



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11647/2015**

THE IMMIGRATION ACTS

Heard at Field House

On 25 January 2018

**Decision & Reasons
Promulgated
On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MEB
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of counsel

For the Respondent: Mr L Tarlow, a senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or

any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a citizen of Albania whose date of birth is recorded as [] 1998. He is from the Gorani minority group. He travelled to the UK concealed in a lorry arriving on 21 April 2014. He claimed asylum on 23 April 2014 on the basis that he fears men in Albania to whom his father owed money. He claims he was forced to work for them in Albania and was trafficked by them. He also fears violence at the hands of his father.
3. The respondent refused the appellant's claim. The respondent did not accept that the appellant was at risk of persecution in Albania. The respondent also considered his claim on the basis of private life concluding that the appellant does not meet the suitability requirements of section S-LTR because of a conviction for a sexual offence.
4. The decision of the respondent of 10 August 2015 was appealed against to the First-tier Tribunal.

The appeal before the First-tier Tribunal

5. In a decision promulgated on 26 October 2017 First-tier Tribunal Judge Freer dismissed the appellant's appeal. The first-tier Tribunal rejected the appellant's account as not credible, that he could relocate and so was not at risk from his father. The human rights appeal was dismissed.
6. The appellant applied for permission to appeal against the First-tier Tribunal's decision to the Upper tribunal.
7. On 5 December 2017 First-tier Tribunal Judge I D Boyes granted the appellant permission to appeal.

The hearing before the Upper Tribunal

8. At the commencement of the hearing Mr Tarlow indicated that the respondent accepted that the First-tier Tribunal had erred in law and that it amounted to a material error. Contrary to the case of **EG (post-hearing internet research) Nigeria [2008] UKAIT 00015** the judge had conducted internet research and made material findings on the basis of that research.

Discussion

9. In light of the respondent's concession I do not need to consider in any great detail the decision of the First-tier Tribunal.
10. I agree that the First-tier Tribunal judge erred in law. Regarding the appellant's account of being trafficked and forced to work in a car wash, the judge set out:

“48. An evidential chain requires proof at every step in it. There is one missing here. It is not in evidence that Albania has car washes in its mountainous north-east. If there are none there, it removes the whole central plank of the account and thus the claim and ruins his credibility without more...

...

50. Until 1991, there were only about 6,000 cars in the whole of Albania and its roads were legendary for their awfulness. Currently there are many more cars in Albania, many of them in the cities. The only significant road in the north-east is the A1, starting at Durres on the coast. Near Kukës it connects with a national road as a dual carriageway on the way to Kosovo. The Gorani people as noted live in a small number of villages on the border and it is not shown that there would be any demand there for a car wash i.e. it is not shown why traffic on the A1 would go and stop there...The emphatic conclusion is that if he was unable to describe the location as being on a dual carriageway, then he was not working on the sole major highway in the area, which was the only sensible place to locate a car wash...”

- 11.** The grounds of appeal assert that the existence of car washes in North Eastern Albania was not an issue raised by the SSHD or at the hearing. The appellant has not been provided with an opportunity to produce rebuttal evidence but, in any event, the judge was factually incorrect to suggest that the appellant was unable to say where the car wash was. The appellant in evidence stated that the car wash was in Keneta which is a suburb of Durres.
- 12.** The Upper Tribunal in **EG** held, at paragraph 5, that to conduct post hearing research on the internet and to base conclusions on that research without giving that parties the opportunity to comment is wrong.
- 13.** In this case the judge has reached conclusions on the appellant’s credibility substantively based on the research conducted post hearing. The appellant has not had an opportunity to comment on that evidence. Further, the judge has made a factual error and made incorrect assumptions. The appellant as recorded by the judge in paragraph 13(iv) stated that the car wash was in Keneta, a suburb of Durres which according to the judge’s research is the starting point of the A1.
- 14.** I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (‘TCEA’).
- 15.** I considered whether or not I could re-make the decision myself. I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.

- 16.** I remit the case to the First-tier Tribunal for the case to be heard at the First-tier Tribunal at Taylor House before any judge other than Judge Freer pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

Notice of Decision

The appellant's appeal against the decision of the First-tier Tribunal is allowed. The case is remitted for a de-novo hearing at Taylor House before any judge other than judge Freer.

Signed P M Ramshaw

Date 29/1/2018

Deputy Upper Tribunal Judge Ramshaw