Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05810/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 December 2017	**On 16 January 2018**

Before
THE HON. LADY RAE
UPPER TRIBUNAL JUDGE JORDAN

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No representative or appearance
For the Respondent: Mr S. Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Ukraine who provided a date of birth of 8 April 1986. She appeals against the determination of First-tier Tribunal Judge Beg promulgated on 18 July 2017 dismissing her appeal against the decision of the Secretary of State refusing her asylum claim and her claim for humanitarian protection. The appellant was not present nor was she represented at the hearing before us. The last contact that we can find on file is a letter written by her solicitors Yemet Solicitors dated 28 July 2017 in which the solicitors confirmed they were

representing the appellant and submitting grounds of appeal. We are satisfied that the appellant and her solicitors were served at two different addresses on 14 November 2017 by first class post. Accordingly we are satisfied that they have received notice of the hearing and we will proceed in their absence because nothing has been put before us to suggest that they have not been lawfully served or wish to adjourn the hearing.

2. The case that was put forward by the appellant was that she refused to be conscripted into the military to perform military service, as a result of which she had been convicted in a court in the Ukraine and sentenced in her absence to three years' imprisonment. She fears that if she returns to the Ukraine she will be arrested and imprisoned. It is accepted that, were she to suffer a period of imprisonment, whether it is on remand or in order to serve her sentence, those conditions are sufficiently serious to amount to a violation of her human rights. The issue, however, before the judge was whether there was a real risk, a reasonable likelihood, of her being returned to the Ukraine where she would then be imprisoned as a draft evader. There were immediately difficulties in the appellant's case which the appellant did not resolve adequately in the evidence before the Tribunal. They are also reflected in the respondent's refusal letter.

3. The appellant is aged 29 and the respondent noted in paragraph 27 of the refusal letter that the objective information stated that military service was for people between 20 and 27 years of age. As the appellant was over the age of 29 when the first call-up papers were served, according to her case, that would appear to be contrary to the basis upon which conscription is operated in the Ukraine.

4. The appellant relied upon three attempts to serve her with call-up papers. On the first occasion, which was on 18 August 2015, she provided a document. This document, indeed all the relevant documents, were in photocopy form, which inevitably raises difficulties. Those difficulties are compounded by the fact that the original documents were said to be held by her family in the Ukraine. The appellant herself said that her sister sent her the documents including the court documents, however the only documents the court saw were photocopied documents. The problem in relation to the call-up of 15 August 2015 is principally concerned with the fact that the notice did not state that the appellant signed to confirm that she had received it yet in evidence she said that she did sign for it. That appears to have been treated by the judge as an inconsistency. Call-up papers however, which were subsequently served on two successive occasions, one on 31 October 2015 and the second on 7 March 2016 were call-up papers served on her home at a time when she was no longer living there when she certainly could not have signed them. Accordingly, this raised an issue as to whether or not a Ukrainian could, on the basis of her failure to comply with the call-up, rely upon call-up documents which had not been served.

5. The Ukrainian conviction was called into question by the fact that there was no evidence about it, save from the appellant's mother who it is said was present during the criminal hearing and is able therefore to give direct evidence of it. However, no

attempt was made to apply to the court for a record of the conviction, nor to seek the help of a Ukrainian lawyer who might have approached the court to verify that he had applied and obtained an original copy of the certificate of conviction sufficient to satisfy the Tribunal that there was in fact a conviction. Inter-solicitor correspondence directed by an appellant's solicitor is of greater weight than correspondence directed by the appellant.

6. The judge went through the nature of claims made by an individual who is seeking to avoid military conscription. The appellant is not a conscientious objector and the general principle is that military service is a lawful operation on the part of a sovereign government for whom it takes responsibility. An objection to military conscription is not sufficient to establish a claim. The case-law that the judge relied upon was very much on the basis of the risk faced by those who are under the obligation to submit to the draft. Of course the judge had already noted that the appellant herself was beyond the draft age. In paragraph 6 of the determination the judge refers to *VB and Another (draft evaders and prison condition) Ukraine CG* [2017] UKUT 79 where she noted that the Upper Tribunal heard evidence that very few draft evaders have today been subjected to any criminal proceedings let alone convicted of any criminal offence or sent to prison.

7. She referred to paragraph 55 of the determination in which the Tribunal held that those who may have been convicted *in absentia* would probably be entitled to a retrial in accordance with Article 412 of the criminal procedure code of the Ukraine. There was also no evidence that a draft evader avoiding conscription or mobilisation would on a retrial ultimately be sentenced to serve a period of imprisonment which is a very rare occurrence. Accordingly the judge was entitled to conclude that the appellant would be able to return to the Ukraine, on the basis that her claim that she was at risk of military conscription had not been made out and that the documents could not be relied upon, as well as that the evidence did not support the conviction, which it is said she had already been subjected to by a court in the Ukraine.

8. Finally, the judge did not accept that there is a real likelihood that she would be sentenced to a period of imprisonment for evading the draft, partly for those reasons but also because the country guidance relating to draft evasion does not suggest there is a real likelihood of her being imprisoned. Accordingly, the only slight window for her to be at risk would be that if she had indeed been sentenced to a period of imprisonment of three years for draft evasion she would be held on remand and not on bail on return to the Ukraine and that during that period of remand, however long that period might be, she would be subjected to the conditions in prison which would violate her human rights. It could not be said that thereafter she would suffer an infringement of her rights because on a retrial she would not be sentenced to immediate imprisonment. However, that opportunity, as it were, for her to be subjected to a period in remand was not on the face of it established by reason of the evidence that she provided. Accordingly it makes no difference that the judge found in paragraph 25 that even were she to be subjected to a short period on remand that would not be sufficient to infringe her rights. For these reasons we dismiss the appeal.

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL

Date: 12 January 2018