



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05495/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25 April 2017

Decision & Reasons Promulgated
On 26 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

F D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

I make an order under rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. This order applies both to the appellant and to the respondent. Failure to comply with this order could lead to contempt of court proceedings.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Paul) dismissing his appeal against the respondent's decision of 25 May 2016 refusing his application for asylum and humanitarian protection.

Background.

2. In brief outline the background to this appeal is as follows. The appellant is a citizen of Albania born on [] 2000. On his own account, he left Albania on 15 November 2014 travelling to Montenegro where he remained until 30 November 2014. He then travelled by lorry across Europe making an unlawful entry into the UK on 2 December 2014. He subsequently claimed asylum on 27 January 2015 when the screening interview took place. There was a full asylum interview on 29 May 2015. The appellant claimed asylum firstly on the basis that he was a victim of trafficking, secondly because of his sexual orientation as a homosexual, thirdly because he was in fear from his family and fourthly because of Jevg ethnicity.
3. On 29 May 2015 a referral was made to the competent authority to make a decision on whether there were reasonable grounds to believe that he had been a victim of trafficking but on 18 February 2016 the competent authority concluded that the appellant had not established such grounds for believing that he had been trafficked either for the purpose of organ harvesting or for sexual exploitation.
4. The respondent then considered the appellant's claim for asylum. His identity and nationality was accepted but the respondent did not accept that he was of Jevg ethnicity or that he would be at risk because of his sexual orientation. The respondent also rejected the appellant's claims that he would be at risk from his father because of his sexual orientation and did not accept that he had been the victim of trafficking as claimed.

The Hearing before the First-tier Tribunal.

5. The appellant appealed against the respondent's decision and his appeal was heard by the First-tier Tribunal on 24 October 2016. The judge summarised the appellant's account in [5]-[15] of his decision. The appellant said that he came from an area in the north of Albania where strict Kanun law was practised. His family moved to Tirana when he was about 7 or 8 months old for economic reasons. As his father was a Jevg he had difficulties finding work. The Jevg are treated as belonging to a gypsy tribe and as a result, they lived in total isolation from other families. He said that he had suffered constant abuse from ethnic Albanians and this continued at school where he suffered discrimination from both classmates and teachers.
6. When he was 13 the appellant said that he realised that he was homosexual revealing this to his friends and then his class, school and community found out. In November 2014 he was confronted by his father and was told that according to Kanun law he was expected to marry a woman and that, if he did not do so, he would kill him. He

was subsequently beaten and his father said that, if he did not change, he would be expelled from home.

7. The appellant then met another person, G, from his community, who said the appellant could shelter with him for a few days and then he would take him to Durres. While staying at G's house he was kidnapped by Albanian men and was told that he would be sold to people outside Albania. He suffered further abuse and was sexually molested. On 15 November 2014 there was a knock on the door and a man introduced himself as the father of another friend, A. He was able to leave with A's father who told him there had been a gun fight outside between criminal gangs. He helped him leave Albania for Montenegro.
8. The appellant was asked in cross-examination about information obtained by the British Embassy which indicated that the appellant had used his passport to travel to Italy. He said that his passport, which he had had with him when he left home, had been taken by the gang. When he left Albania, he did not have his passport but when it was taken from him, he had been given a copy.
9. The judge, however, did not find the account given by the appellant to be credible. He set out his reasons in [28]-[39]. He was not satisfied that the appellant had given a truthful account about being victimised and brutalised while growing up in Tirana. He considered that his account that he was homosexual had been created to provide the pretext for the confrontation with his father in November 2014 prompting his flight from the family home. He did not accept the circumstances in which the appellant had left Albania or that he had been the victim of a criminal gang. The judge said that he was satisfied that the appellant's journey to the UK was not as a young 14-year old fleeing on his own through Montenegro but was the result of a much more carefully planned trip.

The Grounds and Submissions.

10. In his grounds the appellant argues that the judge gave inadequate reasons for his decision. Firstly, it is argued that at [29] the judge gave inadequate reasons for rejecting his claim to be homosexual. The main reason given appeared to be the fact that he came from a highly traditional community but the judge failed to explain why it was not credible that someone coming from such a community could be homosexual. Mr Gilbert submitted that whilst the grounds relied on inadequacy of reasons, the judge's finding on this issue amounted to irrationality. He appeared to be relying on nurture rather than nature to explain why he did not find that the appellant was homosexual. Mr Clarke submitted that the judge had not relied solely on the fact that the appellant was from a highly traditional community but was making the point that it was right to take into account the community in which the appellant was living. When the evidence was looked at as a whole and in particular the appellant's answers at interview at Q129 and Q200-203, the judge was entitled to reject the evidence that on the basis simply of rumours, there had been a confrontation between the appellant and his father.

11. Secondly, it is argued that the judge erred by saying that the circumstances in which G appeared to befriend the appellant but in fact tricked him into becoming ensnared with a criminal gang was incredible and that the judge had stated a conclusion but not given the reasons for that conclusion. Mr Gilbert submitted that the judge had not made it clear whether he was looking at the evidence as a whole from a wider perspective but if he had simply picked up one particular incident, there was an onus on him to explain why he regarded that account as incredible. Mr Clarke said that the judge had also said in [30] that it was an odd thing for a 14-year old boy, who simply could not stay at home because of parental pressure, to take his passport with him and that this was a comment properly open to him.
12. Thirdly, it is argued that the judge erred at [31] when he found that the simple manner by which the appellant had been able to escape and be taken to Montenegro was not credible and was inconsistent with his account that he had been detained and carefully guarded by a gang and had left Albania with the assistance of an agent. It is further argued that the judge failed to take account of the appellant's evidence about how he escaped. His account was that the gang who had kidnapped him were involved in a gun fight and fled. Mr Clarke submitted that the judge's comments were fair. He was entitled to comment on the apparent relative ease of the appellant being able to escape from the gang and leave Albania and to reject the evidence that there had been a gun fight. These findings could not be categorised as irrational.
13. Fourthly, it is argued that in [32] the judge was wrong to say that it was inconsistent with the appellant's assertion in his witness statement that he left Albania with the help of an agent when he had said that his departure was facilitated by A's father and that begged the question of how a 14 year old would have the wherewithal to arrange such finance.
14. Mr Gilbert argued that it was difficult to see what the inconsistency was. The appellant had been able to secure his release by people who were not connected to the trafficking gang and, in any event, it was wrong to suggest that there necessarily had to be complete consistency in an account. The question of paying the agent was not put to the appellant and an adverse inference should not have been drawn in such circumstances. Mr Clarke submitted that the appellant's account of his escape had to be looked at in the context of the fact that there was evidence that his passport had been used to travel to Italy. The judge was entitled in the light of that evidence to reject what the appellant said about how he had left Albania.
15. Fifthly, it is argued that at [33] the judge failed to give a clear explanation for rejecting the appellant's explanation of how he left Albania or why he commented that it made no sense for his passport to be taken away from him by the gang or why he had been given a copy. Mr Gilbert submitted that it was unclear why this made no sense. The passport may well be a valuable piece of property for the gang. Mr Clarke argued that the judge was entitled to regard this as a troubling point amongst

many others. It added to the overall picture of the problematic issues in the evidence which the judge was entitled to take into account.

16. The final ground takes issue with the judge's comment in [35] when he described the evidence from a witness who has taught the appellant in the UK as most telling. She had described him as motivated and exceeding all expectations and generally described his conduct and behaviour as exemplary with a great appetite for learning. It was her view that the appellant had had the benefit of several years of disciplined education but the judge commented that this was completely inconsistent with the explanation he gave of his own life growing up with relatively limited and brutal schooling. It is argued that the appellant had the benefit of several years of education in Albania and the evidence of his school attendance was consistent with the view expressed by his teacher. Mr Gilbert submitted that this was not a case of the appellant not having an education but a patchy education in difficult circumstances. Mr Clarke submitted that the disparity between the appellant's own evidence about his education set out in the interview (Q88-90) and his own witness statement at [11] was such that there was a proper basis for the judge's comment.

Consideration of Whether the First-tier Tribunal Erred in Law

17. I must consider whether the judge erred in law in his assessment of credibility such that the decision should be set aside. The grounds are phrased primarily as a reasons challenge, arguing that the judge gave inadequate reasons for his decision and also that he failed properly to consider aspects of the appellant's evidence. Mr Gilbert submitted that, in relation to the judge's reasons for rejecting the appellant's claim to be homosexual, the judge's finding could properly be categorised as irrational. The thrust of Mr Clarke's submission was that the judge had reached findings properly open to him on the evidence and that when the determination was read as a whole, it was clear why he had not accepted the appellant's account.
18. I am not satisfied that the judge erred in law for the following reasons. So far as the first ground is concerned I am not satisfied that the judge relied simply on the fact that the appellant was from a highly traditional community as the basis for rejecting his claim about his sexuality. Before assessing the appellant's credibility, the judge reminded himself of the fact that when the appellant travelled to the UK he was a boy of approximately 14½ and that if he travelled effectively as an unaccompanied minor it must have been an extremely traumatic experience. He said that he was subjecting the account to scrutiny consistent with the appellant's age. There is no reason to believe that this was not the approach in fact taken by the judge.
19. His comment about the appellant living in a highly traditional community was in the context of the disclosure of his claimed sexuality as the trigger for his alienation from his family. The judge said that, quite apart from the appellant's relative youth and immaturity which would mean that he was not obviously sexually active, account had to be taken of the community in which he was living and that it was a traditional community and that traditional peer group pressures would dictate the way in

which young people would grow up. That was a factor the judge was entitled to take into account but it was not a determinative factor and I am satisfied that the judge did not treat it as such. On the issue of whether the judge was looking at the evidence as a whole, I am satisfied that he did not compartmentalise the evidence but considered it in its entirety. The fact that he inevitably dealt in turn with a number of different aspects of the evidence does not mean that he was treating each aspect in isolation.

20. In [30] the judge commented that it seemed an odd thing for a 14 year old boy who could not stay at home because of parental pressure to take his passport with him at the time and that the circumstances in which G appeared to befriend him and then trick him into becoming ensnared with a criminal gang were incredible. The judge did not err in law by failing to give further reasons for those comments. They were properly open to the judge and must be read in the context of the evidence as a whole.
21. Indeed, at [31] the judge went on to say that “furthermore” the circumstances in which the appellant left Albania were inconsistent with the account that he had been detained and carefully guarded by a criminal gang. It was the appellant’s evidence that he and other boys had been kept in a house by men with guns who said that if they did not obey their orders, they would be killed. It was then his evidence that on 15 November 2014 there had been a knock at the door and A’s father had been able to leave with both him and A, they had been told that there was a gun fight outside the house between the gangs and they should leave before the police arrived as A’s father did not trust the police, saying they were corrupt. The judge was entitled to comment on what he described as the simple manner of the appellant’s escape from the gang.
22. I am also satisfied that he was entitled to comment at [32] on the inconsistency in the appellant’s evidence as to whether he left Albania with the help of an agent or whether it was facilitated by A’s father. This was an issue of fact for the judge to resolve. There was an inconsistency and it was for the judge to decide what inference to draw in the light of the evidence as a whole. It was argued that as the appellant had not been asked about the issue of paying the agent, no adverse inference should be drawn from this aspect of the evidence but I am not satisfied that there is any substance in this submission. The issues were clear and the fact that this matter was not raised in cross-examination does not without more support an argument that there was any procedural unfairness.
23. The judge said at [33] that he was satisfied that the appellant had crossed into Italy in the way recorded by the British Embassy. This is a reference to the evidence that, following inquiries, it had been confirmed that the appellant’s passport had been used to make a lawful exit from Albania to Italy. In reaching this decision the judge was entitled to comment that it did not make sense that if the appellant was going to be smuggled out of the country in any event, there was no reason, if his original passport was taken from him, for him to be given a copy.

24. Finally, I am satisfied that it was open to the judge, in the light of the evidence from the appellant's teacher that his performance and progress had been such that it was her view that he had had a good educational background based on a number of years of disciplined education, to find at [35] that this was completely inconsistent with the appellant's own account of his life growing up with relatively limited and brutal schooling.
25. In summary, I am satisfied that the grounds are an attempt to re-open and re-argue issues of fact. It was for the judge to decide what weight to give to the evidence and what inferences could properly be drawn from it. When the decision is read as a whole, it is clear why the judge did not accept the appellant's evidence. He explained why numerous aspects of his account gave him cause for concern. When taking these factors together, it was open to him for the reasons he gave to reach a finding that the appellant's account was not credible. I am therefore not satisfied that the judge erred in law in his assessment of credibility and, in the circumstances of this appeal, it followed that there was no factual basis on which a claim for international protection could succeed.

Decision

26. The First-tier Tribunal did not err in law and the decision of the First-tier Tribunal stands. In the light of the appellant's age and the issues raised in this appeal I am satisfied that this is a proper case for the decision to be anonymised and I have made an anonymity order accordingly.

Signed H J E Latter

Date: 22 May 2017

Deputy Upper Tribunal Judge Latter