Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01773/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 July 2019	**On 9 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR L K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Jones of Counsel
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania. He was born on 22 April 2000. He appealed against the respondent's decision to refuse asylum dated 13 February 2019.

2. In a decision promulgated on 10 May 2019, Judge Wilding (the judge) dismissed the appellant's appeal. The credibility of the appellant's claim had been accepted by the respondent, however, the judge did not accept that the appellant was at risk on return to his home area but that in any event, relocation to Tirana would not be unreasonable.

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3. There were three grounds, erroneous treatment of documentary evidence in assessing risk, failure to address relevant matters in the risk assessment and erroneous approach to past persecution. I will address them in turn:

Erroneous treatment of documentary evidence in assessing risk.

Credibility had been accepted. The only issues were risk on return, sufficiency of protection and the reasonableness of internal relocation. Nevertheless, the judge had *"significant difficulties"* with the appellant's evidence. The judge failed to consider the evidence in dispute in the context of the rest of the appellant's accepted account. The judge made no reference to **Tanveer Ahmed [2002] UKIAT 00439**. He failed to apply the guidance in **Tanveer Ahmed** which directed judges to assess all evidence including documents *"as a whole or in the round".* That obliged the judge to assess the documentation with the rest of the appellant's account which had been found credible, in particular in respect of what the appellant had said about his traffickers' interest in him which included the following material aspects:

(i) Evidence that the traffickers had demonstrated an interest in him after he was released from the police by threatening him and making threats to kill him if he did not agree to meet them (see appellant's statement at [6]).

(ii) At interview, it was the appellant's understanding that he had been accused of having spied on the traffickers. See Q119.

(iii) The appellant's evidence was that he had spoken to his father (see his statement at [18]) who had told him about the pressures the family were facing; in light of the acceptance of the appellant as credible (see [25] of the judge's decision). Good reasons were needed to refuse that evidence.

4. By focussing on the notarised content of the letter from the appellant's father (see [20] of the decision) without an analysis of it in the context of the accepted aspects of the appellant's claim, the judge's assessment fell short of the standards set out in **Tanveer Ahmed**.

5. Further, the judge adopted an unfair approach to the father's evidence by rejecting it inter alia on the basis that no original had been produced and that he had not been shown the e-mail to which the documents were originally attached. See [23] of the decision. If those concerns were so central to the judge's assessment of credibility then it was incumbent upon the judge to provide an opportunity for the appellant to provide the documents, even if that necessitated an adjournment. Failure to do so amounted to procedural unfairness, especially since the appellant had been accepted as credible.

Failure to address relevant matters in the risk assessment.

6. The judge concluded that

   (i) the appellant would not be of interest from his former traffickers and
   (ii) that he could reasonably relocate within Albania. The judge reached the second conclusion on the basis that the appellant had not established that the traffickers had influence outside the local area but in reaching those conclusions, the judge failed to consider material aspects of the evidence.

7. At [27] the judge said that there was little evidence that the traffickers were looking for the appellant to re-exploit him again. He concluded that the gang would have no interest in the appellant now. That was an error in the context of the appellant's evidence which had been accepted. The appellant had explained that the traffickers had demonstrated an interest in him after he was released. See his statement at [6]. At interview he said that he had been accused of having spied on the traffickers. See Q119. The judge was obliged to take those matters into account.

8. At [36] of his decision in respect of the traffickers likely reach, the judge said there was no reason to think that the gang would know the appellant was back in Albania or had the desire to try to find him. In reaching that finding the judge omitted material aspects of the account. The traffickers were able to operate in multiple locations. See the appellant's statement at [4]. The judge's finding at [37] that there was no reason to think the gang had any connections with the national police ignored the appellant's accepted account about the traffickers' connections. At Q141, the appellant said that Lul was well-known and had contacts all over Albania. At Q144 he said Lul was moving around anywhere and knew people from the state. At Q117 he said the police allowed Lul to operate with impunity. The judge's assessment of risk failed to address that evidence.

Erroneous approach to past persecution.

9. Given the appellant's past ill-treatment was not in dispute the principles set out at paragraph 339K applied. The fact that a person had already been subject to persecution or serious harm etc. would be regarded as a serious indication of a well-founded fear of persecution etc. unless there were good reasons to consider that such persecution would not be repeated.

10. At [25] the judge *"diluted the strength of the principles in the qualification directive"* by finding that the appellant was credible and had shown he had been a victim of modern slavery and persecution. Further that past persecution was an indication of future risk in many cases but not all and each case required careful analysis. The judge's statement of principle fell significantly short of the provisions of the directive. There was no recognition that past persecution was normally a **serious** indication of risk of harm and good reasons needed to be shown to find otherwise.

11. Judge Kelly granted permission on 10 June 2019. He said inter alia:

> *"2. It is arguable that the Tribunal's approach to the appellant's documentary evidence was inconsistent with the accepted credibility of the appellant's account as a victim of trafficking and/or that that or that that approach resulted in procedural unfairness. The other grounds have less force but are nevertheless arguable."*

Submission on Error of Law

12. Ms Jones submitted that the judge's assessment of risk on return and as a consequence, internal relocation, was flawed in a number of material respects:

    Ground 1. Erroneous treatment of documentary evidence in assessing risk.

    Ground 2. Failure to address relevant matters in the risk assessment.

    Ground 3. Erroneous approach to past persecution.

13. I will address them in turn:

    Ground 1. Erroneous treatment of documentary evidence in assessing risk.

    Ms Jones submitted that because the appellant was found to be partly credible, he should also be found to be credible regarding the evidence he provided on the day of the hearing including a notarised statement from his father confirming that the family had been placed under pressure from people who had been asking about the appellant. That evidence was significant because it showed ongoing interest in the appellant from those who had previously trafficked him.

    The grounds claim the judge failed to consider that new evidence in the context of the rest of the appellant's accepted account. In particular, that he made no reference to **Tanveer Ahmed [2002] UKIAT 00439** and failed to apply its guidance.

    Further, that the judge adopted an unfair approach to the appellant's father's evidence by rejecting it inter alia on the basis that no original had been produced and that he had not been shown the e-mail to which the documents were originally attached. See [23] of the decision. The grounds claim that if the judge's concerns were so central to his assessment of credibility then it was incumbent upon the judge to provide the appellant an opportunity to supply original documents even if that necessitated an adjournment.

14. Ground 2. Failure to address relevant matters in the risk assessment.

    The grounds claim that the judge erred because he failed to consider material aspects of the evidence in concluding that the appellant would

not be of interest to his former traffickers and that he could reasonably relocate within Albania. In particular, that the appellant had said at [6] of his statement that when he was released, the traffickers had made threats to kill him if he did not agree to meet them and at Q119 at interview, he said he had been accused of having spied on the traffickers.

As to the traffickers likely reach, the judge omitted to take into account the appellant's evidence that at interview, he said that Lul had contacts all over Albania and was well-known. Further, at Q144 he said that Lul *"... knew people from the state and he was moving around everywhere".* At Q117 the appellant said that the police allowed Lul to operate with impunity.

15. Ground 3. Erroneous approach to past persecution.

    The grounds claim that the judge failed to take comprehensive account of paragraph 339K. In particular that past persecution would be regarded as a *"serious indication"* of future risk.

16. Mr Tarlow submitted that the grounds amounted to nothing more than a disagreement with the judge's findings and decision which had been more than adequately reasoned.

Conclusion on Error of Law

17. The judge carried out a careful, comprehensive and nuanced analysis. Merely because it had been accepted that the appellant had been trafficked, did not mean that such acceptance should extend to the whole of the appellant's case. The judge said he had *"significant difficulties"* with the evidence provided by the appellant on the day of the hearing for all of the reasons he set out at [15] – [44] of his decision.

18. The judge recited the documentation that had been handed up to him at the hearing including a statement from the appellant's father that the family had been under pressure and had "*serious interventions*" and for that reason their lives were in danger from unidentified people who had asked about the whereabouts of the appellant. The appellant said that he had spoken to his father on 18 April 2019 on the telephone who told him that it was not safe to return home.

19. The judge said that notwithstanding the acceptance of the appellant's claim to date, he had significant difficulties with the new evidence. He set out those difficulties at [19] – [24] of his decision. To summarise:

    It had been submitted late in the day.

    No previous mention had been made that the appellant was in contact with his family and that there was ongoing interest in his whereabouts.

20. The document itself was vague and lacking in any significant detail as to what was claimed to be happening. The appellant's father failed to

explain what "*serious pressure*" they had been subjected to or what amounted to "*serious interventions*" they had had and from whom.

21. The document referred to "*family problems*" with no reference to any of the reasons the appellant said caused him to leave the country.

22. The judge was entitled to say that such an absence of unexplained detail reduced the weight which he could attach to the documentation. There was no English translation of the documents which had been produced by the notary rather than an independent source, which also affected the weight the judge was prepared to place upon it; he was entitled to reach that decision.

23. The judge said he did not find it credible that given Albania was a society with a long-standing problem with extrajudicial revenge, if the gang were intent on revenge against the family, they would not have taken such revenge. Nothing had happened since 2016. See [22].

24. The judge said he only had a copy of the document, the original being still in Albania. The judge had not been provided with a copy of the e-mail which attached the document so he had no context as to how it came into the appellant's possession or evidence of the method. The judge said that he did not know if it was sent from Albania or from somewhere else and from what e-mail address it was sent or if any message was attached with it.

25. These were all issues which the judge was entitled to take into account in reaching his findings. The judge did not adopt an unfair approach to the evidence. Nor did he do so in particular on the basis that no original of the documents had been produced. The grounds claimed that if those concerns were so central to the judge's assessment of credibility then it was incumbent upon the judge to provide an opportunity for the appellant to provide the documents. The production of the original document and the accompanying e-mail was not central to the judge's assessment of credibility. On the contrary, it came at the end of a list of concerns and was as the judge said, a final observation as to why he placed little weight on the documents. The judge did not err in adopting such an approach. He was not required to refer to **<u>Tanveer Ahmed</u>** in terms. What the judge did was to decide what reliance could be placed upon the documentation. The judge did just that, considering the situation in the round and finding that he could place little weight on the same. That was a decision the judge was entitled to come to on the evidence before him.

26. Although the judge did not in terms refer to the evidence at Q117, Q141 and Q144 (see [8] above) I do not accept that he materially erred as a result. It is clear from what he said at [36]-[39] that he rejected any suggestion of the claim to Lul's influence and reach.

27. The judge considered all material aspects of the evidence in deciding that the appellant would not be at future risk from his traffickers. The

appellant's documentary evidence handed up at the hearing was not accepted by the judge for the reasons he set out. See what the judge had to say in that regard at [27].

28. What the judge said was that the appellant had established the narrative of his case and had shown he had been a victim of trafficking. He then went on to consider the likelihood of future risk. I accept that the judge did not refer to the term *"serious indication"* but I do not find as a result that he adopted a higher than applicable standard. What he said was as follows:

> *"I therefore turn to determining the issues. Firstly, whether the appellant is at risk from exploitation and modern slavery in his home area. The appellant has established the narrative of his case. He is credible and has therefore shown he has been a victim of modern slavery and persecution already. Past persecution is an indication of future risk in many cases, however not all, and each case requires careful analysis".*

There is nothing to suggest that the judge ignored the provisions of paragraph 339K in not referring to "*serious indication*". The judge set out in detail the appellant's case. He found the appellant would not be at risk from random traffickers and given the particular circumstances of his trafficking, he would not put himself in such a vulnerable position again. He was 16 when he was exploited. He would be returning as a 19 year old wanting to avoiding experiencing the same again and would not be at risk in his home area. The judge considered what the appellant had to say at Q119 but found that the extent of the appellant's involvement with the traffickers was that he had once worked for them. They would have no interest in him now. The appellant had given no credible explanation as to why there would be an ongoing interest in him. It was unclear whether they were even in the same area as he said that the police had shut down the farm.

29. The reason for the appellant's previous exploitation was due to his age and inexperience. He wanted to make money. He was not forced into work, nor was he taken against his will at the outset. In such circumstances, the judge did not err in finding it *"incredibly unlikely"* that the appellant would find himself in that situation again.

30. Accordingly, the judge was satisfied that the appellant was not at risk in his home area but went on to consider nevertheless whether he could reasonably relocate, having found that the Albanian authorities would be unlikely to offer sufficiency of protection. The judge found that the appellant would not be at risk on relocation. There was no evidence to suggest that the gang would know he was back in the country let alone have the desire to try to find him. There was no reason to think the gang had any connections with national police. The judge found the gang did not have the reach the appellant claimed such that he was not in fear of registration. See in particular [37] – [41].

31. I do not accept that the judge in some way diluted or failed to follow the spirit of the Qualification Directive. What the judge did was to carry out a forensic and nuanced analysis finding for the reasons he was entitled to, that the appellant was not at risk on return.

32. The grounds establish no error of law. The judge's decision stands.

Anonymity Direction continued

Signed Date 26 July 2019

Deputy Upper Tribunal Judge Peart