



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01970/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House
By Microsoft Teams
On 9 July 2021

Decision & Reasons Promulgated

On 3 August 2021

Before

UPPER TRIBUNAL JUDGE OWENS

Between

ML
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Daykin, Counsel instructed by Rashid and Rashid Solicitors
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 28 May 1995. She appeals against the decision of First-tier Tribunal Judge Thapar dismissing her appeal against a decision dated 14 February 2020 refusing her protection and human rights claim. Permission to appeal to this Tribunal was granted on 25 March 2021 by Upper Tribunal Judge Kamara.

Background

2. The appellant's father is a British citizen of Albanian origin. He came to the UK in 2000 and claimed to be a national of Kosovo. In 2012 the appellant's mother applied for the family to join the sponsor in the UK. It took over 6 years to make a decision on the application. Eventually the appellant's mother decided to enter the UK illegally with her two children. The appellant was aged 16 when she entered the UK on 15 May 2012. Her mother applied for the family to remain in the UK with her father on human rights grounds but the application was refused.
3. In July 2016, the appellant was told by the respondent that she was no longer eligible to be treated as a dependent of her mother. She was detained for 17 days during which time she claimed asylum on the basis that she had been threatened by her ex-fiancé, that she was at risk as a lone female and because of her significant mental health problems. The claim was made on 26 September 2016. The appellant subsequently tried to commit suicide and was hospitalised and has since received medical treatment for depression. The respondent refused the claim on 14 February 2020.

First-tier Tribunal Decision

4. First-tier Tribunal Judge Thapar dismissed the appeal, finding that the appellant was not credible and that there would be no risk to her on return to Albania. The judge found the appellant's asylum claim to be fabricated. The judge did not accept that the appellant had been engaged or received threats from her ex-fiancé. The judge took into account discrepancies in the account, the failure of the appellant to mention her ex-fiancé earlier, the lack of threats and the failure of her parents to give evidence at her appeal. The judge found that she could return to Albania with her family. The judge found that the appellant did not meet the Article 3 ECHR threshold and that there would not be a disproportionate breach of the appellants right to private and family life in accordance with Article 8 ECHR.

The Grounds of Challenge

5. The appellant submits that the decision of the First-tier Tribunal is flawed in the following material respects.

Ground 1 - Failure to take into account the medical evidence when assessing credibility.

The judge concluded the credibility assessment prior to considering the medical evidence. In accordance with JL (medical reports -credibility) China [2013] UKUT 145 (IAC) the medical evidence was relevant to the assessment of credibility and should have been considered in the round with the remaining evidence. The judge erred by separating out the assessment of credibility and the assessment of the appellant's health.

Ground 2 - Taking into account irrelevant matters.

The judge erred by referring to the lack of evidence in relation to a family feud when the appellant's claim was not based on any such feud. This infected the assessment of credibility.

Ground 3 - Flawed approach to 276ADE (vi) of the immigration rules

The judge failed to make findings on the issue of very significant obstacles to the appellant returning to Albania.

Rule 24 response

The respondent submits that the judge directed himself appropriately. The decision is sustainable, adequately reasoned and rational.

Decision on error of law

Ground 1 - Failure to consider medical report when assessing credibility

6. It was accepted by Mr Melvin that the judge carried out the assessment of credibility prior to considering the medical evidence. The credibility findings are made from [19] to [35] of the decision. At [35] the judge states;

“I find that the Appellant has failed to establish to the lowest standard that she was ever engaged in Albania and that she is at risk of harm from her former fiancé and his family. I have not for the reasons stated above accepted that the Appellant was in a relationship with Andera Mozaris and therefore find that there would be no such risk to the Appellant from the former fiancé in Albania as identified by Dr Mirela Bogadani”.

7. From [19] to [35] there is no consideration given to the appellant's mental health. The judge does not consider the medical evidence until later in the decision at [50] where the judge gives consideration to Article 3 ECHR on medical grounds.
8. Ms Daykin's submission is that this is a clear error. Credibility was an issue in this appeal and the judge in accordance with various authorities including Mibanga v SSHD [2005] EWCA Civ 367 is obliged to consider the medical evidence in the round along with the other evidence prior to reaching a view on the appellant's credibility. Her submission is that the medical evidence was relevant to the question of credibility. Although the medical report makes it clear that part of the reasons for the appellant's depression was her detention in 2016 the report also makes reference to her fear of return at various points and she took me through the relevant references.
9. I am satisfied that the judge's approach to the medical evidence is manifestly erroneous. He has committed the classic error as set out in Mibanga by Mr Justice Wilson who at [24] states;

“It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a

banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact-finder's function in assessing credibility. I agree. What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November 2004, namely HE (DRC -Credibility and Psychiatric Reports) [2004] UKIAT 00321 in which, in paragraph 22, it said:

"Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."

25. In my view such was the first error of law into which the adjudicator fell. She addressed the medical evidence only after articulating conclusions that the central allegations made by the appellant were, in her extremely forceful if rather unusual phraseology, 'wholly not credible'.

10. Mr Melvin accepted that the approach of the judge was not in line with the authorities but submitted that in this particular case the error is not material. The judge gave numerous reasons for rejecting the appellant's account including her failure to mention the fiancé at any time during the course of her time in the UK, the failure to supply corroborating evidence and the failure of her parents to come to the hearing. He submitted that it was clear from the medical report that the appellant's mental health problems were caused directly by her detention which is what she stated to Dr Singh. She had no prior medical reports.
11. In my view the approach of the judge is clearly flawed. The medical report should have been considered in the round with the remaining evidence when assessing credibility.
12. Although the appellant did inform Dr Singh that her mental health had deteriorated significantly when she was detained, she explains in her statement that this was because of the prospect of being imminently removed to Albania where she feels unsafe. Her fear of return was mentioned at various places in the report and Dr Singh concluded that the appellant suffers from a depressive illness of moderate severity, her illness was caused by the psychological trauma of being detained and her anxiety stress and low mood due to the fear of her ex-fiancé, she was visibly distressed at the idea of being returned to Albania and being exposed to her ex-fiancé, factors which would exacerbate her trauma. Dr Singh also concluded that she was not feigning her mental illness. Sr Singh's conclusion was that it was the twin

experiences of detention and threats from her fiancé which led to the deterioration in her mental health. This was material which was corroborative of her claim.

13. In my view this error fundamentally infects the credibility findings made by the judge. Although it may well be that the judge might have formed the same view on the appellant's credibility having taken the report into account this is not a foregone conclusion, particularly when combined with the error at Ground 2 below. I am satisfied that this is an error which was material to the outcome of the appeal.

Ground 2 - Taking into account irrelevant matters

14. At [36] to [41] of the decision the judge makes negative findings in respect of a blood feud. Ms Daykin submits that the references to the blood feud were irrelevant. The appellant did not claim asylum on the basis of a blood feud; she simply mentioned in passing that her father originally left Albania in 2000 because of a dispute over land with family members. Her case was not that she was at risk on return because of a blood feud and she did not present her appeal in this way. The respondent did not consider the appellant's fear on the basis of a blood feud and did not raise this issue in the decision giving reasons for refusal which meant that the appellant was not on notice of this issue and did not deal with the issue at all in her appeal statement and supporting evidence.
15. However, the judge refers to the purported blood feud in numerous different paragraphs of his decision including [23], [24], [28], [29] and then gives detailed consideration to the issue at [36] to [41]. At [41] he concludes that the existence of a blood feud has been fabricated to support the appellant's claim that she and more particularly her brother and father would be at risk if they return to Albania.
16. Mr Melvin referred to this as being a "belt and braces" approach. This was his only submission in respect of Ground 2.
17. I am satisfied that the judge's approach to this issue is erroneous. The blood feud was not a material issue in the appeal. By making negative findings in relation to an issue which was not raised by the appellant as relevant to her claim, the judge infected his view of the appellant's credibility in relation to her claimed fear of her ex-fiancé and her credibility in general. This feeds into the error at Ground 1.
18. I am satisfied that the judge's findings on credibility are fundamentally undermined by these errors and should be set aside in their entirety.

Ground 3 - 276ADE(vi)

19. This ground as originally pleaded was that the judge failed to make material findings in respect of paragraph 276ADE(vi) of the immigration rules in respect of "very significant obstacles". Ms Daykin properly conceded at the outset of the appeal that the judge in fact did use the wording of "very significant obstacles" at [64] and that

the judge has considered this issue. However, she amplified her grounds by submitting that when the judge considered whether there were very significant obstacles to the appellant's integration to Albania, the judge failed to take into account the appellant's poor mental health and the extent to which this would impact on her ability to access treatment and to participate in life in Albania. This issue was given no consideration at all.

20. Mr Melvin's submission was that elsewhere in the decision the judge had pointed to evidence that treatment was available for mental health problems in Albania and the judge found that the appellant's extended family could return with her. The appellant's claim could simply not succeed under Article 8 ECHR.
21. I consider that the judge has compartmentalised the issue of mental health. He gives it consideration under the heading of Article 3 ECHR only.
22. The judge notes that the appellant was admitted to hospital following a suicide attempt on 24 February 2017, has worked with the adult mental health team at Warneford Hospital, was participating in a therapeutic group with Oxfordshire Mind and started to receive counselling at the Refugee Resource in May 2017. Counselling went on for 15 months with follow-up sessions. The appellant had experienced severe anxiety and depression. She is taking medication. The judge notes that the appellant's mood is linked to her immigration situation and that the respondent did not dispute her medical condition. The judge then found that the appellant's condition was not at a critical stage and that she can access treatment is available in Albania. The judge concluded that the appellant's rights under Article 3 ECHR would not be breached. The appellant does not take issue with this finding.
23. However, there is no consideration at all about the impact on the appellant's mental health of returning to Albania or how a deterioration of her mental health might impact on her ability to access treatment or to participate in society. This appellant had made a suicide attempt and produced ample evidence of significant mental health problems. Her bundle of evidence included letters from her brother and friends detailing how her poor mental health impacts on her in the UK. The medical evidence was that her mental health would deteriorate if she were returned to Albania. This evidence appears to have been ignored by the judge. The skeleton argument made submissions on this point and referred to the authority of Akhalu (health claim: ECHR Article 8) [2013] UKUT 400 as well as the authority of Kamara [2016] EWCA Civ 813.
24. The appellant has been in the UK since the age of 16, her father has now been in the UK for 20 years and she was previously motivated to obtain a good educational outcome in the UK. There was evidence of her difficulties since 2016. There was also expert material before the Tribunal in relation to likelihood of her mental health declining on removal and the difficulties that the appellant might face in Albania.

25. It was incumbent on the judge when considering Article 8 ECHR at 276ADE(vi) of the immigration rules as well as in the proportionality exercise to take into account the appellant's poor mental health which was relevant to that exercise as well as the impact on her of being able to access treatment and participate in life in Albania.
26. I am satisfied that when considering Article 8 ECHR the judge failed to take into consideration a relevant matter and that this error is material to the outcome of the appeal.

Preserved findings

27. I preserve only the finding that it would not be a breach of Article 3 ECHR to return the appellant to Albania on medical grounds.

Decision

28. **The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**
29. **The decision of the First-tier Tribunal is set aside.**
30. **The appeal is remitted, de novo, apart from the preserved findings in respect of Article 3 ECHR, to the First-tier Tribunal to be heard by any Judge except First-tier Tribunal Judge Carroll.**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *R J Owens*

Date 19 July 2021

Upper Tribunal Judge Owens