



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal Nos: UI-2022-003890
UI-2022-003889
First-tier Tribunal Nos:
PA/12390/2019
PA/02323/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 December 2023

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MB (1)
EB (2)
(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A. Chakmakjian, counsel instructed by Turpin & Miller LLP
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

Heard at Field House on 4 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, because this is a protection appeal, the appellants are granted anonymity.

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

DECISION AND REASONS

1. The appellants, who are brothers, are citizens of Albania who appealed to the First-tier Tribunal (“the FtT”) against decisions refusing their protection and human rights claims. The decisions were made on 3 December 2019 and 24 February 2020, respectively.
2. The appeals initially came before First-tier Tribunal Judge Bird who, in a decision promulgated on 12 February 2021, dismissed both appellants’ appeals. However, in a decision promulgated on 12 October 2021 Upper Tribunal Judge Blum set aside her decision and remitted the appeal to the FtT for a fresh hearing. However, he concluded that there was no error of law in Judge Bird’s finding that the second appellant had rebutted the presumption of serious crime and danger to the community; the ‘section 72’ certificate pursuant to s.72 Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). Judge Blum directed that that aspect of Judge Bird’s findings be preserved.
3. The remitted appeal came before First-tier Tribunal Judge Hussain who also dismissed the appeals, in a decision promulgated on 27 June 2022. Contrary to Judge Blum’s decision, Judge Hussain did consider again the s.72 certificate and found that the second appellant had not rebutted the presumptions, specifically that part of it that relates to danger to the community. This is a matter which features in the grounds of appeal to the Upper Tribunal (“UT”) about which we refer in more detail below.
4. The further background to the appeal can conveniently be taken from Judge Blum’s very concise but comprehensive summary of the appellants’ backgrounds and the basis of their protection appeals. He said as follows:
 - “3. On 5 August 2014 the 2nd appellant was kidnapped and beaten by the members of the Elezi family (Armir, Edmond and Samet Elezi, hereafter “the Elezi brothers”) because they suspected him of stealing from their shop in Kukes, a city in north-eastern Albania. The 2nd appellant’s father reported the kidnapping and beating to the authorities and the Elezi brothers were arrested together with the “chief of the public order police” in Kukes, who it was claimed was their accomplice. The Elezi brothers and the police officer were arrested and prosecuted. The three Elezi brothers were found guilty, and each sentenced to 3 years imprisonment, reduced by a third in compliance with article 55 of the Penal code, and then suspended for 2 years. The police officer was found not guilty.
 4. The 2nd appellant claimed he left Albania in 2014 having received threats from the Elezi brothers and that he feared for his life. He claimed to have entered the UK illegally at the end of 2014. In December 2016 the 2nd appellant was charged with a criminal offence and remanded in custody. He initially claimed to be Lithuanian. On 6 January 2017 he was convicted of possession of a class A drug with intent to supply and sentenced to 2 years imprisonment. He was also sentenced to 4 months imprisonment in respect of an offence relating to fraudulent identity documents, which

003890

UI-2022-

003889

was served concurrently. A claim to be a victim of trafficking was rejected. A deportation order was signed against him on 30 August 2017, and he was deported on 16 September 2017. The 2nd appellant illegally re-entered the UK and was arrested on 28 April 2018. He claimed asylum on this date.

5. The 1st appellant claimed to have left Albania in fear of his life in January 2016 and to have arrived in the UK illegally in February 2016. He claimed asylum on 15 November 2016.
6. Based on broadly consistent answers given by the appellants relating to the kidnapping and subsequent investigation, as well as court documents and newspaper articles and external evidence considered by the respondent, the claim relating to the 2nd appellant's kidnapping and the subsequent prosecution was accepted by the respondent.
7. The appellants further claimed that, following the reporting of the kidnapping by the appellants' father, he and the 1st appellant were assaulted by the Elezi brothers and the appellants were subsequently threatened by the Elezi brothers. The appellants claimed that they and their father confined themselves to their home fearing an attack from the Elezi brothers. The appellants claimed that the Elezi brothers were powerful and influential and that the authorities would be unable to protect them from a blood feud or vendetta. The respondent did not accept the appellants claim that they or their father had been threatened by the Elezi brothers, or that the appellants and their father had confined themselves to their home, or that the Elezi family were as powerful and influential as claimed. The respondent noted that the appellants' father continued to reside in Albania. The respondent was not satisfied that the appellants were claiming asylum for a Refugee Convention reason. The respondent considered that the Albanian authorities would be able to provide the appellants with a sufficiency of protection and that they could, in any event, internally relocate. In respect of the 2nd appellant the respondent issued a certificate under s.72 of the Nationality, Immigration and Asylum Act 2002 on the basis that he had been convicted of a serious offence and posed a danger to the public."

Judge Hussain's decision

5. The following is a summary of the main findings made by Judge Hussain. He started his findings at para 77 and stated at para 78 that he would deal with the second appellant's case first because his claim had been certified under s.72 of the 2002 Act. As already indicated, Judge Hussain concluded that the second appellant had not rebutted the presumptions within s.72 of the 2002 Act.
6. At para 81, Judge Hussain found that the second appellant had not rebutted "the presumption", referring to the sentence of 28 months imprisonment. He said that the second appellant merely stated that since his release on licence he had not committed any other offence, but he entered the country illegally in 2014 and remained and engaged in criminal activity of a serious nature. He went on to state that rather than

003890

UI-2022-

003889

admit his guilt the second appellant asserted that he was forced into drug-dealing by “the henchman” of the smuggler who brought him to the UK to pay off the £10,000 debt that he owed him, which he said would undoubtedly have been matters that would have been considered by the sentencing judge, although pointing out that he did not have the sentencing remarks before him.

7. At para 82 he said that he did not accept that the appellant was coerced into involvement in drugs because if he had been able to live in the UK for two years without any adverse consequences from the smuggler he could have rejected the proposal to get involved in drugs. Furthermore, despite being removed from the UK pursuant to the deportation order he illegally returned the following year. He found that he could have claimed asylum *en route* in one of many countries, and only applied for asylum in the UK when caught. He found that the conclusion was “inescapable” that the second appellant had no regard for this country’s laws and remains a danger to the safety of the community.
8. In the next paragraph Judge Hussain concluded that that finding disposes of the second appellant’s appeal on Refugee Convention grounds, but he went on to state that he had nevertheless considered whether the second appellant would be entitled to refugee status had he not upheld the certificate.
9. At para 85 Judge Hussain noted that the respondent accepted that the second appellant was kidnapped by the Elezi family. However, the respondent had pointed out that the Elezis suspected that it was the second appellant who had stolen their property whereas the second appellant maintains that it was his friend that did it. he concluded that the Elezi family would not have wasted their resources in kidnapping the second appellant to discover the whereabouts of their property when on his account the second appellant’s friend had been arrested by the police. Since the second appellant alleged that the police chief was a relative of the Elezis, Judge Hussain found that they could have used any means to make the real thief confess and reveal where their property was.
10. At para 86 Judge Hussain said that he found it implausible that if the Elezi were a well-known criminal gang with wealth and wide reach amongst law enforcement agencies, the second appellant’s father would have reported his kidnap to the police. That, he concluded, would have incurred the wrath of the Elezi family and the appellant’s family would have known that the police would take no action. Furthermore, he concluded that it made no sense in the circumstances for the second appellant to have been detained only for 4-6 hours during which all they did was just beat him, if the purpose of the kidnapping was to obtain information about their property.

003890

UI-2022-

003889

11. Judge Hussain then found, at para 86, agreeing with what is said in the respondent's decision letter, that it seemed strange that it was the second appellant who was the target of threats to kill rather than his father who had reported the Elezi family to the police. He rejected the explanation given by the second appellant in his witness statement.
12. He also concluded that the second appellant's explanation for his being targeted rather than his father, namely that he could have been used to work for them but his father was in ill-health, contrasted with the explanation offered by the expert evidence relied on by the appellant, namely that the second appellant was a 'high value' target as potentially being seen as a successful member of the family.
13. In para 89 Judge Hussain found that the Elezi family have had to suffer the humiliation of being convicted and sentenced, even though the sentence was suspended, and it was not self-evident, therefore, that choosing revenge would have been the obvious option for them. It was "equally likely" that they would want to lie low and hope that in time the "episode" (presumably the kidnap), would be forgotten about.
14. As regards the further 'blood feud'-type explanation, supported by the expert evidence, Judge Hussain did not accept it given that the second appellant made no mention of any 'agreement' between the families as in a blood-feud in his witness statement, and because it was not plausible generally that the mere breach of an 'agreement' in Albania would lead an aggrieved party to kill.
15. At para 94 he said that he did not accept that it was "likely" that the second appellant has a subjective fear which is objectively justified that he would be ill-treated by the Elezi family on return. He found at para 85 that the second appellant "was in a rush to return" to Albania to see his ill father but he found that it was unlikely that he would have returned if the Elezi family was so powerful, including in terms of how he would have been able to get past immigration if they had "eyes" everywhere.
16. He also found it remarkable that if the Elezi family wanted to kill the second appellant they would have visited the appellant's father in hospital and inform him that they know that the appellant had returned to Albania, which he found would be tantamount to tipping off the appellant that they were coming to get him.
17. Although the second appellant said that he only stayed in Albania for a short time and spent most of his time in Kosovo, he had not provided any documentary evidence of his entry and exit from Kosovo.
18. He then concluded at para 98 that for the reasons he had given "and those specifically not mention[ed] as well as many of the reasons given by the respondent", the second appellant had not shown that there was a real likelihood of his being ill-treated on return by the Elezi family.

003890

UI-2022-

003889

19. At para 99 Judge Hussain said this:

“The 2nd appellant’s asylum claim also relies on fear of the Elezi family for the same reasons. In light of my findings that I do not accept that it has been shown that the first appellant has a subjective fear, which is objectively justified, I have to reach the same conclusion in regards this appellant’s claim also.”

20. We think that the reference in the first sentence in the quotation above to the second appellant must be a reference to the first appellant, and similarly the reference to the first appellant in the second sentence ought to be a reference to the second appellant. That is because at para 78 Judge Hussain said that he would deal with the second appellant’s case first and his findings up to that point are plainly confined to the second appellant’s case. Mr Chakmakjian raised this in submissions and Mr Melvin did not dissent from it.

21. Judge Hussain then also rejected the human rights grounds of appeal in terms of Article 8, concluding that those claims had been adequately dealt with by the respondent.

The grounds of appeal and oral submissions

22. The grounds of appeal upon which permission to appeal was granted are sevenfold and which we summarise. Ground 1 asserts that Judge Hussain had no jurisdiction to consider the s.72 certificate because that issue had already been determined in the second appellant’s favour and the remittal to the FtT retained that finding.

23. Ground 2 alleges a failure to consider material evidence and/or a failure to give reasons, in that Judge Hussain failed to assess the first appellant’s evidence and account but simply rejected it in the light of his conclusions in respect of the second appellant.

24. Ground 3 contends that there was a failure to consider background evidence in relation to the criminality, power and influence of the Elezi family, specifically with reference to para 86 of Judge Hussain’s decision.

25. Ground 4 contends that Judge Hussain erred in failing to have regard to the appellants’ skeleton argument and the submissions in it in relation to matters that he made adverse findings about. The grounds describe this as procedurally unfair.

26. Ground 5 argues that there was an erroneous approach to plausibility, contending that Judge Hussain’s approach to plausibility is based on generalised propositions, presumption and speculation and fails to make reference, or have regard to, relevant authorities on plausibility.

003890

UI-2022-

003889

27. Ground 6 relates specifically to Judge Hussain's conclusions at para 87 in relation to the second appellant's kidnapping and the continued pursuit of him to exploit him, which it is argued fail to have regard to the chronology of events as described by the second appellant, and the motivation of the Elezi family.
28. Ground 7 asserts an erroneous approach to the correct standard of proof in terms of Judge Hussain's use of phrases such as "equally likely", "likely" and "unlikely" in his assessment of the second appellant's account. This ground also alleges an "error in principle" in terms of an approach to the evidence that was treated as binary without an evaluation of intrinsic and extrinsic credibility.
29. In his oral submissions Mr Chakmakjian relied on the grounds but commenced his submissions with ground 3. He referred us to paras 18-19 of the respondent's skeleton argument which responds to ground 3. He submitted that although the respondent's skeleton argument suggests that the documentary evidence was considered in the decision letter, which Judge Hussain adopted, in fact the documents that ground 3 asserts were not considered by Judge Hussain were not before the decision-maker at the time of the refusal.
30. Mr Chakmakjian took us to those documents which, in summary, relate to what is said to be the influence of one Alfred Elezi, a chief of police, and the connections and nationwide reach of the Elezi family. Our attention was drawn to what is said to be an opinion by an Albanian lawyer on the disproportionate leniency of the sentences imposed on the Elezi brothers. That evidence from the Albanian lawyer was not before the respondent when the decision was made, he argued. It was submitted that this evidence was relevant to state protection. It was evidence that Judge Hussain had not dealt with.
31. As regards ground 2, Mr Chakmakjian emphasised in particular that Judge Hussain had said at para 99 that having rejected the second appellant's account "I have to reach the same conclusion" in relation to the first appellant claim. He submitted that this was a crystal clear error of law in circumstances where there were two appellants, two asylum interviews, two decision letters and where both appellants had given oral evidence. It was incumbent on the judge to consider both of their cases "holistically" and there was an explicit failure to do that, it was submitted.
32. In answer to a question from Judge Kopieczek as to whether there was a hypothetical scenario in which one appellant's appeal could succeed and the other not, Mr Chakmakjian suggested that there could be such a scenario if a view was taken on who the persecutors might target. In addition, the second appellant did not have the same experience as the first appellant. The second appellant fled first, but the first appellant spent some time in hiding and fled Albania 18 months later. As regards

003890

UI-2022-

003889

the complaint to the police, the first appellant waited outside the police station with their father and they were attacked, whilst the second appellant was inside the police station.

33. It was also submitted that it was relevant that the two accounts by the appellants were given separately, and they were consistent and corroborative of each other.
34. As regards ground 4, Mr Chakmakjian gave the example of the submissions at para 15 of his skeleton argument in terms of the need to consider paragraph 339K of the immigration rules (past persecution and indication of future risk), and the submission in the skeleton argument that extortionate demands of the Elezi family are in line with a criminal enterprise. Mr Chakmakjian referred to other aspects of the skeleton argument that was before Judge Hussain in relation to the power and influence of the Elezi family, and background evidence about, for example, corruption, ineffectiveness of state protection and various factual matters specific to these appellants. It was submitted that these matters had not been considered by Judge Hussain.
35. Ground 5 and the 'plausibility point' was relied on as in the grounds. It was additionally submitted that although Judge Hussain was entitled to reject an account on the grounds of plausibility, there is no indication that he had regard to the warnings about doing so as set out in the authorities referred to in the grounds.
36. Mr Chakmakjian's submissions in relation to ground 6 again followed the grounds. The point advanced is that Judge Hussain's conclusion is not logical in relation to the kidnapping and beating of the second appellant and Judge Hussain's suggestion that if his persecutors wanted to pursue him to make him work for them they could have asked him whilst they had him kidnapped. The grounds argue that the motive to extort the second appellant for money or work in lieu of money was a consequence of the family reporting the kidnapping to the police. Judge Hussain had, therefore, misunderstood the chronology, it was submitted.
37. In relation to ground 7 (wrong standard of proof), Mr Chakmakjian accepted that wording may vary but in this decision there were too many occasions when the standard of a balance of probabilities was referred to in the context of such an important decision as a protection claim. It was submitted that there was a conflation and dilution of the standard of proof.
38. Lastly, as regards ground 1, it was submitted that Judge Hussain had made findings on the s.72 certificate that were outside the jurisdiction of the appeal before him. He had made adverse credibility findings in relation to the second appellant on that issue which were not addressed in the appeal on his behalf.

003890

UI-2022-

003889

39. Mr Melvin relied on his 'rule 24' response. As a general submission he argued that for the appellants it appears to be contended that Judge Hussain should have written a decision which was much longer than it already was (16 pages).
40. In relation to ground 1, he submitted that the error by Judge Hussain in considering the s.72 certificate had no material impact on the overall decision.
41. As regards ground 2, it was submitted that the case for the appellants had never been put on the basis that there was a separate risk for each of them, and that ground was accordingly without merit.
42. It was submitted that ground 3's reliance on some newspaper articles does not mean that the judge had to consider every point, so long as he considered the main thrust of the claim. He did not need to deal with every point raised. The respondent had accepted the events that are said to have taken place in 2014 and Judge Hussain had referred to that fact. Mr Melvin submitted that the failure individually to assess three documents was not material.
43. As regards ground 4, it was submitted that that raised much the same point as ground 3 and, again, the judge did not need to deal with every point.
44. In relation to the plausibility point raised in ground 5, it was submitted that it was open to Judge Hussain to find it highly implausible that the family would report the kidnapping to the police if the family were so well connected.
45. In terms of ground 6, it was submitted that the judge's decision as a whole needed to be read, together with the findings overall.
46. Mr Melvin submitted that Judge Hussain had applied the correct standard of proof (ground 7).
47. In reply, Mr Chakmakjian re-emphasised points made in relation to grounds 2 and 3.

Assessment and conclusions

48. We deal with the grounds in the order in which they appear in the written grounds.
49. In relation to ground 1, we are satisfied that Judge Hussain erred in law in considering the s.72 certificate when that was a matter that had been settled by Judge Bird in her decision promulgated on 12 February 2021. As we have already pointed out at para 2 of our decision, on appeal from Judge Bird's decision Upper Tribunal Judge Blum concluded that there was

003890

UI-2022-

003889

no error of law in Judge Bird's finding that the appellant had rebutted the presumption of serious crime and danger to the community. In remitting the appeal to the FtT he said at para 30 that there would need to be a fresh (*de novo*) hearing:

"...with the exception of the judge's discharge of the s.72 certificate. This was a separate and independent finding and one that was unchallenged."

50. In those circumstances it was an error of law for Judge Hussain to have considered the s.72 certificate. The potential materiality of this error of law lies not in the conclusion that the second appellant had committed a serious crime, which is all but determined on the facts of this case by s.72(2) of the 2002 Act, but in what appears to be the main assessment in relation to the s.72 certificate that the second appellant constituted a danger to the community of the UK.
51. The reason we consider that this has a potentially material impact on Judge Hussain's overall conclusions in relation to the second appellant's credibility is that he made an assessment of the credibility of the second appellant's claim that he was coerced into the offending and his view that the second appellant has no regard for the UK's laws.
52. Those are findings that would otherwise have been open to Judge Hussain to make. Although the grounds before us at para 3 contend that the appellants made no submissions about the s.72 certificate before Judge Hussain, it appears to us that that is not in fact completely correct. The skeleton argument that was before Judge Hussain is dated 31 January 2021. That can be seen, for example, in para 13 of the grounds to the Upper Tribunal in relation to ground 4 where it states that the appellants relied on their joint skeleton argument of that date. In that skeleton argument it states at para 12 that the s.72 certificate was one of the issues to be determined. Paras 32-34 of that skeleton argument make detailed submissions on the point.
53. We interpret Mr Chakmakjian's assertion in the grounds that no submissions on the point were made to Judge Hussain on the point as a reference to oral submissions. We do not for a moment consider that there was any attempt by Mr Chakmakjian to mislead us. The likelihood is that it has simply been overlooked that there were written submissions in the skeleton argument in relation to the s.72 certificate which was expressly identified as an issue for Judge Hussain to consider. The skeleton argument was obviously not updated to take into account Judge Blum's decision.
54. It is, therefore, to that extent understandable that Judge Hussain considered that this was a matter that he had to determine in relation to the second appellant, albeit that he was nevertheless wrong in law to do so. It is equally clear that the consideration of the section 72 certificate was an early adverse assessment in the decision of the second

003890

UI-2022-

003889

appellant's credibility. We shall say more about the materiality of that error of law later in this decision.

55. As regards ground 2, it will have become apparent from our summary of the appellants' claims, the findings made by Judge Blum and the grounds of appeal, that the appellants have a clearly related, but in places separate, narrative in relation to the claimed fear of return. It *may* be that despite their closely related accounts of fearing the same criminal family on return to Albania, one appellant may succeed in his appeal and the other not. We do not need to construct hypothetical scenarios to test that possibility. As Mr Chakmakjian submitted, there experiences were different in relation to the Elezi family.
56. For that reason we are of the view that Judge Hussain ought to have given separate consideration to the case of each appellant in terms of its detail and thus a separate assessment of credibility. The failure to do so was an error of law.
57. There is, however, an additional reason for finding that Judge Hussain erred in not given each appellant's case its own assessment. That lies in the contention on behalf of the appellants that their cases, in effect, provide mutual support for each other which is a matter that ought to have been considered in the context of a holistic assessment of the separate appeals. We consider that Judge Hussain ought to have shown that he had considered the mutually supportive accounts in an assessment of the credibility of each appellant.
58. As regards ground 3, the way that ground is drafted at para 19 of the grounds misquotes Judge Hussain's decision. The grounds quote Judge Hussain as having said at para 86 that it was "highly implausible that the Elezi family were a well-known criminal gang with wealth and a wide reach amongst law enforcement agencies...". In fact, what Judge Hussain wrote was that it was "highly implausible that, **if** the Elezi family were a well-known criminal gang.." (our emphasis) etc. There is, it seems to us, a subtle but important difference between those two phrases. The former, without the full context of the sentence, makes the asserted failure to consider the background evidence referred to, a much more emphatic, self-contained finding.
59. Nevertheless, we do consider that there is some merit in the argument advanced in the grounds when the actual material that is said to have been omitted from the judge's assessment of credibility is considered. We have summarised the import of that background material at our para 30 above. We accept Mr Melvin's submission that a judge does not have to refer to every piece of evidence in a judgment. However, on the facts of these appeals this was potentially significant evidence of the power and influence of the Elezi family which Judge Hussain doubted with reference to the plausibility of the second appellant's account and without any obvious assessment of the

003890

UI-2022-

003889

background material that supported his account, despite his having said at para 77 that he had had regard to background evidence in relation to Albania.

60. We are satisfied that ground 3 is made out.
61. We do not consider that grounds 4 and 5 establish any error of law on Judge Hussain's part. He had before him the appellants' skeleton argument. He did not need to deal with every argument advanced on behalf of the appellants. We are not satisfied that it was incumbent on Judge Hussain to refer to the authorities in relation to plausibility and, as with any expert tribunal, a judge can be assumed to have been aware of the need for caution in making adverse credibility findings on the basis of plausibility. More generally, it seems to us that aspects of these two grounds are subsumed within various of the other grounds.
62. Ground 6 relates to a specific aspect of the adverse credibility findings. We have summarised Mr Chakmakjian's submissions in relation to this ground at para 36 above. We are satisfied that this ground does have merit because it appears that Judge Hussain did misinterpret the chronology when making the adverse credibility finding in the latter part of para 87. However, in itself we do not consider that this error is material if the findings otherwise would otherwise have been sustainable.
63. As regards ground 7 and the standard of proof, we note that Judge Hussain did use expressions more akin to the civil standard of a balance of probabilities at paras 89, 94 and 95. However, there is an appropriate self-direction at paras 75 and 76 under the subheading "Burden and Standard of Proof". At para 88 the correct standard of real likelihood is again referred to. In addition, again it can be assumed in the absence of clear evidence to the contrary, that an expert tribunal is aware of the appropriate standard of proof.
64. We have rejected certain of the grounds. We have concluded, however, that the grounds are made out in terms of grounds 1-3 and 6. We are satisfied that the error in relation to ground 1 (the s.72 certificate) is material given that it relates to the second appellant's credibility on admittedly a separate, but significant, issue. We note that Judge Hussain said at para 83 that he would consider whether the second appellant would be entitled to refugee status had he not upheld the certificate. However, it cannot be ruled out that this adverse credibility assessment affected the judge's assessment of the second appellant's credibility otherwise.
65. We also satisfied that Judge Hussain erred in law in relation to ground 2 and the failure to demonstrate a separate assessment of the appellants' credibility. We are similarly satisfied as to the materiality of the error of law that we have found in relation to ground 3.

003890

UI-2022-

003889

66. The errors of law are such as to require Judge Hussain's decision to be set aside in its entirety. Had the only error of law been that advanced in relation to ground 6 we would not have concluded that the decision needed to be set aside for that reason alone.
67. We have considered very carefully whether the appeal should be remitted (again) to the FtT or retained for a re-making in the UT. Mr Melvin submitted that the appeal should be retained in the UT, given that the appeal had already been considered twice by the FtT. Mr Chakmakjian submitted the contrary. We have had regard to the Senior President's practice statement at paragraph 7.2. The question of remittal, or not, is a matter for our discretion.
68. Although the appeal has now been heard twice in the FtT, there is much to be said for the proposition that the appellants are entitled to have their appeal heard on a proper footing, with an assessment of each appellant's credibility in the context of a consideration of all the background evidence relied on.
69. We are mindful of the fact that remitting an appeal with any preserved findings involves the potential for error. However, we are of the view that with a clear indication of the very narrow scope of the preserved findings in this case, and due heed being paid to that indication by the FtT, the matter can safely be remitted.
70. We also note Mr Chakmakjian's assurance given to us that he will be assiduous in reminding the FtT of the fact that the question of the s.72 certificate has been resolved in favour of the appellant, as Judge Blum's decision made clear.
71. Accordingly, we are satisfied that the appropriate course is for the appeal to be remitted to the FtT for a hearing *de novo* with no findings of fact preserved **with the exception of Judge Bird's finding at paras 38-40 of her decision promulgated on 12 February 2021 in relation to the s.72 certificate.**
72. Whilst Judge Bird's resolution of the matter of the s.72 certificate in the second appellant's favour is preserved, that does not prohibit findings being made on any matter that the First-tier Tribunal considers relevant, including the circumstances of the second appellant's offending, but not extending to the question of whether he constitutes a danger to the community. That discrete matter has been resolved in his favour in relation to the offences which resulted in the s.72 certificate.
73. We are mindful of the need to avoid trespassing on the case management jurisdiction of the FtT, but in this case we consider it important to make a direction for the appellant's representatives to file and serve an updated skeleton argument that properly reflects the scope of the remittal.

003890

UI-2022-

003889

Decision

74. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal of each appellant is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judges Hussain or Bird with no findings of fact preserved **except as stated in para 71 above in relation to the certificate under s.72 of the Nationality, Immigration and Asylum Act 2002.**
75. The appellants' representatives must file and serve an updated skeleton argument no later than 7 days before the fresh hearing in the First-tier Tribunal, or at such other time as the First-tier Tribunal may direct.

A. M. Kopieczek

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8/12/2023