



IAC-FH-NL-V1

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

Appeal Number: AA/07261/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**Judgment given orally at hearing  
on  
10 September 2015**

**On 23 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK  
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**IS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Young, Solicitor instructed by Montague Solicitors  
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Albania, born on 28 June 1998. Significantly, he was aged 17 at the date of the hearing before the First-tier Tribunal and is still a minor. He arrived in the UK on 10 May 2013 and made a claim for asylum on 22 May 2013. That application was refused but he was granted discretionary leave to remain and he still has that leave.

2. The decision to refuse asylum was a decision which was appealable as what is known as an 'upgrade' appeal. His appeal before the First-tier Tribunal was heard by First-tier Tribunal Judge Newberry on 6 October 2015 whereby the appeal was dismissed. The significant background to the First-tier Judge's decision is that his determination was not signed until 1 March 2015 and was promulgated sometime later in March 2015. In the circumstances of this case that was a considerable period of time after the appeal had been heard.
3. The bare background to the appellant's appeal and the basis of his claim as advanced before the First-tier Tribunal was a fear that he would face mistreatment on return having been subjected to abuse from his father who forced him to work from a young age. He started working for what he described as a youth gang who made him take bags from the entrance to a port, to ships. Those bags contained drugs. The appellant remained living with his family throughout that time although said that he sometimes slept outside. Sometimes he would be paid, sometimes not. He asserted that he would be beaten if he was late or tried to refuse to help. Ultimately, he left Albania and came to the UK.
4. The grounds of appeal to the Upper Tribunal make a number of complaints about the decision of the First-tier Tribunal. One of them we think we can dispose of very simply. That complaint is about the reference by the judge at [30] of the decision to the appellant having departed from Afghanistan, whereas of course the appellant is from Albania and left Albania to come to the UK. It is said that that is a material error. In our judgement it is obviously an error, but nothing more than a slip of the pen and we find no substance in the suggestion that that is an error of law either on its own or in combination of any other factors requiring the decision to be set aside. Having said that, it does, we think, betray some lack of care on the part of the First-tier Judge.
5. It is also argued in the grounds that although the judge referred to the Joint Presidential Guidance in relation to minors and vulnerable people, the judge did not have that guidance in mind when he came to his conclusions. We stated at the outset that the appellant's age was a significant matter and it is. It is significant not only in terms of the requirement for age to be taken into account when making an assessment of credibility, but the difficulty inherent in that process is heightened in circumstances where the credibility findings on the face of it appear to have been made some five months after the hearing before the First-tier Tribunal.
6. It is also submitted, to summarise, that the credibility findings are inadequate in terms of their detail. We can take the matter shortly. Ms Pettersen did not resist the grounds, although she did not concede the appeal on behalf of the respondent. It was also pointed out to us that the judge had referred to the standard of proof to be applied as being a balance of probabilities, a matter which we for our own part had also noticed, although it was not in the grounds as originally pleaded. We

permitted the grounds to be amended to include that aspect of the determination, the suggestion being that the judge had applied the wrong standard of proof.

7. We are satisfied that the First-tier Judge did err in law for the reasons contained in the grounds and which can be summarised.
8. The appellant's age was a significant factor. We do not see from the determination any adequate recognition in the reasons, of the appellant's age in the credibility findings. We conclude that that error was compounded by the fact that the determination was not promulgated until some five months or so after the hearing. It is not evident from the determination whether or not the appellant gave evidence before the First-tier Tribunal but it appears to us that he did. There is no readily discernible reference to the appellant's oral evidence in the determination from which credibility findings could be said to spring.
9. We were not referred by the parties to any authority on the question of how long after a hearing it is reasonable for a judge to promulgate a decision where credibility is in issue but we have regard to the decision in Jeyakumaran Sambasivam v Secretary of State for the Home Department [2000] Imm AR 85. In that case, to summarise, it was said that the Special Adjudicator's determination had not been promulgated until nearly four months after the hearing and the submission was that he had failed to mark the file to show how long after the hearing the draft had been sent for typing. The Court of Appeal held that normally the Tribunal would remit for a hearing *de novo* a case where the delay between hearing and promulgation was more than three months if credibility was in issue, although the circumstances of each case needed to be considered.
10. We find that the First-tier Judge erred in law in the respects to which we have referred in terms of the credibility findings, combined with the interval of time between the hearing and the promulgation of the decision.
11. Furthermore, having considered the determination as a whole, we are not satisfied that the judge has demonstrated the basis on which he found the appellant's account incredible, with reference to sufficiently detailed findings. We consider that the reasons given by the judge for rejecting the credibility of the appellant's account are not legally sustainable in terms of the depth of their analysis, particularly when having regard to the age of the appellant.
12. We are also satisfied that the judge erred in law in his application of the standard of proof. At [11] of the determination it was said as follows:

"The burden of proof is on the Appellant who must prove his case to the standard of the balance of probability. There must be a real possibility of persecution amounting to serious injury if returned."
13. Of itself, if that was the only basis of the self-direction we probably would not find that the judge had erred in law in his application of the standard

of proof. However, looking at [32], in the summary of the judge's conclusions on the appellant's credibility, it was said as follows:

"I find therefore that the Appellant was not, on the balance of probability, a drug runner, and a person whose journey was planned."

It seems to us clear that the judge there has applied the civil standard and not the appropriate lower standard to be applied in asylum appeals.

14. In all these circumstances we conclude that the errors of law in the decision of the First-tier Tribunal are such as to require the decision to be set aside.
15. We heard submissions from the parties about whether it was appropriate for the matter to be remitted to the First-tier Tribunal or for the decision to be re-made in the Upper Tribunal. We are mindful of the fact that the appeal had already been before the First-tier Tribunal prior to its having been heard before Judge Newberry. First-tier Judge W. Grant heard the appeal on 2 January 2014. Deputy Upper Tribunal Judge Lewis at a hearing on 1 April 2014 found an error of law in Judge Grant's decision, set the decision aside and remitted it to the First-tier Tribunal.
16. Notwithstanding that the matter has already been before the First-tier Tribunal on two occasions, having regard to the Practice Statement at paragraph 7.2 we consider that because of the nature and extent of the credibility findings that need to be made, it is appropriate for the matter to be remitted to the First-tier Tribunal to be heard by a judge other than First-tier Tribunal Judge Newberry.
17. No findings of fact are to be preserved.

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 him or any member of his 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.

Upper Tribunal Judge Kopieczek

18/11/15