



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000693
First-tier Tribunal No:
PA/51985/2020
IA/02012/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

A B
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel, instructed by ABN Solicitors
For the Respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 15 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Sweet (“the judge”), promulgated on 22 August 2021 following a hearing on 19 August 2021. By that decision, the judge dismissed the Appellant’s appeal against the Respondent’s refusals of his protection and human rights claims.
2. In essence, the Appellant, a national of Albania, had asserted that he would be at risk on return to his home country from a criminal gang who had sought to force him to work at a cannabis farm and from whom he had borrowed money. It was said that on return they would have an adverse interest in him and that he would be at risk. In addition, it was said that mental health conditions were relevant both to the protection claim and the human rights claim.
3. The judge concluded that the Appellant’s claim lacked any credibility: [26]. At [29], the judge purported to go on and make an “even if” conclusion to the effect that in any event the Appellant would not be at risk on return to Albania.
4. Permission to appeal was initially refused by the First-tier Tribunal, but then granted by the Upper Tribunal in respect of concisely drafted grounds which essentially asserted that the judge had failed to take material evidence into account.
5. At the hearing I received concise and helpful submissions from both representatives.
6. I conclude that the judge has materially erred in law. With respect, it is plain that the judge failed to engage with relevant evidence before him, specifically that contained in a lengthy witness statement from the Appellant and the assessment and opinions of Dr Al-Wakeel in respect of

the consistency of scars on the Appellant's body with claimed past events.

7. It is the case that a judge need not necessarily address each and every item of evidence before them. However, it is for a judge to identify and then assess the core aspects of the evidence. In this case it is clear that those core aspects included the witness statement and the medical report. Both aspects of the evidence to which I have referred contained material evidence that went to the question of the credibility of the account. Thus, the judge made an error of law.
8. As to whether the error was material, I have considered what the judge said at [29] and [33]. As a general proposition, it is open to a judge to make an "even if" finding, i.e. to consider an individual's case at its highest and make findings in respect of the law and in the context of, for example, the country evidence. Having said that, such an alternative consideration must be sufficient in its analysis and findings.
9. In the present case what is said at [29] and [33] is inadequate. At [29], the only stated reason in support of the conclusion that there would be no risk on return was the apparent fact that the Appellant had not himself been harassed by the leader of the criminal gang since leaving Albania. At [33], the judge made reference to objective evidence relating to mental health services in that country and also that there was a sufficiency of protection, with reference to matters set out in the reasons for refusal letter. There is no identification of what the "objective evidence" was, no assessment of any evidence other than that stated in the reasons for refusal letter, no statement of findings relating to the particular aspects of the Appellant's account, including the nature or the potential influence of the individual concerned, and no assessment of whether internal relocation was a possibility (which is a distinct question from whether there was sufficiency of protection).
10. In summary, the alternative conclusion was legally inadequate and thus it follows that in the exercise of my discretion, the judge's decision

has to be set aside. Both representatives were agreed that if material errors of law were found, this appeal should be remitted to the First-tier Tribunal. I agree. There needs to be a complete rehearing of the Appellant's case with no preserved findings of fact and that hearing will be conducted by a judge other than First-tier Tribunal Judge Sweet.

Anonymity

11. It is appropriate to make an anonymity direction in this case, given that the Appellant continues to rely on protection-related issues.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and that decision is set aside.

The Appellant's appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete re-hearing, to be conducted by First-tier Tribunal Judge Sweet.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 16 May 2023