

**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: PA/03561/2018

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 28th June 2018** | **On 4th July 2018** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**Taras [K]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Collins of Zoi Bilderberg Law Practice

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant’s appeal against the decision of Judge Rowlands made following a hearing at Harmondsworth on 11th April 2018.

Background

1. The appellant is a citizen of the Ukraine born on 5th March 1993. He claims to have arrived in the UK in March or April 2013. He was encountered during an enforcement visit on 9th January 2018 and admitted that he had entered the UK illegally and had no visa. On the same day he signed a form IS.101PA and agreed to return to the Ukraine voluntarily. Six days later he claimed asylum. He was refused on 13th March 2018.
2. The appellant said that he would be at risk on return to the Ukraine because he had not done his military service. He had also gone to demonstrations there and in the UK, and had clashed with police. He did not understand what he was signing when he said that he would make a voluntary departure.
3. The judge made comprehensive credibility findings against the appellant. She said that he had failed to prove to the required standard that he would be likely to receive punishment for conscientious objection to military service. His objection to service was not in fact because of any conscientious objection but because he was unfit to carry it out. The appellant accepted that he had not joined any political organisation in the Ukraine and had been very vague in his evidence about the clash with police. In any event, there has been a change of regime in the Ukraine.
4. The judge did not accept that there would be any risk to him on return as a consequence of having taken part in any political activities in the UK because there was no evidence that his attendance at demonstrations here would bring him to the adverse attention of the authorities. Moreover, his witness had been involved in exactly the same activities as the appellant and had been back to the Ukraine on at least seventeen occasions without difficulty.
5. The appellant said that he suffered from scoliosis but the judge said that there was not a shred of medical evidence to confirm it and she had no hesitation in reaching the conclusion that his rights under Article 3 of the ECHR would not be affected by his return to the Ukraine. She dismissed the appeal on all grounds.

The Grounds of Application

1. The appellant sought permission to appeal on four grounds, claiming that the judge had erroneously directed himself to consider the wrong legal test in assessing the appellant’s claim to asylum, and she had not considered the appellant’s Article 8 claim.
2. Permission to appeal was granted by Judge Parker on 16th May 2018. Judge Parker said that it was arguable that the correct standard of proof had not in fact been applied in the credibility assessment.

Submissions

1. Mr Collins rowed back from his grounds at the hearing, accepting that he could not rely on Ground 2, which criticised the judge’s assessment of the evidence of future harm. He also accepted that his criticism of the judge’s self-direction as set out in Ground 1 was simply semantics and that Ground 4 was weak. He did, however, argue that the judge had not in practice applied the correct legal test when making her credibility assessments.
2. Ms Everett strongly defended the judge’s decision and asked me to find that the judge had made comprehensive findings against the appellant supported by cogent reasoning.

**Decision and Reasons**

1. There is no merit in these grounds.
2. The judge’s self-direction, which she set out at paragraph 18, is unimpeachable. She wrote as follows:

“… the onus of showing that he is entitled to asylum lies with the appellant and he has to demonstrate that there is a reasonable likelihood, that is, a serious possibility that should he be returned to his own country, he would be persecuted for one of the reasons set out. Fear of persecution is in itself of course a serious matter and it therefore requires that the appellant prove his case only to the lighter burden which was set out by the House of Lords in the case of Sivakumuran [1988] Imm AR 147 where it was held that “an appellant’s fear of persecution should be well-founded means that there has to be demonstrated a reasonable degree of likelihood that he will be persecuted for a Convention reason if returned to his own country”.

1. Mr Collins did not rely on Ground 2.
2. So far as Ground 3 is concerned there is no basis for concluding that the judge did not in fact apply the correct standard of proof which she set out at the beginning of the determination. Indeed, throughout, she states that the appellant had failed to prove “to the required standard”. There is no evidence whatsoever that she actually applied an incorrect standard. There is nothing perverse in her conclusions. She set out clearly why she considered that the appellant had not been a reliable witness, conclusions which were plainly open to her.
3. Finally, so far as Article 8 is concerned, the basis of Ground 4, as Ms Everett pointed out, it is not at all clear that the appellant actually relied on Article 8. He has no family here. There was no medical evidence before the judge in relation to the scoliosis, which in any event could be treated in the Ukraine. There was no evidence that the appellant was having treatment in the UK. There is no possible basis upon which she could have concluded that the appellant could have succeeded in relation to Article 8.

**Decision**

The original judge did not err in law. Her decision stands. The appellant’s appeal is dismissed.

No anonymity direction is made.



Signed Date 3 July 2018

Deputy Upper Tribunal Judge Taylor