



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/10878/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 7 March 2018

**Decision & Reasons
Promulgated**

On 14 March 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A B

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, Counsel instructed by Barnes, Harrild & Dyer

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge M R Oliver promulgated on 18 May 2016 ("the Decision"). By the Decision the

Judge dismissed the Appellant's appeal against the Respondent's decision dated 22 July 2015 refusing his protection and human rights claims.

2. In order to explain the delay between the date of the Decision and the date when this appeal came before me, it is necessary to recite briefly the procedural background. On 9 June 2016, permission to appeal was granted by First-tier Tribunal Judge J M Holmes. The appeal came first before Deputy Upper Tribunal Judge McGinty on 13 July 2016. The Appellant was not present or represented. As the result of an explanation given by the Appellant's solicitors that the hearing had been recorded in error as listed on a different day, the Deputy Upper Tribunal Judge adjourned the hearing. The appeal then came before Upper Tribunal Judge Perkins on 8 August 2016. Again, the Appellant was not present or represented. The Judge was satisfied that notice of the hearing had been properly given and determined that it was appropriate to proceed with the hearing. He did so, dealing with the grounds now before me albeit making one factual error which I note below. He found there to be no material error of law in the Decision.
3. The Appellant sought permission to appeal to the Court of Appeal against Judge Perkins' decision on the basis, first, that the Judge was wrong to proceed in the Appellant's absence and, second, that his risk assessment was flawed. Judge Perkins refused permission to appeal but that was granted by Sir Stephen Silber on 3 August 2017, specifically on the first of those grounds. The appeal to the Court of Appeal was allowed by consent, again on the basis that Judge Perkins should not have determined the appeal as he did in the Appellant's absence. That ground is of course no longer relevant to my decision.
4. It was agreed by both parties that the procedural position at the hearing before me is that I have to determine afresh whether there is an error of law in the Decision. If I so find, the parties were agreed that this is a case where the appeal should be remitted because of the nature of the errors set out in the grounds, particularly based on the lack of findings as to why the Appellant would not be at risk on return.
5. Turning then to the factual background to this appeal, the Appellant is a national of Albania. He is of Gorani ethnicity. He was born on 17 October 1997 and was accordingly aged eighteen at the date of the hearing before the First-tier Tribunal and is now aged twenty years. He arrived in the UK illegally and claimed asylum on 17 March 2014, one month after he claims he arrived here.
6. The Appellant claims to be at risk from his father who has been violent to him in the past and who is said to be an alcoholic and a gambler. His father has previously served a term of four years in prison for stabbing someone in a drunken brawl. The Appellant's mother and his two siblings left the family home but left the Appellant with his father. The Appellant's claim is that he was forced to transport bags for his father across the border to Kosovo between 2012 and 2014. The bags are said to have contained drugs. The Appellant was forced into this work by

violence and threats from his father. Finally, the Appellant says that his father threatened him with a knife and, when he told his uncle about this, his uncle arranged for him to be brought to the UK by an agent.

7. The Appellant has been found to be a victim of trafficking by the Competent Authority. In this regard, Judge Perkins when considering the claim appears to have thought that the Appellant was the victim of sexual trafficking. Mr Palmer confirmed that this has never been the Appellant's case. The First-tier Tribunal Judge noted the Competent Authority's decision in this regard but concluded that the Appellant is not at risk on this account and is not a member of a particular social group.

8. Permission to appeal was granted by First-tier Tribunal Judge J M Holmes on 9 June 2016 in the following terms (so far as relevant):-

"...[3] This is an extremely brief decision. It is arguably unclear whether it is so brief as to fail to make it clear the basis upon which the Judge was approaching the Appellant's account. This was an account that had been accepted in large part by the decision of the competent authority - and arguably as a result was not in dispute before the Judge. Thus the Judge's starting point ought arguably to have been that the account was credible upon the applicable low standard of proof, and that it did mean that the Appellant had been the subject of trafficking and had been forced into criminal servitude. The Judge ought arguably to have then analysed the account in the light of the current country guidance on Albania to ascertain from whom the Appellant faced a risk of harm, and whether this was an issue local to his home area or one that could be avoided by internal relocation, and whether this was an issue local to his home area or one that could be avoided by internal relocation, and whether this was a risk of harm against which there was adequate state protection. It is arguable that the decision fails to do so, and that the approach to whether the Appellant could be a member of a particular social group was itself flawed."

9. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the decision or remit to the First-tier Tribunal for re-hearing.

Discussion and conclusions

10. I can deal very shortly with the first of the Appellant's grounds. Mr Palmer submitted that the findings are restricted to one paragraph and that the Appellant does not therefore know on what basis his appeal is dismissed. The Judge's main findings are at [38] of the Decision as follows:-

"[38] If his account is true, his only realistic fear on return is from his father, since it is his father with whom criminal gang deals. His father is an isolated figure without any support in the close family or elsewhere. His previous substantial prison sentence shows he has no influence with the police or other organs of power. There is no evidence that the appellant's family have come to any harm after engineering his flight. I reject his claim that, returning as an 18-year-old, he will be at risk of persecution or article 3 harm from his father."

11. Although it is right to note that the Judge began that paragraph with an indication that the Appellant's account might not be true, I cannot discern from the Judge's consideration of the claim elsewhere in the Decision that the Judge did not believe the Appellant. As Judge Holmes pointed out when granting permission, the starting point is that the account was accepted by the Competent Authority and it would be difficult for the Judge to go behind that finding without giving cogent reasons.
12. My reading of what the Judge says at [38] is that the account was accepted but it was not accepted that the Appellant would be at risk on return because there would be a sufficiency of protection against the threat that his father posed. I will turn to deal with whether that conclusion was open to the Judge or whether it required further and better reasoning after I have considered the Appellant's ground two.
13. Ground two concerns the finding that the Appellant is not a member of a particular social group. Although Mr Palmer accepted that what the Appellant says has happened to him in the past is better described as "modern slavery" than "human trafficking", he submitted that the Appellant should have been found to be a member of a particular social group as a result of his categorisation as a victim of that treatment, in particular that he is a "former child victim of modern slavery".
14. Mr Avery pointed out that this is not akin to the position of females who are forced into prostitution who may be at risk on return due to their earlier victimisation. As Mr Avery submitted and I accept the crux is whether the Appellant is at risk on this account on return because he will be targeted as a result of his categorisation as a victim. As Mr Avery also pointed out, age is not an immutable characteristic as is evident from the fact that the Appellant is no longer a child.
15. The Judge's consideration whether the Appellant can be said to be a member of a particular social group appears at [32] to [35] of the Decision. Having had regard to the authorities to which the Judge was referred by the Appellant and explained why he distinguished those from the present case, the Judge then directed himself in accordance with the House of Lords' judgment in Fornah as to persecution against which the Refugee Convention is directed. He then applied the law to the facts of this case as follows:-

"[35] The appellant claimed that he was trafficked within Albania and across the border to Kosovo, by which he means that he was forced by his father to perform criminal acts in a role akin to slavery. I keep in mind that he was a minor and is deemed not to have been able to give informed consent to such an activity. Whereas, however, women forced into prostitution can readily be seen to form a distinct group who would be viewed as different by other parts of society, it is difficult to see of what group of a like nature the appellant was part. On the basis of his own account he was the victim of a father. I cannot accept that he was a member of a particular social group in the absence of evidence of discrimination against such a group."

16. There is no misdirection in the Judge's approach. As Mr Avery submitted, the stumbling block to the Appellant's case on this ground is that the Appellant is in no different position to any other man in Albania. He will not be perceived any differently as a result of his earlier victimisation by his father. He will not be ill-treated or discriminated against for any reason connected with that earlier victimisation. I note in this regard that, although there was evidence before the Judge as to the position of the Gorani minority in Albania, it was no part of the Appellant's case that the ill-treatment he feared was linked to that ethnicity.
17. For the above reasons, I am unpersuaded by the Appellant's grounds one and two. I am however satisfied that there is an error disclosed by the Appellant's ground three. This is said to be on the basis that the Judge failed to consider the report of Antonia Young. Reference is made to this report at [30] of the Decision. The summary there given is a fair one. However, the Judge makes no reference to this report when he comes to make his findings.
18. Whilst, as I have already noted, the Judge did not disbelieve the Appellant's account and therefore Ms Young's views as to the credibility and plausibility of the claim did not need to be taken into account, she also makes a number of observations as to whether the Appellant could be expected to turn to the authorities for protection and whether the protection which would be offered if needed would be effective. As I have already noted, it is the sufficiency of protection which I read as being the reason why the Judge found the Appellant not to be at risk. Whilst that might be a finding open to the Judge, he needed to take into account when reaching that finding the evidence of Ms Young, to explain what weight he gave her evidence and to explain why, notwithstanding that evidence, he still concluded that the Appellant would be willing and able to access protection which would be sufficient to guard against the risk he claimed to fear.
19. Similarly, and although I do not consider that the Judge was relying on the ability of the Appellant to move elsewhere in Albania to avoid harm, if that was the basis of his conclusion, then Ms Young's evidence about that also needed to be considered.
20. For the above reasons, I am satisfied that the grounds disclose an error of law by reason of the Judge's failure to take into account relevant evidence as to the risk posed to the Appellant on return and/or to explain why that evidence made no difference to the finding that he would not be at risk. Since my conclusion is founded on the basis of lack of findings on the evidence, I agree that it is appropriate to remit this appeal for re-hearing before a different Judge.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge M R Oliver promulgated on 18 May 2016 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.



Signed
Upper Tribunal Judge Smith

Dated: 13 March 2018