Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12684/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 11 August 2020 by Skype	**On 18 August 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OLEKSANDR [A]
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain instructed by Bankfield Heath Solicitors
For the Respondent: Mrs R Petterson Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. On 20 February 2020 First-tier Tribunal Judge O'Hanlon ('the Judge') dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal has been granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

> "The grounds are arguable by a narrow margin. At [48] while the Judge limited the weight to be given to the appellant's mother's letter, significantly the Judge did not

reject that evidence. This visit by the Ukrainian authorities would seem to substantiate the experts report at [46] and [48] of his report, that the appellant was likely to be on a shared database and that the Ukrainians would hand him over to Russia.

Background

3. The appellant was born on 28 April 1993 and is a national of Ukraine. The basis of his claim for international protection is that he fears persecution if returned to Ukraine as a result of his deportation from Ukraine to Russia because he is a Jehovah's Witness who had resided in Russia since 2012 and who has residential status there.
4. The Judge considered the documentary evidence and had the benefit of seeing and hearing oral evidence being given. Findings of fact are set out from [35] of the decision under challenge which can be summarised in the following terms:

    i. The appellant's identity, date of birth, nationality, and conversion to the Jehovah's Witness faith is not disputed [40].
    ii. The Judge finds both the appellant and his wife's evidence consistent in relation to whether the appellant continued to practice as a Jehovah's Witness [41].
    iii. The appellant is to be returned to Ukraine [42].
    iv. The Judge noted the appellant's claim of a fear of being returned to Ukraine and then being extradited to Russia because he is a Jehovah's Witness who had previously come to the attention of the authorities and in light of the fact the Russian Supreme Court had upheld a ban on Jehovah's Witness activities in April meaning he will face a real risk of persecution. The appellant did not fear being a Jehovah's Witness in Ukraine but fears being extradited to Russia [42].
    v. The Judge finds there was no evidence the appellant had a well-founded fear of persecution [42].
    vi. The Judge accepted as credible the appellant's wife's evidence that they had been arrested by the Russian authorities and detained as claimed for a period of 5 days from 23 March 2019 as a result of their activities as Jehovah's Witnesses. The Judge finds that the appellant and his wife had previously been persecuted by the Russian authorities as a result of their religious beliefs and that intolerance of the appellant's religious beliefs by the authorities has been enshrined by the prohibition of Jehovah's Witnesses in Russia, leading to a finding the appellant and his wife would be at risk of persecution in the event that they were returned to Russia [43].
    vii. The Judge refers to the expert report from 'Dr TH' in relation to the question of whether the appellant will be handed over to the Russian authorities by Ukrainian authorities [45]
    viii. The Judge finds that if the appellant and his wife were of such importance to the Russian authorities that they would seek the extradition of the appellant and his wife from Ukraine in the event they were returned to Ukraine, "somewhat begs the

question" as to why the appellant and his wife were released by the authorities in Russia when they had them in their custody. The Judge accepting that after 5 days detention the appellant and his wife were released by the authorities due to the intervention of a solicitor [45].

ix. The Judge finds there was nothing in an article relied upon by the appellant's representative suggests that Russia has sought the extradition of members the prohibited religions from Ukraine or other countries [46].

x. The Judge did not find the Human Rights Council document relied upon by the appellant's representative and handed in at the hearing suggested that extradition of Jehovah's Witnesses has previously occurred [47].

xi. The Judge confirms that he has taken into account an undated letter from the appellant's mother referring to a visit on 25 June 2019, the day on which the appellant should have attended upon the authorities in Russia in accordance with a summons of 25 June 2019 issued by the Prosecutor's Office in Ukraine who are looking for her son in which there is reference to the Prosecutor's office attending again in October 2019 which is said to be evidence in the letter suggesting that Ukraine authorities had been requested by the Russian authorities to look for the appellant. The Judge finds that the letter could only have limited weight attached to it although does find the reference to an attendance on 25 June 2019 is consistent with a copy of the summons returnable for that date as considered. The Judge however finds that even if the Ukrainian authorities had been requested by the Russian authorities to ascertain the appellant's whereabouts this was some distance away from the Russian authorities actively seeking the appellant's extradition in the event that he had been located in Ukraine [48].

xii. The Judge was not satisfied the required standard that it is highly likely the Ukrainian authorities would hand the appellant over to the Russian authorities on the basis there was no evidence to indicate the Russian authorities actively sought extradition of the appellant and no evidence to show the appellant is on a Federal wanted list, despite his claim to so be. The Judge finds there was nothing in the documentation place before him or the experts report which refers to extradition of persons from Ukraine to Russia on religious grounds. [49].

xiii. The Judge notes that whereas the expert report claims it was likely the appellant will be viewed as a betrayer for the fact he had lived a long time in Russia and married a Russian national, that was not the basis on which the claim was made. The Judge finds other aspects of the expert report speculative for the reason stated at [49]. The Judge finds there was nothing to show that it was likely that Russia would seek the extradition of the appellant simply because he had been a practising Jehovah's Witness whilst residing in Russia. The Judge notes the appellant's own evidence he did not have any significant problems with the Russian authorities prior to March 2019 and

despite having been detained had been released by the Russian authorities which did not suggest they would have the motivation to seek his extradition from Ukraine. The Judge finds he was not satisfied to the necessary standard the appellant will be extradited from Ukraine to Russia and was satisfied the appellant could be returned to Ukraine without the risk of being extradited to Russia [49].

xiv. In relation to appellant's wife the Judge noted the submission she would not be allowed to enter Ukraine as she does not live there in relation to which the Judge finds it will be possible for the appellant to go to Ukraine and for his wife to make an application to join him in Ukraine as the wife of Ukrainian national. The Judge finds this had not been shown not to be the case [50].

xv. The Judge dismisses the appeal pursuant to articles 2 and 3 and other protection grounds on the basis the appellant had failed to demonstrate he has a well-founded fear of persecution on return to Ukraine.

xvi. The Judge notes the appellant's representative did not address him on Appendix FM or paragraph 276 ADE and nor was any such claim made in the grounds. It was not made out the appellant or his wife could succeed on human rights grounds, either within or outside the Immigration Rules [55].

Grounds and submissions

5. The grounds assert the Judge erred in law as it was accepted by the Judge that the Ukrainian authorities had been to the appellant's family home looking for him on the day he failed to answer a summons. The grounds assert the Judge's finding that the evidence did not support a claim the Russian authorities were actively seeking extradition is irrational as the attendance at the family home by the Ukrainian authorities showed an arguable real risk of refoulement.
6. The grounds assert the Judge has not assessed the risk to the appellant and his wife for failing to answer the summons.
7. The grounds assert the Judge accepted the expert report in relation to past persecution and future risk in Russia but failed to rationally explain why the experts evidence on risk on return was not accepted.
8. The grounds assert the Judge erred in speculating that it was not made out the appellant's wife shall not be admitted to Ukraine for if she is not and is refused entry she will have to travel to Russia where it was found there was a real risk of persecution.
9. The appellant asserted the Judge needed a clear evidential basis on which to determine that return of the appellant's wife to Ukraine would be safe, durable, and lawful, which it is argued was not made out.
10. The Secretary of State, in her Rule 24 reply, wrote:

> The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately and gave adequate reasons for his findings.

The respondent submits that the Judge of the FTT gave adequate reasons for finding that the appellant and his wife continued to practise the Jehovah's Witness face (Para 41) and that the appellant would have no well-founded fear of being a Jehovah's Witness in Ukraine (Para 42).

The Judge of the FTT proceeded to consider the appellant's claim that he would be extradited to Russia. Having considered the appellant's account of his difficulties in Russia, the documents submitted by the appellant, the expert report and the relevant background evidence, the Judge of the FTT accepted that the appellant and his wife had been arrested and detained in Russia and would be at risk of persecution if they returned there.

The Judge of the FTT accepted that the appellant would be returned to Ukraine and gave adequate reasons for finding that the appellant was not at risk of extradition to Russia and had not established that he was on the Federal wanted list.

The respondent submits that the Judge of the FTT did note the expert's opinion that it was highly probable that the appellant was on the Federal wanted list, but it was open to him to find that there was no satisfactory evidence to support this opinion.

The Judge of the FTT had regard to the background evidence regarding the evidence of political prisoners being exchanged, but made findings that were open to him that there was no satisfactory evidence that Russia sought extradition of members of prohibited religions from Ukraine or other countries. It was open to the Judge of the FTT to conclude that the fact that the appellant and his wife were released after 5 days' detention indicated that they would not be of high enough importance that the Russian authorities would seek their extradition.

The respondent submits that the Judge of the FTT had regard to the evidence from the appellant's mother and gave adequate reasons for giving it little weight (Para 48). It was open to the Judge of the FTT to find that even if the Ukrainian authorities had been requested to ascertain the appellant's whereabouts, that was some distance from actively seeking his extradition.

The respondent submits that the Judge of the FTT considered all the evidence in the round and gave adequate reasons for finding there was no evidence that the Russian authorities had sought the appellant's extradition or that he was on the Federal wanted list and that he would not be at risk of extradition if returned to the Ukraine (Para 49).

The Judge of the FTT took into account the fact that the appellant's wife is Russian but gave adequate reasons for finding that she could apply to join the appellant in Ukraine as his wife.

The respondent submits that the determination discloses no material error of law and that the grounds of appeal represent mere disagreement with the conclusions of the Judge of the FTT.

11. Mr Hussain in his reply dated 12 June 2020 wrote:

REPLY TO SSHD'S RESPONSE

1. OA seeks to respond to the SSHD's "response to directions" dated, 8thJune 2020as follows.

2. OA wishes to repeat his request for an oral EofL hearing and refers the Tribunal to his submissions in this regard dated, 24thMay 2020 [#1-11].

3. In respect to the SSHD's response to directions, OA avers that: i. The response is largely generic; simply stating that the reasoning of the FTT was adequate. ii. The response does not engage with the detailed grounds of appeal.

4. The SSHD has failed to explain how it was rationale for the FTT to conclude that the attendance of Ukrainian police at his Mother's home on the day he and his wife failed to answer to bail was not indicative of the Ukrainian authorities acting on behalf of the Russians. Moreover, that this is a strong indicator that there exists a reasonable degree of likelihood they would do so again if OA returns to the Ukraine.

5. The submission that OA's wife can "apply to join [him]... in the Ukraine" fails to deal with the following obvious and insuperable issues: i. OA's wife would have to first return to Russia, where it was accepted she was detained and ill-treated; ii. She has breached her bail conditions (for an accepted persecutory prosecution) by failing to surrender and leaving the country illegally; iii. The SSHD/FTT failed to refer to any evidence supporting the finding that she could return to the Ukraine directly and remain there; iv. The SSHD has failed to show why she would not be removed to Russia if she attempted to enter the Ukraine and reside without prior permission.

6. As the UT will have picked up from the statements of both OA and his wife; she was heavily pregnant(8 months) at the date of hearing. The FTT failed to grapple with how she could be placed on an aircraft in light of this and returned in any event.

7. Finally, there is now a baby to consider and although it is accepted that this was not a matter before the FTT, it cannot now be ignored.

Error of law

12. It is not disputed that the authorities in Russia have targeted followers of the Jehovah's Witness faith in the country and that if suspected a common charge in Russia for Jehovah's witnesses under Article 282.2(1) of the Russian Criminal Code is "Organisation of the activity of a social or religious association or other organization in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity." It is also accepted there has been a ban on the movement of Jehovah's Witnesses in Russia since 2017 based on the law against extremism.
13. Notwithstanding such restrictions the Judge was entitled to note at the end of [45] surprise as to how the appellant and his wife, who had been arrested by the authorities in Russia as a result of their beliefs and practices as Jehovah's Witnesses, were released without any evidence of their being charged under the Russian Criminal Code or of any evidence being provided of restrictions being placed upon their movements.
14. The appellant claims that the evidence from his mother should have been given greater weight than it was by the Judge. That evidence was clearly considered by the Judge who makes a specific reference to it [48] of the decision in the following terms:

"I have taken note of the evidence put before me by way of an undated letter from [HLH], she refers to a visit on 25 June 2019, the date on which the Appellant should have attended upon the authorities in Russia in accordance with the summons of

25th of June 2019 by the Prosecutor's Office in Ukraine who are looking for her son. Attending again in October 2019. The evidence in this letter would suggest that the Ukrainian authorities have been requested by the Russian authorities to look for the Appellant. As the writer of the letter was not in attendance at the hearing, I do find that this limits the weight which I can give to this letter, although I do find that the reference to the attendance on 25 June 2019 is consistent with the copy of the summons returnable the 25 June 2019 which I had also considered. It is of course the case that even if the Ukrainian authorities had been requested by the Russian authorities to ascertain the whereabouts of the Appellant, that is some distance away from the Russian authorities actively seeking extradition of the Appellant in the event that he had been located in Ukraine."

15. The letter purportedly from the appellant's mother was accompanied by a translation into English. The original is a handwritten document. The translation is in the following terms:

My name is [HLH]. I am 46 years old, my address is [~]. I am the mother of Oleksandr [A], I am writing this letter at his request in order to tell you about the events that I witnessed from the 3 June 2019 till the end of October.

On 25.06.19 in the first half of the day a blue police car came to me in the first half of the day, I live on my own in a private house, and a man in a police uniform came in to my address. He later introduced himself as the District police officer of our and the neighbouring villages. I was surprised because I can't remember any occasion when the police would come to my house.

He started his conversation with the following words, "I need to have a serious conversation with you because I have received a request from the General Prosecutor's Office of Ukraine to establish the whereabouts of your son at the moment". I replied that my son had been living outside of Ukraine for a long time, he was married in Russia and he lived there. He said that he had information that my son could be in Ukraine. I was shocked by his words because at that time I knew that my son and his wife Albina were persecuted in Russia for being Jehovah's Witnesses but I was totally unaware that it could have reached Ukraine, our village. I told him that I knew the reason my children were being persecuted in Russia and how they could put him on the wanted list in Ukraine. I said that they were persecuted by the current regime that he did not want to listen, he just started entering my house while pushing me away. I told him, "you are not entitled to break into my private property" but he still entered, which caused me to shout.

He looked inside the kitchen and the two rooms from the hallway without entering, maybe my shouting stopped him. After that he went outside and opened the door of the garage. I had an impression that he did not care what I was saying. By that time some neighbours came outside and saw him coming out of my house and walk into the garage. I said again, "you are not allowed to break into my house", to which he just smiled and came outside. He went to my neighbours and asked them what they knew about the whereabouts of my son. Then he left.

After this, at the beginning of October, he came again to me pretending that he was just passing by. He jokingly asked, "have your children come?" Because he found it hard to believe that I didn't know about their whereabouts.

Later, at the end of November our Head of the Village Council Victor [K] came to me and said that he had received a phone call from Sokyryany and they want me to go to the police station in Sokyryany at 2 Yaroslava Mudroho Street, at 10:00 on the following day, which scared me a lot. I told Victor that I was afraid to go there and I didn't understand what they wanted from me but Victor said, "don't be afraid, the police just want to ask you some questions".

On the following day I arrived at the address given to me by Victor. I was met by the police investigator Vitaliy [K], he told Miss to sit down and started to politely with me, I can't down and thought that he was a normal officer and will be able to understand my situation.

I told him about the situation in general, about Russia, about my children are being persecuted it there, about the District police officer that had come to me and would not even listen to me. He listened to all of this and I got the impression that he understood me. But when I finished his manner changed, he became rude, he started saying that "they are innocent children for you but we received an enquiry from Russia according to which the situation is completely different". He said, "your son has broken the law there, he attempted to destabilise the situation, and instead of living normally he is involved in the propaganda of subversive ideas, distributing leaflets, so it is not that innocent", this is what he said.

I said that my son was a citizen of Ukraine and he should understand the lawlessness and the kind of authorities in Russia. I said, "how can you treat my son like this?" At this point he jumped up from his chair and started abusing me loudly, saying, "is not your right to judge, your son has broken the law, I have received the enquiry and my job is to find him and put him to justice. As far as the citizenship is concerned, the enquiry says he is the citizen of the Russian Federation and I would not be surprised if he had a dual citizenship which is illegal". At the end he said that if I knew something about Alexandra and Albina's whereabouts it would be better for me if I notified him.

16. The appellant is not a citizen of the Russian Federation but a citizen of Ukraine. Whilst there may be merit in enquiry being received from Russia in relation to a Russian citizen the Judge was arguably entitled to express scepticism as to whether the authorities in Ukraine would extradite a Ukrainian citizen to Russia on the basis of his religious beliefs. It is also a credible observation by the Judge that even if the authorities in Ukraine had been asked to trace the whereabouts of the appellant there was no evidence that the Russian authorities were actively seeking extradition in the event the appellant had been located in Ukraine. It is also the case that the material provided, whilst it speaks of the exchange of political prisoners of both sides, and whilst there is evidence in the news of the exchange of captured combatants in the area of conflict in the east of Ukraine, there is no material upon which the Judge was entitled to place weight indicating that such arrangements apply to those wanted as a result of their following the Jehovah's Witness faith or other religious groups deemed of concern to the authorities in Russia.

17. The appellant has provided within the papers copy documents with accompanying translations said to have been issued by the Investigative Committee of Russia, The Main Investigation Department of the Investigative Committee of the Russian Federation in the city of Moscow on the 21 June 2019 at 11:30 hours addressed to the appellant and headed "Summons for interrogation "ordering the appellant to attend at the Main Investigate the Department at the address stated on 25 June 2019 at 9.15 hours. The appellant did not attend as he was not in Russia and it appears that the summons had been sent by post to him at an address in Moscow. The claimed chronology indicates that within a very short period of time of his not attending the authorities in Russia had contacted the authorities in Ukraine who dispatched a police officer on the same day, according to

the letter from the appellant's mother who arrived in the first half of the same day, to ask where the appellant was. The Judge does not comment upon this chronology. It is accepted that under Russian procedural law, if a defendant is sent a summons but failed to turn up, service would be deemed to have been validly affected. The document relied upon by the appellant, the Russian summons, sets out the consequences of failing to appear in the following terms: *"In case of a failure to appear on the specified date without valid reason on the basis of article 113 of the Code of Criminal Procedure of Russian Federation you can be the subject of detention on the basis of article 118 of the Code of Criminal Procedure of Russian Federation a pecuniary penalty may be imposed on you".* Article 113 states:

Article 113. Forcible Bringing to Court

1. If they fail to appear at the summons without serious reasons, the suspect and the accused, as well as the victim and the witness, may be brought forcibly.
2. A forcible bringing shall consist in taking the person under coercion to the inquirer, the investigator or the public prosecutor, or to the court.
3. If there exist some reasons, interfering with their appearance in response to the summons at the fixed time, the persons mentioned in the first part of this Article, shall immediately inform to this effect the body, by which they have been summoned.
4. The resolution of the inquirer, the investigator, the public prosecutor or of the judge, or the ruling of the court on the forcible bringing shall be announced before its execution to the person who is going to be subjected to a forcible bringing, which shall be certified with his signature on the resolution or on the ruling.
5. A forcible bringing cannot be carried out at the night time, save for the instances when the matter brooks no delay.
6. Not subject to a forcible bringing shall be the minor who have not reached fourteen years of age, pregnant women, and sick persons who cannot leave the place of their stay on account of poor health, which shall be certified by a doctor.
7. A forcible bringing shall be effected by the bodies of inquiry under a judgement of the inquirer, the investigator or the public prosecutor, and also by bailiffs responsible for ensuring the observance of the established courtroom procedure - on the orders of the court.

18. What was not made out before the Judge is that if a person fails to attend a summons on these facts the next stage would not have been to issue a warrant for their arrest. Despite this, the chronology relied upon by the appellant seems to suggest that the immediate action, rather than take such a step, by the Russian authorities was to seek the appellant's whereabouts in a completely different country. The suggestion in the grounds the Judge accepted the issue of the summons by the authorities in Ukraine at the behest of the Russian authorities is not a finding that was specifically made by the Judge who finds that notwithstanding the reference to 25 June 2019 only little weight could be attached to the letter from the appellant's mother. No arguable irrationality or material error is made out in the Judge's conclusion as to the applicable weight.
19. In relation to the core issue of the risk of refoulement it is not made out the Judge erred in law in finding there was insufficient evidence provided by the appellant to support his claim that he faced a real risk

of being returned to Russia by the Ukrainian authorities if he was returned there by the UK.

20. The claim the appellant may appear on a shared database is also an issue of concern to the Judge.
21. The Judge's core findings at [49], in which he draws the threads of the assessment of the evidence together, disclose no arguable material legal error.
22. In relation to Ground 2, the claim the appellant's wife will not be able to return to Ukraine with the appellant and may have to return to Russia to make such a claim which will subject her to a real risk the result of previous activities, the respondent's intention to return the appellant to the Ukraine's has been clear from the receipt of the reasons for refusal letter. Despite the assertions made by the appellant's wife no evidence was provided to support the contention that she would not be able to return. At [50] the Judge finds:

> In his submissions the Appellant's Representative suggested that the Appellant's wife, a dependent on his asylum application, cannot be returned to Ukraine as she does not reside there. He submitted that the reference in the Refusal letter to the Appellant's wife going to Ukraine with him is speculation. It is the case that the Appellant is a Ukrainian national and on the basis of my findings would not be at risk in the event of return to Ukraine. It would therefore be possible for the Appellant to go to Ukraine and, as stated in the Refusal letter, the Appellant's wife could make an application to join the Appellant in Ukraine as the wife of a Ukrainian national. On the basis of my findings the Appellant would not be at risk upon return to Ukraine as a result of his religious beliefs and as a Ukrainian national, I do not consider that there is any reason why this should not be the case.

23. As there is no evidence of any application having been made to the Immigration Authorities in Ukraine from the UK or otherwise for an Immigration Permit to enable the appellant's spouse to travel to Ukraine or join him, there was no evidence that she would be unable to secure such. Immigration permits issued by the Ukrainian immigration services beyond the established quotas include those granted to a spouse if the other spouse with whom he/she is married for longer than two years is a Ukrainian citizen; children and parents of Ukrainian citizens. The burden of proving an immigration permit could not be secured by the appellant's life without returning to Russia fell upon the person so alleging which is the appellant. As no enquiries or application had been made the Judge was arguably entitled to find the appellant's claim was no more than speculation.
24. Mr Hussain also referred to the fact that since the hearing the child has now been born to the appellant and his wife but that was not the situation that existed at the date of the hearing before the Judge even though the appellant's wife was pregnant at that time. If the birth give rise to issues that warrant a right to remain in the United Kingdom it is always open to the appellants to make a further claim which the respondent can consider pursuant to paragraph 353 of the Immigration Rules.

Decision

25. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

26. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson Dated the 13 August 2020