



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06047/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 1 October 2018**

**Decision and reasons
Promulgated
On 29th October 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**GERALD [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms S Harding of Counsel

For the respondent: Mr Candola, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellant a citizen of Albania born on [~] 1999 appealed against the decision of the respondent dated 26 April 2018 not to grant him asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge MPW Harris dismissed the appellant's appeal for asylum, humanitarian protection and on human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 10 August 2018 stating that it is arguable that the Judge made a material error of law as he may not have adequately assessed the issue of internal relocation given his findings and the country information.
3. The First-tier Tribunal Judge made the following findings in his decision which I summarise. The Judge did not hear oral evidence from the appellant on the instructions of his legal representatives, Mr Sharma although the appellant was present at the hearing. It was accepted that the National Referral Mechanism Report dated 24 August 2015 decided that the appellant was a victim of trafficking. The appellant's claim for protection was based on his fear of the criminal gang who he worked for in Albania in June and September 2014. He delivered bags containing drugs for the criminal gang with the help of the police who were corrupted. In September 2014 the appellant was carrying two bags of drugs on the bus for the criminal gang. He lost one of the bags in transit. He went into hiding and his father decided to take the appellant out of the country. They left Albania 7 September 2014 and travel to Belgium from where he entered the United Kingdom. He claims that he arrived in the United Kingdom when he was 15 years old and claimed asylum the next day.
4. The respondent does not dispute the appellant's account of previous abuse from his father and former exploitation by the criminal gang. However, the issue is whether the appellant can show that there is a lack of state protection in his home area as he fears non-state actors. Background evidence in the case of **TD & AD (trafficked women) CG [2016] UKUT 00092 (IAC)** states that the context of female victims of trafficking, the country guidance indicates that generally there is sufficiency of protection available although there may be cases where individual circumstances where a person may not be able to access protection.
5. The Judge stated that the appellant did not give evidence at the hearing that does not prevent him from accepting the bases of the undisputed evidence that there is a real likelihood that criminals had a relationship with the appellant with the help of corrupt police in the appellant's home area. The appellant will not be able to access sufficient protection in his home area and thus remains at real risk from the criminal gang.
6. As the appellant does not claim to have dropped drug packages outside his home region he can relocate to Tirana. The Judge stated that details given by the appellant in his answers at his interview and in written evidence is limited. The Judge however was not prepared to accept that three criminals would have such power and influence for them to learn about the appellant's relocation within Albania and target him. The Judge noted again that the appellant has not given evidence as to the degree of influence the three criminals in his home area have over the authorities in Tirana. The appellant is a male victim of trafficking and therefore faces less problems than a woman victim of trafficking where patriarchal values remains widespread.

7. The grounds of appeal state the following which I summarise. There are a series of material errors in the decision which, individually and collectively demonstrate that the First-tier Tribunal's decision is unsustainable. The Judge made a clear finding that the appellant is "at real risk of serious harm in his home area currently. The Judge also makes a finding that the appellant will not have sufficiency of protection in his home area. The Judge then dismisses the appellant's appeal on the basis that he can internally relocate within Albania and gives unsustainable reasons. The Judge accepts the factual matrix of the trafficking claim that the gang have contacts within the police at the highest level. The Judge also ignores the background evidence from the respondent's the country policy and information note- Albania background information, including actors of protection, and internal relocation of 25 July 2017. The Judge did not consider that anyone relocating within Albania must transfer their civil registration in Albania to the new area. The corrupt police officers therefore have the ability to inform the criminal gang about his whereabouts.
8. At the hearing I heard submissions from both parties. Mr Harding adopted his grounds of appeal and said that the Judge of the First-tier Tribunal should have addressed the lack of oral evidence. Mr Condala said that the Judge has considered all the points but accepted that the appellant's oral evidence was important.

Decision on whether there is a material error of law in the decision

9. I do not accept Mr Harding's submission that the Judge of the First-tier Tribunal should have addressed the appellant's lack of oral evidence. That was the decision made by his legal representative Mr Sharma which the appellant adopted. The burden remains upon the appellant to prove his case and therefore if he did not want to give evidence that was a matter for him. However, having said that, it was important for the appellant to have given oral evidence to address many of the issues raised in this appeal.
10. The Judge made findings that the appellant faced real risk of serious harm in his home area on his return from the criminal gang for whom he worked delivering drugs. The Judge found that he would be at risk of being re-trafficked in his home area and also does not have sufficiency of protection in his home area due to the corrupt police officers who collude with the drug traffickers. However, he found that the appellant can relocate to Tirana but did not give adequate reasons taking into account the background evidence.
11. The factual matrix of the appellant's claim was accepted. He was found to have been a victim of trafficking and having worked for a criminal gang in Albania transporting drugs in his home area. Therefore, relocation for the appellant was an issue which should have been explored within the background evidence. One of the reasons for this was that because the

appellant did not give oral evidence at the hearing led the Judge to speculate. I was of the view that fairness demands that the appellant given an opportunity to give oral evidence which can be considered.

12. In the circumstances, I direct that the appeal be placed before any First-tier Tribunal Judge apart from First-tier Tribunal Judge MPW Harris for hearing of the appeal de novo for findings of fact to be made on the strict proviso that the appellant gives oral evidence at this renewed hearing.
13. I sought reassurance from Mr Harding that the appellant will give oral evidence at the renewed hearing because that the only reason I was remitting the appeal. Mr Harding assured me that the appellant would give oral evidence.
14. I therefore direct that the appellant gives oral evidence at the renewed hearing at the First-tier Tribunal and if he does not, the decision of the First-tier Tribunal be upheld because the only reason why I have remitted this appeal is for the appellant's oral evidence to be taken into account in any decision made for the appellant's application for protection.

Decision

The appeal be remitted to the First-tier Tribunal

Dated this 21st day of October 2018

Signed by

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Ms S Chana
A Deputy Judge of the Upper Tribunal