



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

UI-2023-000400
First-tier Tribunal Nos:
PA/55427/2021
IA/16407/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 June 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HQ

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant/SSHD : Mr Walker, Home Office Presenting Officer

For the Respondent: Mr B Hawkin, Counsel instructed Fadigo and Co Solicitors

Heard at Field House on 27 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. I shall refer to the Respondent as the Appellant as he was before the First-tier Tribunal. His date of birth is 11 April 1999. He is a citizen of Albania.
2. The First-tier Tribunal (Judge L J Murray) granted the SSHD permission to appeal against the decision of the First-tier Tribunal (Judge Cameron) to allow the Appellant's appeal against the decision of the SSHD on 21 October 2020 to refuse this Appellant's claim on protection grounds. There was an earlier decision by the SSHD refusing the claim and certifying it as clearly unfounded. The Appellant made further submissions which gave rise to the decision of the SSHD which is the subject of this appeal.
3. The Appellant's case is that he is a victim of modern slavery and was forced to work for a criminal gang and that he is at risk on return of being trafficked. He came to the UK on 21 July 2016 and claimed asylum the next day. There was a conclusive grounds decision on 22 January 2019 that the Appellant was not a victim of trafficking.
4. The judge heard evidence from the Appellant and both the parties' representatives made submissions.
5. Under the heading of "Findings of fact and credibility" at paragraph 20 the judge said it was relevant to note that in the conclusive grounds decision it was stated that there was no evidence that the Appellant was suffering from any mental, psychological or emotional trauma or that he had received counselling. The judge had before him a medicolegal report by Dr Syed Zia Ali, a consultant psychiatrist, dated 4 March 2022. In relation to this evidence the judge stated at paragraph 21 that "Dr Ali has provided details of his experience and I am satisfied that he is able to give a psychiatric report in relation to the appellant".
6. The judge recorded Dr Ali's evidence that the Appellant was under Croydon North Assessment and Liaison Services and that he was receiving counselling on the phone twice weekly and taking medication. The judge recorded that Dr Ali had stated that the Appellant is suffering from very severe depression and that he made little eye contact and spoke in a low tone and halting manner and that his answers were monosyllabic. The judge recorded Dr Ali's evidence that the Appellant is suffering from complex PTSD and that he has memory loss and lapses can occur and that he would have poor concentration and poor memory recall. The judge recorded Dr Ali's evidence that the Appellant's physical and mental health problems are as a result of the experiences that he has endured and although the Appellant is fit to give evidence, he would struggle with answers due to his underlying depression and PTSD and would suffer issues of concentration, focus and memory which would impact on his statements.
7. The judge took into account that the Appellant had provided further documents in support of his claim including a police report dated 8 March 2016 wherein he stated that he had been threatened by two people whom he did not know. The judge took into account a hospital report of 6 March 2016 which he recorded as indicating that the Appellant had attended A&E with pains in his head and it was concluded that he suffered a cerebral contusion. The judge took into account a newspaper report dated 9 March 2016 in relation to this incident. The judge took into account a "prosecutor's report" dated 21 July 2016 indicating that the

appellant was seized by the police with a quantity of cannabis". The judge noted that the Appellant stated that he had been physically violated and threatened by people that he feared and although he said that he did not know them he subsequently gave details of the two people. The judge said that " It was stated that he had been forced to sell narcotic substances due to a debt".

8. In the conclusions at paragraphs 29–47, the judge recorded that the SSHD had not taken issue with the Appellant's age or nationality. The judge said that the Appellant stated throughout his evidence that he was forced to work to pay off a debt and that he was threatened. The judge took into account that the Appellant was aged 17 when he came to the UK. The judge took into account that there was no evidence relating to the Appellant's mental health before those deciding whether he was a victim of trafficking (the conclusive grounds decision).
9. The judge said that the Appellant had now provided a psychiatric report from Dr Ali and that he was also aware that there was a short report from a psychologist Ardita Korriku dated 16 June 2016 which indicated that the Appellant was referred by his parents as a result of the attack. It is said in the report that the Appellant had lost confidence in himself and was negligent and during sleep showed signs of anxiety.
10. In relation to this report the judge stated as follows:-

"32. This report does not of itself assist greatly however it does confirm that the appellant was having issues and also that he was suffering mental health issues. This report in my view does support the current findings by Dr Ali that the appellant was suffering mental health problems albeit that these have not been diagnosed until recently".
11. The judge said that he had had the opportunity to hear the Appellant give oral evidence and that he was extensively cross-examined and appeared to answer all questions put to him.
12. The judge stated at paragraph 34 that he did not accept the Respondent's submission that no weight should be given to the additional evidence provided by the Appellant. The judge said that the Appellant:

"has explained that certain documents were sent to him by his friend and there is nothing within the evidence which would indicate that the documents provided by the appellant are not genuine. There is a police report and also a prosecutor's report in connection with the appellant's assault and his being found with drugs".
13. The judge said that the reports were consistent with the Appellant's core account "and although there are clear inconsistencies which had been referred to I do take account of the appellant's age and the fact that he was clearly suffering mental health issues. I do place weight on the report of Dr Ali who is an experienced consultant psychiatrist" (paragraph 35).
14. The judge stated as follows:-

"36. After taking into account all the evidence available including the appellant's oral evidence before me and notwithstanding the inconsistencies in the evidence, I do find after taking into account the appellant's age and his clear mental health issues which were ongoing

in 2016 that the core of the appellant's claim to have been forced to work for a criminal gang in Albania as a result of a debt owed by his family, is credible and I am prepared given that the lower standard of proof to accept the appellant has therefore given a credible account of being forced to work for a criminal gang.

37. I therefore accept the appellant's core court account that he was the victim of modern slavery in Albania.
38. Albania is a relatively small country and I do take account of and place weight on the country expert report by Miranda Vickers. Although the respondent took some issues which this she has provided a full CV and I am satisfied that she is in a position to give a country expert report.
39. The respondent's own country guidance at 2.5.25 appears to confirm that the appellant would be at risk and that there is insufficient assistance provided by the authorities.
40. Although the appellant was assisted by his family and he clearly has been in contact with his friend, taking into account his mental health problems and the fact that he is still receiving counselling and medication, and taking into account that the facilities in Albania are not particularly good, it is unlikely given his mental health that he would be able to seek treatment on return.
41. In view of the appellant's mental health is unlikely that he would be able to access services in Albania and I do find that he would be at risk from criminal gangs and a risk of re-trafficking as a result.
42. Taking into account his mental health I am satisfied therefore that internal relocation would be unduly harsh in the appellant's situation.
43. Given the conclusions as outlined above, I do find that the appellant has discharged the burden of proof to establish that he is entitled to the grant of asylum. I come to the conclusion that the appellant's removal would cause the United Kingdom to be in breach of its obligations under the Qualifying Regulations".

The Grounds of Appeal

15. Ground 1: The judge failed to have regard to numerous inconsistencies in the Appellant's account highlighted in the Reasons for Refusal Letter (RFRL) of 21 October 2021 or provided adequate reasons for the discrepancies raised which undermined the Appellant's credibility and which have not been addressed. The judge inferred that the negative conclusive grounds decision without sight of evidence that the Appellant is suffering from mental ill-health. However it has not been explained how the extent of his mental health impacted the Appellant's ability to provide an accurate account of his claim.
16. Ground 2: The judge failed to have regard to whether Miranda Vickers is suitably qualified to provide an opinion on the issue of modern slavery. Her CV illustrates a leaning more towards political issues and therefore should have been given little weight.

17. Ground 3: The judge placed weight on the medical report of Dr Ali who is described as an experienced consultant psychiatrist, however the diagnosis made was based on one remote consultation. He says the Appellant is suffering from complex PTSD. Dr Ali further states that “memory loss and lapses can occur and the appellant would have poor concentration and poor memory recall”. It is therefore unclear how it was then said at paragraph 24 of the judge’s decision that “the appellant is fit to give evidence but that he would struggle with answers due to his underlying depression and PTSD and will suffer issues of concentration, focus and memory which would impact on his statements.”
18. It is also of note that the Appellant had responded coherently to questions put to him at appeal (paragraph 33) given the above statements. The judge failed to have regard to these contradictory statements which is material to establishing the Appellant’s credibility.
19. Ground 4: At paragraph 40 the judge made reference to the Appellant’s family having assisted him, however there was no explanation regarding the family’s current position and whether they were in a position to assist him on return. The assertion that the Appellant cannot relocate has not been made out.
20. The judge’s statement at paragraph 40 regarding the Appellant not being able to access services on return to Albania because of his mental health is factually incorrect and speculative. There is no evidence that the Appellant continued to be pursued by criminal gangs given that his activities were low level nor has any evidence been presented that the Appellant’s family have suffered any form of persecution since his absence.

The Rule 24 Response

21. Mr Hawkin relied on UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095, where the Court of Appeal stated:

“19. I start with two preliminary observations about the nature of, and approach to, an appeal to the UT. First, the right of appeal to the UT is “on any point of law arising from a decision made by the [FTT] other than an excluded decision”: Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), section 11(1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12(1) and (2) of the 2007 Act. If there is no error of law in the FTT’s decision, the decision will stand. Secondly, although “error of law” is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in *AH (Sudan) v SSHD* at [30]:

“Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.”

6. Mr Hawkin submitted that FTTJ Cameron at paragraphs 17-37 considered the Appellant’s account; the SSHD’s case that it was inconsistent; the effect of the medical evidence; the effect of the documentary evidence; and accepted the core of his account that he was the victim of modern slavery in Albania. At

paragraph 38 FTTJ Cameron was satisfied that Ms Miranda Vickers was a country expert, and this ground of appeal is merely a disagreement. The main thrust of Mr Hawkin's submissions was that the grounds are a disagreement with the findings.

Error of Law

22. The SSHD's account was set out in the RFRL. The Home Office Presenting Officer relied on this. The SSHD did not accept that the Appellant had been forced to work for a criminal gang and that he was a former victim of trafficking. The SSHD relied on the conclusive grounds decision. The Appellant's account was rejected, however, the position of the SSHD was that even if he were at risk there would be sufficiency of protection and he could safely relocate. The SSHD relied on inconsistencies in the Appellant's statements of 19 October 2020 and 13 October 2016 relating to his account that he was forced to work for a criminal gang selling drugs to pay off his debts. There were also found to be inconsistencies in the documentary evidence. The SSHD queried why it had taken four years to produce documents on which the Appellant relied. The SSHD queried why the Appellant did not flee Albania when he said he was at risk. He stayed with his mother for several months. This, according to the SSHD, would have provided him with time to obtain those documents. The SSHD raised as a credibility issue why the Appellant did not take the documents with him when he left Albania.
23. In the RFRL the SSHD listed inconsistencies arising from the "minutes on the denouncement of the crime" to explain why the document is not reliable. The SSHD noted that the report stated that the Appellant was taken to the Regional Hospital in Kukes, however, in his statement he said that he woke up in a private hospital. Moreover, the document does not state that any members of the gang were arrested which is not consistent with the Appellant's statement. In the Appellant's statement he said that he was discharged from hospital after five days; however, the document the report states that he was questioned in the Police Directorate of Kukes County after two days; three days before he claims to have been discharged.
24. The SSHD also relied on inconsistencies in the "minutes on the statements investigation" dated 8 March 2016. This report states that the Appellant was arrested in 21 July 2016 which is after the Appellant claims to have left Albania on 7 July 2016. Moreover the names of the gang members in the report are not consistent with the names that the Appellant provided in his interview. It was also noted that the report states that although the Appellant was arrested, he was not prosecuted because he cooperated with the police which the SSHD said did not corroborate his claim that the police would be unwilling or unable to offer protection.
25. The RFRL took issue with the evidence of Ms Korriku querying why the evidence was not produced earlier bearing in mind that it was dated 2016. An issue was raised concerning her credentials and qualifications. It was queried why the Appellant's father who he claimed was abusive and heavily in debt would contact a psychologist to assess the Appellant. There was before the decision maker a letter from Dr Sokoli. The SSHD raised a number of issues with this.

26. There were a list of issues raised by the SSHD concerning the reliability of the newspaper article including inconsistencies in what was reported therein and the Appellant's account and other documents relied on. An issue was raised concerning the production and distribution of the newspaper.

Error of Law

27. The SSHD's case was that the Appellant's account was inconsistent and contradictory and the documentary evidence was not accepted as reliable applying Tanveer Ahmed [2002] UKAIT 439.
28. I take on board Mr Hawkin's submissions about the grounds being general. However, clear reference is made in them to the RFRL. It was not necessary for the grounds to set out that decision in any detail.
29. I have considered whether the decision is adequately reasoned on the basis that the judge was entitled to find that the Appellant has PTSD and to depart from the conclusive grounds decision. I am not satisfied that the judge gave adequate reasons for allowing the appeal in the light of the extensive credibility issues raised by the SSHD.
30. Mr Hawkin relied on para 33 of the decision which he said engaged with the main inconsistency in the Appellant's account. The judge stated the following at para 33:

“ I have had an opportunity to hear the appellant gave oral evidence and he was extensively cross-examined. He appeared to answer all questions put to him. He accepted that he had not given the assailant's names initially but confirmed that he had subsequently”

I accept Mr Hawkin's submission about the significance of the First-tier Tribunal hearing evidence and forming a view of it. However, while the judge said he had the opportunity to hear the Appellant give oral evidence his observation that he appeared to answer all questions put to him, does not adequately explain why he was found to be credible, in the light of the extensive credibility issues raised by the SSHD. The second part of the final sentence of para 33, is not a reason for accepting the Appellant's account.

31. From the decision the judge gives three principal reasons why he accepted the Appellant's account; (1) The Appellant's age; (2) the medical evidence establishing that the Appellant has PTSD and (3) the Appellant's ability to answer questions in evidence. The judge was, in my view, entitled to attach weight to the evidence of a psychiatrist and find that the Appellant had PTSD which would affect memory and which could account for discrepancies in evidence. However, these factors could not rationally account for all the inconsistencies relied on by the SSHD without further reasoning. Moreover, it is difficult to understand how the reasons given. The reason given specifically for accepting the documents as reliable was that the Appellant explained that the documents were sent to him by a friend and that there was nothing within the documents which would indicate that they are not genuine. This goes nowhere near to addressing the SSHD's case.

32. I exercise the necessary caution and judicial restraint in interfering with the decision of the First-tier Tribunal. I appreciate that not every step in a judge's reasoning need be set out. However, sufficient reasons for the decision must be given [MK \(duty to give reasons\) Pakistan \[2013\] UKUT 641 \(IAC\)](#). The losing party must be clear about why it is they lost the appeal. This decision falls short of meeting this requirement. I appreciate what Mr Hawkin stated about the length of judge's decision; however, the length of a decision does not support that it is adequately reasoned. The critical issue in this appeal was the Appellant's credibility. The judge did not address any of the reasons given by the SSHD for concluding that the Appellant was not credible. While a diagnosis of PTSD could account for a level of inconsistency, it cannot rationally be an answer to the SSHD's case. The judge fell short of resolving principal areas of conflict between the parties which were raised in the RFRL which set out the SSHD's case.
33. I find that ground one is made out. There is no necessity to engage with the other grounds because the error is material. I set aside the decision to allow the appellant's appeal.
34. There will need to be a fresh hearing.
35. The appeal is remitted to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

I remit the matter to the First-tier Tribunal to be heard afresh

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 June 2023