



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03255/2018

THE IMMIGRATION ACTS

Heard at Field House
On 5 February 2019

Decision & Reasons Promulgated
On 18 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR XHEVAHIR DAJCI
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones of Counsel

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

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Albania born on 1 April 1998. He appeals against a decision of Judge of the First-tier Tribunal Wyman sitting at Hatton Cross on 10 April 2018 in which she dismissed the Appellant's appeal against a decision of the Respondent dated 15 February 2018. That decision was to refuse the Appellant's application for international protection.

2. The Appellant left Albania on 3 September 2015 and went to Belgium. On 12 October 2015 an attempt to travel to the United Kingdom was prevented when he was apprehended and returned to France. On 17 October 2015 the Appellant arrived in the United Kingdom and claimed asylum on 6 November 2015. He was referred to the Competent Authority to assess whether he was a victim of human trafficking or slavery, servitude or forced/compulsive labour but it was concluded by the Authority on 8 July 2016 that he was not a victim of modern slavery.

The Appellant's Case

3. The Appellant claimed that he was at risk of persecution if returned to Albania on account of his membership of a particular social group described as victims of trafficking. The Appellant's father owed 10 million Albanian lek (approximately £70,000) to an individual called Orest who suggested that he could find the Appellant a job to repay the debt. Orest took the Appellant to Belgium where the Appellant had to beg. He and Orest then came to the United Kingdom illegally by climbing into the back of the lorry. Once in England they went to the house of a friend of Orest where the Appellant was not allowed to leave but was required to cultivate cannabis plants. On 5th November the police raided the property and the Appellant managed to escape. He met an Albanian man who helped him to claim asylum the following day. The Appellant believed that if returned to Albania his life would be at risk both from his father and from Orest. The Appellant could not relocate within Albania as his father or Orest would find him wherever he went.

The Decision at First Instance

4. The Judge heard evidence from the Appellant and Ms B Whetren the Appellant's girlfriend. A copy of the negative conclusive grounds decision was provided to the Tribunal by the Respondent. The Judge found that decision to be irrational because she accepted the Appellant's claim that he had been forced to work for Orest. She accepted that the Appellant's father had lost his job and borrowed money from a moneylender who called in the debt. The Appellant's father "sold" the Appellant to Orest to repay that debt, see [111] of the determination. The Appellant had been trafficked by his father and Orest but as he was a single adult male he would not leave need to live with his family upon return.
5. The Appellant would be able to support himself by finding a job. There was freedom of movement within Albania. Although the Appellant would need to register to obtain an identity card that of itself would not put him at risk of being located by his father or by Orest. There was a functioning police force in Albania but there were good reasons to consider that such persecution would not be repeated if the Appellant were returned to Albania and the appeal was dismissed.

The Onward Appeal

6. The Appellant appealed against this decision arguing that it was not open to the Judge to find that internal relocation would be reasonable for the Appellant or that there would be a sufficiency of protection in his particular circumstances especially as the Judge had mostly accepted the Appellant's credibility in his account. Trafficking was carried out by criminal gangs and it was irrational for the Judge to say that the Appellant had never claimed that his father or Orest were members of a significant gang or had connections to the police. It was arguably irrational to infer that because the Appellant did not refer to substantial gang activity this would mean that he was not in danger from the criminals who trafficked him.
7. It was accepted that there was a fully functioning police and judiciary in Albania but there were inadequate reasons given to explain why the Appellant would not be the subject of interest of the gang which trafficked him or his violent father. There would be very significant obstacles to the Appellant's ability to integrate into Albanian society upon return because he had been trafficked. He would have to start from nothing having never worked in Albania with no family networks to rely on and with a continued real fear of being tracked by an abusive and violent father and the traffickers to whom the father had sold the Appellant.
8. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Chohan on 30 May 2018. In refusing permission to appeal he found the findings made as a whole were open to the Judge and that adequate reasons had been given. The grounds seeking permission were no more than a disagreement with the Judge's findings. The Appellant renewed his application for permission to appeal to the Upper Tribunal and the application came before Upper Tribunal Judge Perkins on 2 October 2018. He found it arguable that Judge Wyman's decision that the Appellant did not need international protection because the Appellant could relocate within Albania was not open to the Judge or had not been explained properly. He gave permission on each ground but found point 6 to be the most troubling.
9. I assume that this was a reference to paragraph 6 of the grounds in which it was argued that it was irrational to infer that because the Appellant had not mentioned substantial gang activity he was not in danger from the criminals who had trafficked him.

The Hearing Before Me

10. The onward appeal was initially listed before Deputy Upper Tribunal Judge Taylor on 8 November 2018 but due to an administrative mishap notice of the hearing was not served on the Appellant and the subsequent decision of Judge Taylor (to dismiss the Appellant's appeal) was set aside and the matter was relisted when it came before me. The appeal was thus at the error of law stage. I was required to decide whether there was a material error of law in the decision such that it fell to

be set aside and the appeal reheard. If there was not a material error of law, the decision at first instance would stand.

11. At the outset of the hearing counsel applied for an adjournment of the error of law hearing on the basis that the Appellant's brother had come to the United Kingdom a year ago fleeing Albania for the same reason as the Appellant namely that his father wanted to sell the Appellant's brother to traffickers. The Appellant had been unaware of this and an adjournment was sought to enable the Respondent to consider the asylum claim of the Appellant's brother in the light of the positive credibility findings made by Judge Wyman in relation to the Appellant. This would show how far the Appellant's father was willing to go to pay his debt. Evidence of the brother's claim would be put forward in the Appellant's claim at the adjourned error of law hearing.
12. For the Respondent the Presenting Officer opposed the adjournment arguing that the brother's claim was irrelevant to the issue of materiality of an error of law on Judge Wyman's part.
13. I considered the application for an adjournment bearing in mind the principle established in the case of Nwaigwe, that the test of whether to adjourn is one of fairness. In this case the appeal had been determined by Judge Wyman and an application for an adjournment to adduce further evidence meant the matter came within the principles established by the case of Ladd v Marshall. Firstly, was the proposed evidence relevant to the issues to be decided by the court and secondly had it not been possible to produce that evidence earlier?
14. I was not satisfied on either of those two grounds that the test in Ladd v Marshall was made out. Firstly, it was not at all clear how the possibility of a claim by the Appellant's brother would impact upon the error of law hearing which I had to determine. The Judge had accepted the Appellant's credibility on the issue of being trafficked by his father and Orest. It was difficult to see what further assistance on that point the Appellant's brother could give in any event. Secondly, the Appellant's brother had apparently been in the United Kingdom for a year and it was not explained why this information had only come to light on the morning of the error of law hearing. Fairness did not require the adjournment of the case which I could properly decide on the basis of the papers and submissions. I therefore refused the application for an adjournment and the case proceeded.
15. Counsel relied on the grounds of onward appeal. Point 6 of the grounds which had troubled Judge Perkins the most was not a finding open to the Judge namely that Orest was not a member of a significant gang. Orest trafficked people out of the United Kingdom in order to make them work selling cannabis. He was a member of a criminal gang. Although there was freedom of movement within Albania there was a high degree of recording of personal information. Whilst the Kanun in relation to vendettas was little followed revenge killings by criminals were frequent. If the Judge had taken proper notice of the levels of criminality she might

have come to a different conclusion and would not have found that the Appellant was able to move around the country without being found. On return the Appellant would be at risk of re-trafficking.

16. In reply the Presenting Officer argued that the Judge was familiar with the background material on Albania. There was no reason why the Appellant could not relocate. This was always going to be a fact sensitive assessment of the risk to an individual. The Judge could only proceed on the evidence she had. There was no evidence that Orest had significant links to the police and the risk of being identified by him was limited. There was no reason why the Appellant could not get help from the authorities. There was no material error of law in the determination.
17. In reply counsel argued that the Judge's reasoning on internal relocation was very thin and followed on from a more thorough assessment of the Appellant's credibility. The evidence showed Orest was a significant criminal. TD [2016] UKUT 92 was a case on trafficked women from Albania and was on different facts to the instant case before the Judge and should not have been relied upon. In the event that the determination was set aside, the appeal should be remitted to the First-tier to be reheard.

Findings

18. Having found that the Appellant had been trafficked into the United Kingdom as a result of an arrangement between the Appellant's father and Orest the Judge held that the Appellant could safely relocate to Albania. He would not have to live in the family home but would be able to move around Albania and find work to support himself. The grounds argue that the person who trafficked the Appellant, Orest, was a criminal likely to have connections to the police and a member of a significant criminal gang.
19. The problem with that argument is that that was not the evidence before the Judge. The evidence was that trafficking the Appellant was a private arrangement between the Appellant's father and Orest. In the first place Orest would take the Appellant to Belgium but ultimately the Judge suspected to the United Kingdom where the Appellant would be expected to work to repay the debt. The Judge was very careful in her assessment of the evidence to base her findings on what she had in front of her. There was no indication that anyone else was involved in this arrangement. Indeed, it is significant that when the time came for the Appellant and Orest to travel to the United Kingdom from Belgium they travelled together on two occasions, clandestinely in the back of a lorry indicating that Orest was taking a very personal interest in what happened to the Appellant, he was evidently not delegating matters to others because there were no others involved. He had driven the Appellant to Belgium from Albania indicating, as the Judge found, there were no others involved.

20. It is significant to note that when the Appellant made his claim for asylum to the Respondent the Appellant was in possession of his own passport. The Judge noted that that was unusual for a victim of trafficking but whilst it did not undermine the Appellant's claim to be a victim, it did indicate that this was not a typical case of trafficking by a large or significant criminal gang who would otherwise have taken the Appellant's documents.
21. The Appellant sought in submissions to suggest that Orest was a member of a significant gang but as the Judge pointed out at [115] the Appellant had never claimed that either his father or Orest were members of a significant gang or had connections with the police. The Appellant did refer at question 148 of his substantive asylum interview to the fact he did not know where Orest and his friends were, but this was in the context of the period when the Appellant was working in the cannabis farm in the United Kingdom.
22. The Appellant had told the Respondent in interview that he had made no effort to approach the Albanian authorities and would not do so because he did not consider that they would help him. It is difficult to see how the Appellant was in a position to know that if he had not tried. The Judge was impressed by the background material which showed that Albania had a functioning police service and judiciary and that steps were taken to combat trafficking. Whilst no system of protection can be perfect, the Judge's view was that there was an adequate level of protection available for the Appellant to the Horvath standard. The Appellant's disagreement with this conclusion is speculation by the Appellant that the police would not support him because they would be in some way, not explained, connected to his father or Orest.
23. It is also speculative of the Appellant to suggest that Orest would have a continuing interest in him. Orest's whereabouts are not clear, he was last seen in the United Kingdom according to the facts as found by the Judge but what was important was the finding at [116] that there was a functioning police force in Albania who could provide a sufficiency of protection even if there was a continuing interest in the Appellant.
24. In the case of TD cited by the Judge it was said that trafficked women might have considerable difficulty in reintegrating into their home areas on return to Albania. The Judge contrasted that position with the Appellant's case. He was a single man with no children who had had the advantage of higher education and practical training. He had no physical or mental health problems and would be able to find work and support himself. These were conclusions which were open to the Judge on the evidence and the argument that the Appellant could not relocate to Albania is, I find, a mere disagreement with the decision. The Judge found that just because the Appellant would have to register for an identity card it would not mean that he would be at risk of being located either by his father or by Orest. There was no evidence only speculation by the Appellant that either the Appellant's father or Orest would have any ability to access the information kept by the Albanian

authorities on its citizens. Nothing in the grounds of onward appeal or the submissions made to me have elucidated that point further.

25. The threshold to cross to show irrationality on the part of a judicial decision is a very high one and the arguments put forward by the Appellant do not come close to showing that. This was a carefully reasoned determination in which the Judge was anxious to be scrupulously fair to the Appellant. It is conceded that she analysed the credibility issues carefully but because the Appellant does not agree with the Judge's equally cogent reasons for finding that the Appellant could safely relocate, the determination according to the Appellant suddenly became irrational. The Judge explained very carefully why the Appellant would not be at risk upon return notwithstanding the traumatic events which had occurred in the past.
26. The Appellant claimed that his rights under Article 8 would be breached if he were returned to Albania because there would be significant obstacles to reintegration. The Judge rejected this claim, see paragraph 24 above and adequately demonstrated why the Appellant could be expected to relocate. The grounds did not refer to the Appellant's relationship with Ms Whetren and rightly, very little was made in submissions to me about the Appellant's Article 8 private life claim. Little weight could be placed on that private life given that the Appellant's status in this country has been precarious. Overall, the Judge's findings were open to her on the evidence and the grounds of onward appeal are no more than a disagreement with the Judge's findings. They do not disclose any material error of law and I dismiss the Appellant's appeal accordingly.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed: Judge Woodcraft
Deputy Upper Tribunal Judge

Date: 12 February 2019

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed: Judge Woodcraft
Deputy Upper Tribunal Judge

Date: 12 February 2019