



**Upper Tribunal
(Immigration and Asylum Chamber)**

Case No: UI-2023-003225

First-tier Tribunal No: PA/05166/2019

THE IMMIGRATION ACTS

**Heard at Field House
Heard on 2 October 2023
Prepared on 9 October 2023**

Decision & Reasons Promulgated

13th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**EA
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, counsel
For the Respondent: Mr M Parvar, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Albania born on 15 February 2002. He appeals against a decision of Judge of the First-tier Tribunal Lingam sitting at Yarl's Wood on 22 May 2023. That decision was to dismiss the appellant's appeal against a decision of the respondent dated 13 May 2019. I pause to note here that part of the reason why it had taken four

years from the refusal letter to the date of hearing was because there had been two substantive asylum appeals before the case was heard by Judge Lingam. In both cases the matter had been remitted back to the First-tier. During the hearing on 22 May 2023 the appellant was treated as a vulnerable witness, and an anonymisation order was made on 21 August 2023.

The Appellants' Case

2. The appellant's case was twofold, the first was that he had been approached by two alternatively five men outside his school in Albania who had demanded that he carry some drugs for them to another part of his town. They had put a gun to his head and one of the men had gone with him whilst he was delivering the drugs. Secondly that he had experienced bullying at school in Albania because of his Gorani ethnicity although the appellant also told the respondent that he had not left Albania because of ill treatment due to his ethnicity. The appellant claimed that his family had had to move to the capital city, Tirana, because of threats. The appellant submitted medical evidence including reports from two separate psychiatrists Dr Mir who saw the appellant on 9 October 2022 and Dr Yahli whose report was three years earlier and dated 16 November 2019. The respondent did not accept the appellant's credibility.

The Decision at First Instance

3. In a careful determination the judge analysed the medical evidence in some detail. She noted the differences between the two psychiatric reports. The earlier report of Dr Yahli had said that the appellant's mental health difficulties which included depression were due to both the kidnapping by the gang but also concerns over the appellant's immigration case. By contrast Dr Mir had said that the appellant's depression was mainly due to his immigration difficulties and that the appellant was not vulnerable to be exploited, the stress the appellant now suffered from was not due to events the appellant had experienced in Albania.
4. The judge's summary of her findings begins at [55] of the determination and from [67] onwards the judge notes a number of inconsistencies in the appellant's account. For example in interview the appellant stated that five men had approached him outside the school whereas in oral testimony the appellant had said only two men had approached him. The judge noted that even on the appellant's account he had been released by the gang, had not given them any personal details about himself and there was no reason therefore why the gang would have any further interest in the appellant or be able to find him if they did have such an interest. The judge also had regard to an expert report filed on the appellant's behalf by Sonia Landesman. The judge noted at [84] that the expert had referred to the appellant escaping from his captors but that

had never been part of the appellant's account. The appellant was in regular contact with his family and the judge's view was that the appellant could return safely to Albania and live there.. The judge dismissed the appeal.

The Onward Appeal

5. The appellant appealed against that decision on grounds which were described by the First-tier Tribunal judge who granted permission to appeal as being "not the easiest to read". Although there were a number of sub headings, there were three basic grounds. The first argued that the judge had had no regard to the country background information in assessing the credibility of the appellant's claim. The judge was wrong to point to a contradiction between the two psychiatric reports and the evidence generally have been inadequately considered. The second ground argued that the appellant had been a victim of trafficking and the judge was wrong to say that the appellant was not. The third ground noted that the appellant was 13 years old when the kidnapping incident took place and he had arrived in the United Kingdom as an unaccompanied minor. The judge had not taken these facts into account either. The respondent filed a brief rule 24 response to the grant of permission arguing that the grounds amounted to no more than a disagreement with the judge's decision.

The Hearing Before Me

6. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
7. In oral submissions counsel who had appeared at first instance and settled the grounds of onward appeal submitted that the judge had misdirected herself in finding discrepancies between the two medical reports. This judge was wrong to state that Dr Yahli had remarked that the appellant's family had left Albania. The judge had made no reference in her determination to the country guidance case of **TD & AD [2016] UKUT 00092** which had held that while there was a general sufficiency of protection in Albania there might not be in particular cases and individual circumstances had to be taken into account. The appellant had been targeted and coerced at gunpoint by a criminal gang. The expert evidence was that a large majority of trafficking victims had been kidnapped in broad daylight. In considering trafficking claims there were two aspects to prove: the action and the purpose of exploitation.
8. The judge have found that because the appellant was not asked by the gang to carry out any further work he was not at risk of re-trafficking.. It

was wrong in law to say the appellant was not a victim of trafficking. In relation to ground three there was no discrepancy in the appellant's account, he had always said he was approached outside the school. The appellant was 14 the time the incident happened and the omission of some details by the appellant needed to be put in that context. It was clear that the appellant's depression stemmed from his fear of return to Albania. Dr Yahli said the appellant was vulnerable not just on medical grounds but also being of Gorani ethnicity as he was identifiably of that ethnicity. Dr Y's report was prepared early on Dr Mir's was much later but Dr Yahli's report took the appellant's background into account whereas Dr Mir's report was based only on the appellant's mental health.

9. In response, the presenting officer argued there was no material error of law in the determination. The reference in Dr Yahli's report was very brief and referred to the appellant's family moving home. There were many adverse credibility findings made by the judge in the determination. The appellant's family for example still lived in Albania. The appellant was inconsistent as to when he had last had contact with his family. Although the country guidance case had not been referred to by the judge the only reference the appellant had made was to the head note of the case which required consideration of the risk to an individual upon return to be based on the facts of the particular case. The judge found the appellant was not a victim of trafficking regardless of the definition of modern slavery. The judge did not accept that the appellant's account as true. In finding no truth the judge had no need to evaluate risk of re-trafficking.
10. There was family support available to the appellant on return. There was no country guidance to support the contention that the appellant's ethnicity would put him at risk. The judge dealt with the issue of sufficiency of protection finding no evidence that the authorities would not protect the appellant. The judge found the appellant would not be at risk on return. The judge's findings were open to her bearing in mind the contents of Dr Mir's report. The judge noted the difference between the expert's report and the appellant's claim. As far as ground 3 was concerned appellant was clutching at straw.
11. In conclusion counsel argued that the judge's determination was based on incorrect facts. The use by her of the expression "it's crucial" meant she was putting a lot of weight on the adverse findings. Dr Mir had talked about matters solely from a medical perspective. One had to look at not just the medical situation but also the appellant's circumstances and the judge's failure to mention **TD & AD** meant that there was an error of law.

Discussion and Findings

12. The appellant mounts a reasons based challenge to the judge's determination which as I have already indicated is a detailed determination in which the judge has considered all of the relevant evidence. The problem for the appellant was that there were a large

number of inconsistencies within the his account. Given that the appellant had told his account to the respondent in interview, had prepared a lengthy written statement and had had three separate substantive oral hearings, it is surprising that the appellant could not achieve a degree of consistency in his account. This indicates that the appellant had perhaps an overly complicated account which he had some difficulty sticking to.

13. Whilst it is correct that the judge regarded the appellant as a vulnerable witness and the appellant was describing events which have occurred to him he said at the age 13 or 14, by the time the appellant came to be interviewed by the respondent and appear in court he was an adult. The judge was entitled to conclude that there would be a reasonable degree of consistency in the appellant's account if it was a truthful one but given the large number of inconsistencies it was open to her to conclude that the appellant's account was not credible. The judge refers in her determination to a number of inconsistencies, see for example [67] onwards where the judge lists various ones such as the difference in the number of men who approached the appellant, where the approach took place, what the men did or did not tell the appellant about what they did or did not want him to deliver and other inconsistencies.
14. According to the appellant's account the gang simply let the appellant go, they did not bother to ascertain who he was or where he lived. This in itself indicated that the gang would have no further interest in the appellant should that part of his account be correct, see [51]. I do not accept the submission made to me that there were no inconsistencies of any consequence between the two psychiatric reports. The two doctors arrived at different conclusions as to why the appellant was suffering from depression. Dr Yahli thought it was because of what had happened to the appellant in Albania Dr Mir by contrast thought it was because of worry over the appellant's immigration case. Although Dr Yahli did not say in terms that the appellant's family had left Albania, he did refer very briefly to the appellant's family moving home.
15. The judge was in rather difficult situation in that she had two expert reports which contradicted each other. Where the reports conflicted, the judge preferred the second report (of Dr Mir) which was more recent in time and thus in a better position to evaluate what the cause of the appellant's depression was. I do not accept counsel's submission that Dr Yahli was able to come to his conclusions not only because of the medical evidence but because of the general background evidence. Dr Yahli did not appear to have any particular expertise in country background information about Albania such as to strengthen his conclusions about the cause of the appellant's mental health difficulties. The cause of the appellant's depression was a medical issue and it was open to the judge to come to the evidence based conclusions she did, see [58] that the appellant's symptoms are unrelated to events in Albania.

16. I agree with the characterisation of the appeal made by the respondent that the appeal is in effect nothing more than a disagreement with the careful findings of the judge. The grounds simply seek to re-argue the appeal. TD & AD require the Tribunal when evaluating the risk of trafficking to look at the individual factors that apply to a particular appellant, the judge did that. The fact that she did not mention the country guidance authority by name is not relevant in itself. The judge was aware of the test she was required to carry out and she spent some considerable time in the determination evaluating the appellant’s personal circumstances. What the judge found was that because the appellant’s account was so implausible and because the appellant was in contact with his family and could return to them there was no risk of the appellant being trafficked in the future. That was a conclusion open to the judge on the evidence. I dismiss the appellant’s appeal.

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 continue the anonymity order already in place dated 21 August 2023.

Signed this 10th day of October 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge