



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000396
First-tier Tribunal No:
PA/52235/2023
LP/02108/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR KLEVIS FISHTU
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 24 March 2024

DECISION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Kudhail on 5 February 2024 against the decision to dismiss the Appellant's protection and human rights appeal made by First-tier Tribunal Judge Wyman in a decision and reasons dated 20 December 2023.
2. The Appellant is a national of Albania, born on 28 July 2004. He entered the United Kingdom by air from Spain on 18 February 2022, when he claimed asylum. He

contended that he would be at risk on return of domestic violence from his father over his relationship with a woman. He further contended that her two former lovers had attacked him.

3. Judge Wyman found that the Appellant had suffered domestic abuse (albeit his account had been embellished) and had been attacked by his girlfriend's former lovers. Nevertheless the Appellant was not a member of a Particular Social Group. The Appellant had not established any fear based on a Refugee Convention reason. There was no need for the Appellant to live with his father in Albania. He had lived independently since leaving Albania over 18 months ago. The Appellant was capable of working to support himself. Even if his father tracked the Appellant down, further domestic violence would not amount to persecution. Even if the judge were mistaken about that, the judge found that there was a reasonable internal flight alternative available for the Appellant, away from his home village. Furthermore, a sufficiency of protection was available for the Appellant in any event.
4. The Appellant had spent the majority of his life in Albania and spoke the language and had the right to work. The Appellant's mother and brother were in Albania. The Appellant could re-integrate into Albania without difficulty. There were no exceptional circumstances. Any interference in the Appellant's Article 8 ECHR rights was proportionate to the public interest in immigration control.
5. Permission to appeal was granted by Judge Kudhail because it was considered arguable that the First-tier Tribunal Judge had erred when finding that the Appellant had been living independently, because he had been in the care of the local authority in the United Kingdom. That was a mistake arguably leading to unfairness.
6. A rule 24 notice was filed on behalf of the Respondent, opposing the appeal.
7. There was no appearance on behalf of the Appellant. A bundle had been belatedly filed and was available. The Tribunal was notified by email that the Appellant was content for the appeal to be determined on the papers in the absence of any representative for the Appellant. The tribunal proceeded accordingly.

8. Ms Gilmour for the Respondent submitted that there was no error of law and that the judge had been entitled to dismiss the appeal. Ms Gilmour relied on the Respondent's rule 24 notice. The grounds did not challenge the other findings made at [32] as to his personal characteristics, skills and familiarity with Albanian culture. When viewed in the context of the rest of [27], the judge's observation that the Appellant had lived 'independently' since leaving Albania was clearly in the context of being away from his family home and that on return he would be facing a similar situation, albeit in an environment with which he is familiar. The grounds did not point to any elements of the evidence that suggested the fact that he had been under the supervision of social services for a period of time was an indicator of his inability to lead an independent life in Albania. No such argument was made before the judge on this point. The grounds made not challenge to the findings made under paragraph 276ADE 'very significant obstacles' [40-45]. When viewed in this context, the judge's observation cannot be categorised as a mistake of fact or an error that results in unfairness. The onwards appeal was no more than disagreement with a decision open to the judge on the findings of fact reached. The appeal to the Upper Tribunal should be dismissed.
9. At the conclusion of submissions the Tribunal stated that it found that there was no error of law and that its written decision was reserved, which now follows. The Tribunal accepts Ms Gilmour's submissions. The Tribunal considers that the grant of permission to appeal should not have been made as Judge Wyman expressly found that the Appellant's claims (to the extent that they were accepted) fell outside the Refugee Convention. That finding was not challenged in the grounds of appeal and was plainly correct. As part of the application of anxious scrutiny, Judge Wyman also considered the Appellant's case in the alternative and found for good and sustainable reasons that there was a reasonable internal flight alternative available as well as a sufficiency of protection.
10. In any event, the actual basis on which permission to appeal was granted was mistaken. As the Respondent's rule 24 notice explains, the obvious meaning of the judge's reference to the Appellant living "independently" was simply that he was no longer living in his former family home, and was managing on his own.

11. This was an obviously weak case in all respects. Nevertheless, the judge examined the evidence with care, and gave clear and sustainable reasons for all findings reached, including that there were no exceptional circumstances. The decision was addressed all of the issues and the supporting evidence. There is thus no basis for interfering with the judge's decision and reasons. The onwards appeal is dismissed.
12. Although it is peripheral, there is no basis for an appeal to be made subject to an anonymity order merely because it is a protection appeal. Open justice is the prevailing principle. The Appellant is not a minor and there is need for an anonymity order in his appeal. The order previously made is accordingly discharged.

DECISION

The appeal to the Upper Tribunal is dismissed

The original decision stands unchanged, save that the anonymity order is discharged

Signed R J Manuell Dated 25 March 2024

Deputy Upper Tribunal Judge Manuell