



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11767/2018

**THE IMMIGRATION ACTS**

Heard at North Shields, Kings Court  
On 19 July 2019

Decision & Reasons Promulgated  
On 21 August 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[E M]

Respondent

**Representation:**

For the Appellant: Mr P Stainthorpe, senior presenting officer

For the Respondent: Ms Soltani, Iris Law Firm, Middlesbrough

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Caskie who allowed the respondent's appeal against the decision refusing his asylum claim for reasons given in his determination promulgated 27 March 2019. This was after a hearing some 21 weeks earlier on 5 November at which the judge announced without giving reasons that the appeal was allowed.
2. The respondent is a citizen of Albania (Kukes) where he was born in October 2000. He arrived in the UK as a minor and claimed asylum. His immigration history is not clear as the refusal letter refers to a claim to have arrived clandestinely on 17 October

2016 but that he had been encountered by Border Force the previous day. His asylum claim was made on 10 November. The judge referred to the respondent having arrived on 17 July 2017 although he observed some confusion in the Home Office papers. I return to this aspect below. The claim was refused on 27 September 2018 by when the respondent was 17½ years old.

3. The basis of the respondent's claim is that he was the victim of domestic abuse by his father who has a problem with alcohol abuse and who was at the mercy of moneylenders. These money lenders had also threatened him to kidnap the respondent. The police were unable to assist. The respondent had obtained support from his grandparents but his father would bring him back home when he wished. The overland journey to the UK had begun when he was approached by three men after the respondent was asked by his father to go into town and sell cigarettes. They had said that they would take him to a safe place. The respondent's case is that these arrangements had been supported by his grandparents and his mother.
4. The Secretary of State refused the claim on the basis that it was not credible. The claim under the Human Rights Convention was also refused with particular reference to Article 8 which included also a best interests consideration.
5. In an earlier visa application that was made on 10 September 2015 the respondent had sought entry clearance as a student visitor to study English with a proposal that he would stay at a hotel in Brighton arranged by Junior ISIS for eight days. His father was recorded to be funding the visit costing £650. The visa was not granted.
6. The respondent gave evidence as well as his paternal uncle [SM]. The latter adopted a letter dated 15 October 2018. This explains that he is married, has two children and that he has lived here for nineteen years. He considers the respondent to be part of his family. He had only learned that the respondent was here some two to three months after his arrival. The respondent's girlfriend also gave evidence.
7. A further aspect of the evidence included the provision of details of another Albanian citizen said to be the respondent's cousin on whose behalf a similar claim was made in 2015.
8. The challenge to the judge's decision is as follows:

**"Committing a procedural impropriety**

1. The Tribunal's determination fails to disclose that, as is characteristic for this Judge, a decision was made at the end of the PO's submission. The Tribunal decided that it had enough information to allow the appeal in court without hearing from the appellant's representative and without providing any reasons for reaching his conclusion. While such an approach is conceivable, it is respectfully submitted that the frequency with which this particular Judge does this, calls into question the independence and reliability of the conclusions reached. Furthermore, this decision was clearly made without full consideration of the documents served on the day of the hearing or with little consideration of the evidence that was adduced in cross-examination.

### **Failing to give adequate reasons for findings on a material matter**

2. It is also submitted that another aspect of this Judge's alacrity in allowing the appeal was that he failed to make a finding on key elements if [sic] the evidence in the credibility assessment.
3. The PO noted that in a visit visa application 12 months before the appellant arrived in the UK, his father had been prepared to pay £650 for the appellant to come to the UK on a school visit. The PO submitted that this contradicted the appellant's assertion that his father was poor, he was indebted to money-lenders and he was abusive to the appellant. It is also contradicted the appellant's claim that his father prevent him attending school. The Tribunal made no finding on these points but simply accepted the appellant's account.
4. The PO also made the submission that this was a package claim. He noted that the appellant's cousin had used exactly the same account in his successful asylum claim only a couple of years earlier. The Tribunal made no finding on whether this was coincidence or an apparent abuse of the Immigration Rules. Given that the accounts were the same, it is remarkable that Tribunal simply mentioned it in passing at paragraph 24 of the determination without making any finding on its relevance to this case.
5. It is submitted that, at the very least, the credibility assessment is incomplete. Furthermore, it is submitted that if the tribunal had made reasoned findings on this evidence, it would have surely found against the appellant."

9. The judge set out his conclusions in his decision at [23] to [31] as follows:

- "23. I have considered all the documentation on the file. I begin the explanation of my consideration of the matters to be determined in this case by noting the standard of proof in a case such as the present one is low. The appellant only requires to establish a real risk of suffering serious harm in order to succeed in his appeal.
24. In the present case I note that the Secretary of State rejected the appellant's claim to have a bad relationship with his father and indeed the decision letter specifically indicates that his father paying for a school trip indicated that the appellant had a good relationship with his father. However, it was the appellant's bad relationship with his father which the Secretary of State considered relieved him of his obligations in terms of family tracing. I note that the documentation produced in respect of the appellant's cousin was not accompanied by any consent form for that information to be released despite the Data Protection obligations upon the Secretary of State. Ms Little, the appellant, the appellant's agents and myself now have a significant amount of information in relation to the appellant's cousin's asylum claim.
25. Background information has been produced to me in relation to the prevalence of domestic violence in Albania. It is indicated in a Council of Europe document that "the inclination to preserve the unity of family at all costs also explain disturbing failures in the procedures for issuing protection orders for children". Amnesty International in February 2008 reported that domestic violence had increased. The United States Department of State indicated that the police often did not have the training or capacity to deal effectively with domestic violence and Freedom

House indicated that “domestic violence is widespread, and whilst the Parliament has adopted some measures to combat the problem in recent years, few cases are prosecuted. Police are poorly equipped to handle cases of domestic violence which is often not understood to be a crime”. The European Commission in April 2018 indicated that domestic violence remained a serious concern in respect of Albania.

26. It is against that background that I require to consider the appellant’s claim. What he claims happened to him in Albania clearly happens to many in Albania and that adds weight to the reliability of the appellant’s evidence. It also adds weight to the appellant’s claim that both he and his cousin had been subjected to similar maltreatment.
27. The appellant’s account of having attempted to report matters to the police but them not responding also accords with the background information. It is clear to me that the appellant’s account of his flight from Albania was not one involving him being approached at random by three men who then brought him to the UK. The fact that those men were said to hold the appellant’s passport indicates at a minimum that his mother, who it was said previously had possession of his passport, had involvement.
28. In relation to the statement by the appellant that neither he nor his family were in fear of others with regard to his travel to the United Kingdom it did not appear to me to be contradictory of the position of the appellant stating that he was afraid of three men who were threatening to abduct him. The possession by three other men of his passport was a matter which may have provided the appellant with a degree of reassurance that these men were at least being supported by his mother.
29. In relation to the delay in the appellant claiming asylum, when he arrived in the United Kingdom as a 16-year-old, I accept that his lack of knowledge of how to go about claiming asylum until he had obtained advice provides an adequate explanation for that delay. Given the widespread occurrence of domestic violence in Albania and the lack of willingness and ability on the part of the state agencies to protect individuals from it by being unwilling or unable to provide protection, for the reasons given at paragraph 25 above I am satisfied that victims of domestic violence in Albania, and in particular child victims of such violence form a particular social group for the purposes of the Refugee Convention. The social group in question is children. Not all children in Albania suffer domestic abuse. Those who suffer domestic violence form part of an identifiable group within that group and are unable to obtain a sufficiency of protection and are entitled to recognition as refugees.
30. In relation to the ability of the appellant to be traced by, in particular, his father I consider it properly a matter within judicial knowledge that Albania is one of the many European countries that operates an identity card system. A single corrupt official with access to that system would allow any Albanian to be traced. I consider that the patriarchal society that is Albania, as demonstrated in the background information before me, makes it at least reasonably likely that the appellant’s departure from the power of his father, who could be regarded to be a violent alcoholic gambler is a significant slight. I consider that would provide motivation

for the appellant's father to seek to continue to harm the appellant and that therefore he continues to be at risk of persecution.

31. There is no doubt that the appellant's claim for asylum looks distinctly suspicious. It did not appear to me, having had the opportunity to observe the appellant providing his oral evidence and be cross examined in some detail by Mr Appleby that the appellant was a young man with guile to effectively conceal the truth. Of course, it is possible that the appellant and his uncle and his family in Albania noted the opportunity that arose when this boy was going on a school trip to the United Kingdom to take the opportunity that presented. Ultimately the question for me is whether the opportunity identified was an opportunity to make a better life in the United Kingdom than the appellant could realistically hope for in Albania or alternatively so that he could escape the malign clutches of his father. Looking at the evidence overall in this case (and leaving out of account the actions and inactions of the Secretary of State entirely) I am satisfied that the appellant has discharge the onus upon him of establishing that he has a well-founded fear of persecution in Albania. He was a credible and in my view reliable witness. That was my view at the conclusion of the hearing, and it remains my view today."
10. Mr Stainthorpe relied on First-tier Tribunal Presidential Guidance Note No 1 of 2014 in relation to the first limb of ground 1. That guidance provides at paragraph 21:
    - "21. Notwithstanding that there is power in rule 29 to give a decision notifying the parties of the outcome of an appeal orally at the hearing the Tribunal will continue to reserve the substantive decision in an appeal and issue a notice of decision and statement of reasons as a single document in every case. It will be inappropriate to give an *ex tempore* decision without giving a full statement of reasons at the same time. This is because the factual questions and other issues in dispute in appeals to the Immigration and Asylum Chamber are usually complex and the parties are entitled to receive a full statement of reasons for the decision."
  11. Mr Stainthorpe argued that given the complexity of this case, it was improper for the judge to allow it at the hearing. The presenting officer's note did not include an indication of the length of the hearing, however Ms Soltani intervened and explained it had taken two hours 24 minutes. Mr Stainthorpe argued that the judge had not properly considered the evidence and had failed to resolve the conflict in evidence having regard to the position taken by the Home Office. The judge's reference to the respondent being part of a social group was undermined by the fact that he was over 18 years old at the date of hearing. He further illustrated his challenge by reference to other aspects of the credibility findings and argued that although the judge could have read the country information on the day, he nevertheless contended that he could not have "reconciled" it. In addition, he contended that the judge had significantly erred in [30] by reference to the identity card system which had not been raised with the presenting officer at the time of the hearing.
  12. By way of response Ms Soltani argued that Mr Stainthorpe had argued matters that were not within the grounds of challenge. In particular, she pointed to the aspect relating to social group. In response to my suggestion that this might be a *Robinson*

obvious point, she accepted it might be but referred again to the silence of the grounds on this aspect. According to her note of the hearing, it had not been raised and was not in the reasons for refusal. She contended that there was no correlation between the alleged procedural impropriety giving the decision on the day and not considering matters properly. Simply because the judge had indicated that he did not need to hear from the respondent's representatives did not result in error and she relied on a r.24 response (which I turn to below) that deals with all the complaints pleaded in the grounds specifically in relation to the points raised by the Secretary of State about the visa application, it was misconceived. The judge had set out in [10] of the decision significant detail in relation to the role of the grandparents in that application. Although the point had been made by Mr Stainthorpe it was simply not the case that members of the judiciary such as an experienced judge would be unable to engage with those issues on the day.

13. By way of response Mr Stainthorpe referred to paragraph 27 of the refusal letter which raised a Convention reason as an issue.
14. The Rule 24 response dated 18 July made the following points:-
  - (i) No evidence was adduced to support the contention that there was any difficulty with the judge's independence.
  - (ii) The grant of permission was solely on the basis that it might be arguable the judge had failed to take certain issues potentially adverse to the respondent's credibility into account being:-
    - (a) failure to take into account the apparent contradiction between the evidence in the visa application of the respondent's father's readiness to finance the trip against the latter's claim that his father was poor and indebted to money lenders; and
    - (b) failure to take into account that this was a "package claim".
  - (iii) As to (a) above, the tribunal had recorded that it was the respondent's grandfather who had wished for him to escape and had assisted with his application. As to (b), it was factually incorrect to assert the tribunal had only dealt with this in passing; the judge had cited the respondent's evidence on the point at [11] where the point was put to him. He had responded by suggesting that they both had similar problems with their family. The judge had by way of analysis referred to the matter at [24] and had assessed the objective material and notes at [26] the support for the respondent's claim that he and his cousin had both been subjected to similar maltreatment.
15. My conclusions are as follows. Ground 1 is in two parts. The first is a procedural one as to whether it was appropriate for the judge to announce the decision of the hearing and the second limb raises the issue whether there had been adequate consideration by the judge of the evidence. The Presidential Guidance Note makes its purpose clear in paragraph [1]:

“... This guidance is for information only and is intended to assist individual judges in exercising their responsibilities but is not intended to detract from the duty of each judge to make decisions in proceedings before them”.

16. Rule 29 of the Tribunal Procedure Rules 2014 provides, relevant to this issue;

“29. – (1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 13(2) (withholding information likely to cause serious harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 4) which disposes of the proceedings –

(a) a notice of decision stating the Tribunal’s decision; and

...

(3) Where the decision of the Tribunal relates to –

(a) an asylum claim or a humanitarian protection claim, the Tribunal must provide, with the notice of decision in paragraph (2)(a), written reasons for its decision;

...”.

17. In my judgment the judge made no error of law in announcing his decision at the hearing and giving his written reasons with written notice of that decision, albeit several weeks later. Failure to follow guidance does not of itself result in the judge having erred in law.

18. The second limb to ground 1 argues that the decision was made without full consideration of the documents served on the day of the hearing and/or with little consideration of the evidence that was adduced in cross-examination. The documents served the day of the hearing comprised a full page paper entitled Refugee Documentation Centre (Legal Aid Board, Ireland) ‘Albania Information on Domestic Violence’, dated 25 June 2018 from the Secretary of State. Included in the bundle from the respondent’s representatives were several pages of material relating to child protection issues in Albania. The decision of Judge Caskie refers to this material at [7] which he analysed it at [25] as follows:

“Background information has been produced to me in relation to the prevalence of domestic violence in Albania. It is indicated in a Council of Europe document that ‘the inclination to preserve the unity of family at all costs also explain disturbing failures in the procedures for issuing protection orders for children’. Amnesty International in February 2018 reported that domestic violence had increased. The United States Department of State indicated that the police often did not have the training or capacity to deal effectively with domestic violence and Freedom House indicated that ‘domestic violence is widespread, and whilst the Parliament has adopted some measures to combat the problem in recent years, few cases are prosecuted. Police are poorly equipped to handle cases of domestic violence which is often not understood to be a crime’. The European Commission in April 2018 indicated that domestic violence remained a serious concern in respect of Albania.”

Evidence given in cross-examination is set out in paragraphs [14] and [15]. There is no need to repeat that here. It was not incumbent upon the judge to give reasons for his decision at the hearing and it cannot be said that the written decision is devoid of reasoning or analysis on these two aspects.

19. The second ground of challenge argues in general terms that the judge had failed to make a finding on key elements of the evidence in the credibility assessment. This is followed by the two examples relating to the respondent's father's role in the visa application and the evidence produced by the Secretary of State that this was a "package claim". Here again I consider the judge did address the two points particularly raised. The "package" aspect was addressed in [17] and further in [24], the respondent's father's funding being also addressed in that latter paragraph. The judge had earlier noted in [10] the respondent's explanation that his grandfather would be paying for the trip and having found the respondent to be credible, it may be reasonably assumed that the judge considered this aspect had been dealt with.
20. Notwithstanding these matters, I have concerns about the correctness of approach of the judge to the task before him. There is some evidence of carelessness. In paragraph [1] he refers to confusion in the papers provided by the Secretary of State as to the date on which the respondent arrived in the United Kingdom and as to whether this was the 16, 17 or 18 July 2017. He concluded that he was satisfied "by the preponderance of evidence" that he arrived on 17 July 2017. It is difficult to see how the judge could have rationally concluded this was the arrival date on the papers before him. The summary of immigration history in the summary of the Home Office case refers to the respondent's arrival on 18 July 2017. This was readily acknowledged by Mr Stainthorpe to have been an error. The respondent's own evidence disclosed in the screening interview was that he had travelled overland (rather than by sea as indicated in the Home Office summary) and furthermore the refusal letter sets out the immigration history with this chronology:

12 October 2016	Left Albania
16 October 2016	Encountered by Border Force Officer
17 October 2016	Claimed to have arrived
10 November 2016	Claimed asylum

Although this chronology has its flaws, it was never the respondent's case that he arrived in 2017 or in July of either 2016 or 2017.

21. In paragraph [10], the judge referred to the respondent's evidence relating to the visa application and observed:
- "... The confirmed that the application had been for an 8 day school trip, but he said that once he arrived in the UK, he had applied for asylum but that had been refused".

It was not the respondent's case that the visa had been granted. When positing the possibilities in paragraph [31] the judge as will be seen from the passage cited above



that he considered the possibility of the opportunity that arose when the respondent was coming here on a school trip. The judge does not appear to have understood that the visa was never granted.

22. I accept Ms Soltani's submission that neither aspect is material but I am left with a sense of unease over the care with which the judge approached the task before him, not only as to the issue of credibility but also the factors he was required to consider in assessing whether the respondent had a well-founded fear of persecution. These matters in my judgment come within the scope of the broad introduction to the second ground. On the respondent's evidence, the threat of his kidnap resulted in his father paying the debt and thus it is reasonable to assume it had subsided. This left a claim based on the father's abuse. It is clear on the evidence that the respondent's grandparents provided him with protection from that abuse but there was no explanation why they did not go to the police to obtain protection in the light of the respondent's lack of success. There is also a question mark over the nature and extent of abuse by the respondent's father. The judge appears to have proceeded on the basis that the account he was given was sufficient to amount to persecution. Whether the respondent as a minor came within a social group required more than the short analysis at the conclusion of [29].
23. The judge records in paragraphs [14] and [15] the evidence of the respondent's uncle. This included the indication that he had not found out about his arrival until two to three months after it had happened. He had been telephoned by the respondent. He had spoken to the respondent's grandparents but they had said they had not wanted him to become involved prior to the respondent's arrival. [SM] is the respondent's paternal uncle. Bearing in mind his annual visits to Albania it is reasonable to suppose that he has maintained contact with his family. The judge does not address the plausibility of [SM] being unaware of the respondent's journey despite the evidence that this was organized by his grandparents until some time after his arrival.
24. It is unarguable that by the time the appeal came before the judge, the respondent was no longer a minor. Whatever had happened in the past, he was no longer within the identified social group and furthermore the judge did not give any real consideration to the issue as to what would happen to the respondent were he to be returned as a young adult. This would inevitably have involved considerations of internal relocation to for instance Tirana and the exploration of whether this would be unduly harsh in the context of any connections there should the respondent be unable to establish the availability of protection in Kukes should there be a risk of repetition of the respondent's father's hostility.
25. In my judgment this case did not ultimately fall to be resolved as one of whether the respondent had fabricated a claim for a better life or whether he was in need of refugee protection. Instead it required findings of fact and an assessment of risk based on those findings that the respondent would face were he to be returned to Albania by the time the judge came to give his reasons in March 2019. The failure by the judge to address legitimate issues of credibility are sufficiently captured by

ground 2. The other aspects of concern relating to the application of Refugee Convention law are in my judgment *Robinson* obvious and were matters that the judge failed to address.

26. I am satisfied the judge therefore erred in law and set aside his decision. Having regard to the nature of the errors, I am satisfied that the case requires to be remitted for its further consideration by a differently constituted tribunal. None of the findings of Judge Caskie is preserved.

Signed

Date 19 August 2019

*UTJ Dawson*

Upper Tribunal Judge Dawson