named in the passport, she said that it was her third cousin after which she said she is not feeling well. There is no perversity in the Judge's reasoning and the conclusions that he came to on the evidence before him that the deception perpetrated by the appellant and his wife was clear for him to see.
20. The Judge also found that the appellant and his wife maintain their deception at some length when interviewed by the Home Office in connection with their marriage. The appellant maintained that he was from Hungary and that he had gone to school in Hungary. He maintained his claim that he obtained the Hungarian passport from the Embassy and had not been able to go through an interview in Hungary. He disclosed that he had entered Hungary using the Ukrainian passport in his current name. When the appellant was asked why the Hungarian passport was in the name of Atilla Gulyas, he said that he had wanted to change his name. If that was the case the Judge found the appellant could have declared this. This also demonstrated to the Judge that the appellant changes his name as there was no evidence for why he wanted to change it.
21. The Judge was entitled to find that the only explanation for the behaviour of both the appellant and his wife was that they knew that it was a false passport and that the appellant was not entitled to hold it from the very beginning. The Judge found that if the appellant genuinely believed the Hungarian passport was legitimate, he could simply have applied for a residence card for his wife disclosing both names and explaining that he had changed his name. I find that the judge considered all the evidence and came to the only conclusion he could on it. There is no perversity or lack of proper reasoning.

22. The Judge considered the reason given by the appellant for why he wanted to leave the country in a hurry and why he could not wait for the date of birth and name to be changed, in his passport. The Judge properly found that is the end the appellant could have procedurally engaged with the summons issued to him for active military duty, The Judge was entitled to find that the appellant could have engaged a legal representative and or made representations as a conscientious objector which is permissible by the government of Ukraine. The appellant paid an agent for him and his wife to leave the country, which demonstrates that he had the money to have engaged a lawyer. The Judge was also entitled to find that the appellant had a right of appeal which he could have exercised. Therefore, there would have been no reason for the appellant to leave the country in a hurry and could not have waited for a passport with his correct name and date of birth to be issued to him. The Judge was entitled to find the very basis of the appellant's claim that he had to leave the country in a hurry, was not credible and not accurate.
23. I find there has been no error of law in the decision, material or otherwise, in respect of the findings made by the Judge on the evidence before him. I therefore uphold the First-tier Tribunal's decision. I also find that no differently constituted Tribunal would come to a different conclusion on the evidence, in this appeal.

Notice of Decision

24. I therefore uphold the decision of the First-tier Tribunal Judge and I dismiss this appeal.

Signed
2017

Date 24th day of June

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed
2017

Date 24th day of June

Deputy Upper Tribunal Judge Chana

