



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

Appeal Number: AA/12416/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 7 August 2017**

**Decision & Reasons Promulgated
On 21 August 2017**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**G Y
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hoshi, Counsel, instructed by Sutovic & Hartigan
For the Respondent: Mr L Tarlow, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his protection appeal, which is based both on his father's domestic violence towards the appellant before he came to the United Kingdom, and on the risk of harm to him from criminal creditors of his father, seeking to put pressure on the appellant's father for payment of the father's gambling debts.
2. The First-tier Tribunal Judge treated the appellant as a vulnerable person and applied the *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*. The appellant was born in March 1999 and at the date of promulgation of the First-tier Tribunal decision he had already attained his majority. He did so between the hearing and promulgation, and there is in the First-tier Tribunal decision consideration of the appellant's section 55 best interests, which are not relevant to the assessment of an adult appellant's circumstances.
3. The First-tier Judge accepted that the abuse by the appellant's father had occurred, that the appellant was subjectively and objectively in fear of his father and that no protection existed for him in the home area. The First-tier Tribunal Judge did not accept that there was a risk from criminal gangs in respect of the appellant's father's alleged debts: that part of the account was rejected, although the Judge accepted that the appellant's belief in the risk, and his fear of the gangs, was real.
4. This appeal therefore turns on the availability of internal relocation to protect the appellant from his father's violence. The First-tier Tribunal Judge accepted at [82] that if the appellant did not return to his home area, he would find employment and accommodation difficult to obtain elsewhere in Albania, and that there were very low employment rates. However, the Judge approached his decision on the express basis that the appellant's uncle would be easy to trace, and would be willing to support him, if he were living elsewhere in Albania.
5. The Judge also found that the appellant's local authority (Kingston-upon-Thames and London Borough of Richmond) could be expected to continue to support the appellant after his return to Albania. That is a factually incorrect assertion which was put in issue in the Secretary of State's Rule 24 Reply: neither the Secretary of State nor the local authority has any responsibility for the appellant once he has been returned to Albania.
6. The respondent takes no issue with the evidence given by the appellant's social worker, Ms Drammeh at the hearing in February 2017, concerning his maturity, which is recorded in the decision at [64]-[67]:

"64. ... [Ms Drammeh] describes the Appellant living in supported lodgings, attending college and making very good progress there. She refers to him having made friends through college and community and using the gym. She observes he does not have had prior experience of independent or semi independent living. The Appellant lives with four

others in a house, Ms Darlington told me that she, as his social worker, would visit one a month or more often the Appellant needed she told me of that these would be taking him to appointments or assistance with engaging with other agencies. She explained that a support worker visited not just for the Appellant but to undertake a check upon all of the residents. Ms Drammeh's letter states that she would be concerned that the Appellant would not be able to live independently without safe family support, she describes him (in the letter) as 'vulnerable, pleasant, personable, polite and sensible young man'. The Appellant told me that he would not be able to work support himself or have money to eat if he returned to Albania.

65. The Appellant told me that he cooks for himself (an improvement, I note, since Mrs Drammeh wrote her letter), he said that he had help with appointments stating that he would not be able to make appointments himself. Ms Drammeh told me that the Appellant would need support even in the UK over the next few years. She explained that the Appellant had made excellent progress with support but described him as at the level of a 14 year old needing encouragement and requested help with obtaining and engaging with services. She said that his development was possibly slowed because of his life experiences (which I took to mean the abuse sustained by his father). She explained that the Appellant was not in a comparable position to a person who has lived in the UK for many years. She said he has had 'so many obstacles that he has not been able to develop the knowledge and confidence to go out into the world, the UK'. She explained that the support that would be offered to the Appellant in the UK upon him turning 18 years old would be as a care leaver in the UK to mimic adequate support parents would provide. She said in this regard 'he would need support higher than a British child say going to university'. I note too the provision of direct financial support to care leavers, and Ms Drammeh referred me to the relevant Local Authority's statutory responsibilities in this respect. Ms Drammeh therefore confirmed to me that the Local Authority would have statutory responsibilities/obligations toward the Appellant as a child and upon turning 18 years as he now has a responsibility to the Appellant as a former child in care. ...
66. I find that the Appellant has made developmental progress as would be expected since arriving in the UK and since Ms Drammeh's first letter. ... I find that the Appellant has limited practical support on a day to day basis, I note the support offered (other than accommodation and finance) is largely related to arranging and taking the Appellant to appointments.
67. ... Moreover I conclude the Appellant is able to meet his own daily living and care needs himself should he have the financial resources to do so, and from my findings that the Appellant is an intelligent young person, that the Appellant would be able to meet his appointments in his home country himself.
68. It is not in the Appellant's best interest that he return to live with his father and mother. I make this finding, perhaps obviously, in light of the past abuse by his father. I have had regard to Rule 339K in this

respect and in my overall assessment as to the risk to the Appellant upon return.”

The Judge considered that the reason why the appellant needed so much support in the United Kingdom was largely that he had not grown up here. He found the appellant to be intelligent and to be living in the United Kingdom in a ‘semi-independent manner’.

7. The appellant appealed to the Upper Tribunal.

Grounds of appeal

8. The appellant’s grounds of appeal challenged the negative factual findings regarding the appellant’s account of risk from his father’s creditors, and the findings regarding internal relocation, his best interests as a child, and Article 8 ECHR.
9. Regarding internal relocation, the appellant relied on the evidence of his social worker, Ms Drammeh, and on a letter from Sachin Dev, his support services manager, that he would ‘find it very difficult to cope if he were returned to Albania’.
10. The appellant contended that there was no evidential basis for the Judge’s findings that the appellant would receive post-return assistance in Albania as a care leaver from his local authority in the United Kingdom. He relied on a letter from Ms Drammeh’s line manager, Shaira Makorie, which confirmed that the local authority could not provide any support for the appellant in Albania, financial or otherwise. He argued that this error was of the utmost significance.
11. Finally, in relation to internal relocation, the appellant contended that it was unreasonable for the Judge to rely on putative support from his maternal uncle in Albania. The First-tier Tribunal Judge had found that the appellant had been subjected to treatment by his father which met the past persecution threshold in paragraph 339K of the Rules; that if he returned to his home area that persecution was reasonably likely to be repeated; and that there was no sufficiency of protection for the appellant in his home area. He reminded the Upper Tribunal that the First-tier Tribunal had accepted that he had not been in contact with any family members since leaving Albania over two years ago and that for him to seek to trace and rely on his maternal uncle, who still lived in the home area, would put the appellant at grave risk, even if his uncle was willing to help and had not moved away, become ill or infirm, or died, in the meantime.
12. The appellant contended that on the above basis, the First-tier Tribunal’s findings were perverse and/or *Wednesbury* unreasonable.
13. I do not set out the ground concerning the appellant’s father’s creditors in detail here, as it was not pursued before me.

Permission to appeal

14. Upper Tribunal Judge Plimmer granted permission to appeal on the basis that the First-tier Tribunal had arguably erred in its assessment of internal relocation for the appellant after his return to Albania. The grant of permission included all grounds in the grounds of appeal, but as stated above, only internal relocation was argued at the Upper Tribunal hearing.

Rule 24 Reply

15. The respondent opposed the grant of permission to appeal. So far as relevant to the internal relocation issue, the Rule 24 Reply is as follows:

“... 3. It is noted that whilst the Judge states that the appellant will receive financial support whether in the United Kingdom or Albania, the Judge acknowledges that the local authority’s statutory responsibility will cease should the appellant leave the United Kingdom. ... It is submitted that this will include financial support as that is part of the local authority’s statutory responsibility. However, it is accepted that the Judge does refer to this as a reason for finding internal relocation would be possible.

...

5. Notwithstanding the above, the Judge has considered that the appellant’s father will not have the means to trace him. ..The [Judge] also considered other factors in terms of internal relocation and it is submitted those would be sufficient to make the finding of internal relocation sustainable. ...”

Error of law

16. On 9 June 2016, Deputy Upper Tribunal Judge Shaerf found an error of law and decided that the appeal would need to be remade in the Upper Tribunal including a consideration of the appellant’s circumstances as found and a nexus with the Refugee Convention or the Qualification Directive 2004/83/EC and the section 55 best interests of the appellant as a child. That latter finding is erroneous and I treat this appeal as sounding only under the Refugee Convention, Qualification Directive or in human rights considerations.
17. That is the basis on which this appeal came before me for hearing.

Upper Tribunal hearing

18. I heard submissions from Mr Hoshi for the appellant, and Mr Tarlow for the respondent. Mr Hoshi produced a note of the evidence of Ms Drammeh, which had not been agreed by the Upper Tribunal or with the Home Office. In view of the undisputed record of her evidence in the First-tier Tribunal

decision, I did not consider it necessary to admit that document. I admitted, and had regard to, the letter from Ms Makorie mentioned above.

19. For the respondent, Mr Tarlow did not dispute that the First-tier Tribunal's findings regarding local authority support in Albania constituted an error of fact at the level of an error of law and that the appeal decision would need to be remade.
20. The parties' submissions on internal relocation restated the arguments in the pleadings set out above and there is no need to set them out in detail here.

Discussion

21. The first point to make is that the appellant is not a child, and was not a child when the First-tier Tribunal promulgated its decision. The section 55 best interests duty has ceased to apply. The Judge's consideration of the appellant's section 55 best interests is nevertheless of assistance in considering the safety of returning this appellant. The Judge accepted that it was not in the appellant's best interests to return to live with his father and mother in his home area and that there was insufficient protection for him there.
22. The accepted facts concerning the domestic violence against the appellant by his father engage paragraph 339K of the Immigration Rules HC395 (as amended):

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, *unless there are good reasons to consider that such persecution or serious harm will not be repeated.*" [Emphasis added]

I am not satisfied that there are such reasons in the appellant's home area. The real question is whether at his age and maturity, he could survive safely by exercising his internal relocation option to, say, Tirana or somewhere else in Albania, away from the home area. Albania is a small country and family networks are large. News travels fast.

23. The social worker's evidence was that the appellant's maturation while in the United Kingdom had been slower than would be the case for a person of the same age who grew up here. The Judge accepted that he was a vulnerable person. I remind myself that his social worker considered him to be functioning "at the level of a 14-year-old needing encouragement and requesting help with obtaining and engaging with services".

24. The Judge found that this appellant would have difficulty finding both employment and accommodation outside his home area, and that there were very low rates of employment in general in Albania. I consider that the appellant cannot be expected to rely on the support of his mother's brother, even if his maternal uncle is still in the home area, because that would disclose the appellant's whereabouts to his parents, and is likely to revive the risk in the home area and to signal to his father where it is that he has relocated, thereby defeating the purpose of internal relocation.
25. I am not satisfied, having regard to the evidence, that this young man, given his limited social skills and his vulnerability, and his inability to risk accessing his family network, would or could survive successfully in another part of Albania. He would have no contact with his extended family, not any Social Services or other support and, as the judge found, and a very restricted possibility of employment as employment is difficult to find in Albania. There would be a real risk of destitution on that basis.
26. I therefore substitute a decision allowing the appeal on both asylum and human rights grounds, because I consider that there is a real risk to this appellant of further domestic abuse from his father, should he seek to access any assistance from his extended family and that as a vulnerable young man with the limited social skills he has he is also at risk of persecution or serious harm, alternatively that to expect him to relocate elsewhere in Albania where he would have a very low chance of employment or accommodation, and would lack the skills to deal with any problems which arose, raises a real risk of an Article 8 ECHR breach.

Conclusions

The First-tier Tribunal did make a material error of law in its decision.

I set aside the decision of the First-tier Tribunal and remake the decision by allowing the appeal.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 21 August 2017