

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 11 August 2004
Date Signed: 11 August 2004
Date Determination Notified: 01 September 2004

Before:

Mr S L Batiste (Vice-President)
Mr J Perkins (Vice-President)
Mrs E Hurst JP

Between

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr S Jaisri, instructed by Messrs Bart Williams & Co
For the Respondent: Ms T Hart, Presenting Officer.

1. The Appellant, a citizen of Ukraine, appeals, with permission, against the determination of an Adjudicator, Mr T R P Hollingworth, dismissing his appeal against the decision of the Respondent on 14 February 2001 to issue removal directions and refuse asylum.
2. The Appellant's claim can be summarised as follows. He lived in Ivano-Frankovsk, in West Ukraine and was a qualified engineer with his own business. He was a member of the congregation of a local Ukrainian Orthodox Christian Church. He did not hold any particular office in the Church but assisted the local priest by for example driving him about from time to time. He said there was an ongoing conflict in the area between the Orthodox Christians and the Greek Catholics, who formed the majority of the local population. His problems allegedly began on 5 March 2000. He heard noises outside his church. He went outside to investigate and found himself embroiled in a fight. He suffered concussion and cuts and bruises and required hospitalisation for

twelve days. The Appellant then received threatening telephone calls telling him not to persist with any complaints against his attackers. Nevertheless the matter was reported to the police, who made inquiries but there were no arrests. Thereafter he suffered harassment and intimidation from the Greek Catholics, which he reported to the police, who failed to take the complaints seriously. The second incident was on 15 October 2000 in Mikulichia, a village some 50 km from his home. He went to arrange for the use of the Church in that village by the Orthodox Christians the following Sunday. Afterwards he was beaten up in the churchyard by Greek Catholic members of that congregation. His car was vandalised and personal belongings including his and his wife's passports were stolen. He was hospitalised again. On 17 October 2000 his shop was looted. He did not consider that he could live safely in Ukraine as he could not relocate elsewhere due to registration requirements. He came to the UK on 3 December 2000, with his wife and daughter, and applied for asylum two days later.

3. The Adjudicator accepted that the Appellant was an Orthodox Christian and married man with one child, who was the owner of a business. He was not involved in politics and his involvement with his Orthodox Church was at low level, limited to regular attendance and essentially driving his local priest around. The Adjudicator accepted that the Appellant was the subject of an attack on 5 March 2000, but did not accept his account of this attack. His evidence about how he became involved was unclear. It would appear to be purely by chance rather than any targeting. The medical evidence provided in support of his claim showed no more than the Appellant attended a local medical centre. It made no mention of hospitalisation or of any treatment beyond the provision of painkillers. There is no mention of any appointment to see a specialist. Thereafter the Appellant continued with his business until October 2000, without any further serious incidents. The Adjudicator considered there was no objective evidence of religious violence or persecution involving the Orthodox Church or the Greek Catholic Church. He concluded that if the Appellant had complained to the police they would have investigated the matter, especially if there were witnesses.
4. The Adjudicator rejected the Appellant's claim that he had received threatening telephone calls, given the vagueness of the evidence about them and the Appellant's evasiveness when questioned. At all events no attempt was made to carry out any threats between March and October 2000. The Adjudicator rejected the credibility of the Appellant's account of the attack on 15 October 2000 and its seriousness. He did not consider that the Appellant would have been targeted by Greek Catholics 50 km away from his home. There was also a material inconsistency between his various accounts. In his statement of April 2002 he complained about lack of police support when he was able to identify the culprits. Yet at the hearing he said that he did not know who his attackers were. The Adjudicator concluded that there was a sufficiency of protection available for the Appellant in his home area. If as he latterly maintained he did not know who his attackers were in the October incident, the lack of arrests did not imply that the police were uninterested. The Adjudicator rejected the claim of the vandalism of the Appellant's shop because there was no evidence of

any report to the police and no evidence about when the incident occurred and how the damage was caused. It was implausible that if the police had been involved in investigating the attack on 15 October, the Respondent would not have mentioned to them this attack on his shop as well. The Adjudicator did not accept either that the Appellant's and his wife's passports were stolen or his later claim that the police had recovered them but refused to return them. His reason was the unsatisfactory and confused evidence given by the Appellant about this.

5. In reaching his conclusions the Adjudicator gave weight to a report by Dr Chenciner dealing with obstacles facing potential returnees to the Ukraine in the light of the residential registration system that replaced the previous propiska system in November 2001. However, as an alternative finding, the Adjudicator concluded that the Appellant's account of the confiscation of the passports was not credible and there was no reason why the Appellant and his family could not return to Ukraine and relocate elsewhere. The Adjudicator concluded that the Appellant had sold his business before coming to the UK and used the proceeds to travel here, which he did for economic reasons.
6. The grounds of appeal made a variety of specific challenges to the various elements of the determination but at the outset of the proceedings before us, both representatives agreed that the Adjudicator had not, in his adverse credibility findings concerning the core elements of the claim, adequately dealt with the substantial volume of corroborative material before him. This showed that there were difficulties between the Orthodox Church and the Greek Catholic Church in West Ukraine, where the Greek Catholics formed a majority of the population, particularly about the use of church buildings. It gave support for the Appellant's claim that he had attended at the Church used by the Greek Catholics in Mikulichia and had told the local Greek Catholic priest that the Orthodox Church would be using that building the following week rather than him. It showed that some violence ensued. There was medical evidence both from the Ukraine and the UK to show that the Appellant had suffered more serious injuries than the Adjudicator was prepared to accept. Both representatives and therefore agreed further that if the core claim were to be material to the outcome of the appeal, then the matter would have to be remitted for hearing afresh by another Adjudicator.
7. However the Adjudicator's adverse credibility finding concerning the retention by the police of the Appellant's and his wife's passports, and his conclusion that there was a viable internal relocation option that would not be unduly harsh, were distinct issues that were not contradicted by the specific corroborative material and were potentially dispositive of the appeal. The appeal before us was therefore essentially concerned with these matters and it proceeded on the basis of taking the core claim at its strongest.
8. Mr Jaisri relied upon the report by Dr Chenciner, which showed that although the old propiska system of registration, it had been replaced by a similar system that required a person moving to a new area to de-register with the police in his old area and to re-register with the police in the new area. Having a passport

was also an important requirement. There was extensive corruption in the Ukraine, which would provide difficulties for the Appellant in moving elsewhere. The test of undue harshness would be met by the level of corruption the Appellant would have to address. The cost of bribery could be substantial.

9. In response, Ms Hart submitted that the CIPU report showed there was freedom of movement in Ukraine that was respected in theory and practice. Registration was required to move to another area, but there was no reason why the Appellant and his family could not obtain the necessary consents. He was of no adverse interest to the police in his home area. His problems were with individuals from another religion. The police would have no reason to object to his moving, and if he was a source of potential difficulties with the local Greek Catholics, they might well be pleased to see him move elsewhere, where this would not be a problem. He would relocate outside West Ukraine, where Orthodox Christians would be the substantial majority. There would be no reason why the authorities in the new area should object to his living there. The Adjudicator was justified in concluding that the Appellant and his wife had retained their own passports. In any event, the Appellant's own evidence from a lawyer in Ivano-Frankivsk, showed that a lost or withdrawn passport could be replaced by attending at the police office and filling in an application form. Dr Chenciner had not identified in his report any specific reason why the Appellant would be unable to complete the registration requirements for living in another area. The Appellant was an educated engineer who would find it easy to find employment. He would be a welcome addition to a new area.
10. We have carefully considered these submissions. First with regard to the passports, we can see no error of law in the Adjudicator's conclusions in paragraph 49 of the determination that it was implausible in the context of the Appellant's evidence that the police would have withdrawn his passports and driving documents. There was no good reason for their wanting to do so, and if they had recovered these documents after they were stolen, they would not have so informed the Appellant if they did not want him to have them back, if he wanted to get them. As we have indicated, there is nothing in the documentary evidence to undermine the sustainability of this conclusion by the Adjudicator. Nevertheless, even if the Appellant's account were true and for some reason the police had withheld his and his wife's passports and is no good reason why he could not attend the police station and apply to have them back or to have new ones, and no good reason why the police would refuse to oblige, subject perhaps to the payment of a small bribe, of which we shall say more later.
11. Next with regard to registration requirements on moving to another area, it is clear from reading the CIPU report in conjunction with Dr Chenciner's report and its appendices, that although the old Soviet propiska system has officially been abolished in Ukraine, something very similar to it is still in place. Moreover the registration is not computer based at a national level but depends upon local records. The need for registration relates essentially to accessing to public services, but apparently many Ukrainians live without due registration and pay a small bribe to their local police to avoid problems.

12. The Appellant, in order to move to another area and comply with the de facto legal requirements, will have to de-register with the police in his old home area and re-register in the new area. However Dr Chenciner has not provided any reason in his report specific to the Appellant why he could not do this. Mr Jaisri has suggested that the endemic corruption in Ukraine referred by Dr Chenciner would prevent him from doing so in that he would have to pay bribes. He pointed us to evidence in the CIPU report that the prosecutor general had been accused of taking a bribe of \$100,000 and sought to imply that bribery was at unrealistic levels for someone like the Appellant to be able to afford and there was no clear evidence of how much would be involved as there is no real prospect of obtaining clear evidence about the levels of bribery at various levels in a society where bribery is endemic.
13. However that submission is neither correct in principle, nor is it supported by Dr Chenciner's report. In principle in societies, where officials expect some payment to do the jobs they are supposed to by virtue of their office to supplement their incomes, it would be counterproductive for them to demand bribes in everyday matters that ordinary people could not afford. The example in the CIPU report concerning the large bribe allegedly paid to the prosecutor general appeared to relate to a Mafia chieftain seeking to evade prosecution. That is a very different matter from an ordinary citizen seeking permission to move from one area to another when there is no specific reason to object to it. We do not accept Mr Jaisri's unsupported assertion that the levels of bribe required would be a practical hindrance to satisfying the necessary registration requirements to relocate outside West Ukraine. Dr Chenciner refers to a study on corruption that indicated a bribe of \$200 might normally be required to obtain such registration, though this is bound to be speculative to some extent. We do not consider that the need for registration or the cost involved if bribes are required are sufficient to prevent internal relocation or to make it unduly harsh, especially when contrasted with the cost of using an agent to come to the UK.
14. Indeed on the specific facts of this appeal, we consider that the police in the Appellant's home area might well be happy to see him go and would be supportive of a move. He was himself of no adverse interest to them. He had not committed any crime. However insofar as he attracted hostility from local Greek Catholics, his departure from the area would remove a source of potential friction. Outside the area of West Ukraine, the majority of the population would be co-religionists of the Appellant. There would be no objection to having a well-educated man like the Appellant come to join them. He would make a valuable member of another Orthodox congregation. Indeed, if he were to run into any local bureaucratic difficulties, it would be reasonable to expect the Orthodox Church to offer him some assistance, for example if he needed an address in a new area in which to register. After all the need to move arose out of his activities for the Church. The payment of small bribes are it seems a normal part of everyday life in Ukraine. The Appellant is a trained engineer and had his own business. He would be much more able than most Ukrainians to

afford the relatively small sums required to effect internal relocation within Ukraine, especially when compared to the cost of smuggling himself, his wife and his daughter to the UK.

15. Accordingly we can see no error of law in the Adjudicator's conclusion that the Appellant and his family have a viable internal relocation option within Ukraine and that it would not be unduly harsh to expect him and his family to use it rather than seek international protection.
16. Accordingly, for the reasons given above this appeal is dismissed.

Spencer Batiste
(Vice President)

Approved for electronic transmission