



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2023-003948

First-tier Tribunal No:
PA/50757/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of October 2024

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**AT
(ANONYMITY ORDER MADE)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Allison, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mrs A. Nolan, Senior Home Office Presenting Officer

Heard at Field House on 23 September 2024

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. This Order has been granted on the basis of the protection issues raised in the appeal.

DECISION AND REASONS

Introduction

1. This is the Appellant's appeal against the decision of Judge Coll (hereafter "the Judge") who dismissed the Appellant's protection and human rights appeal on 5 July 2023.
2. Permission to appeal was initially refused by the First-tier Tribunal before being granted by Upper Tribunal Judge Smith on 8 July 2024.

Relevant background

3. The Appellant claimed asylum in the UK on 13 September 2018 when he was 15 years old. The claim was refused by the Respondent on 3 July 2020 but within the decision the Respondent accepted that the Appellant's father was a police officer in Albania (albeit not of a senior profile) and that threats were made to the Appellant's father by criminal elements (see para. 54 of the refusal letter.)
4. Since the Respondent's decision there has been an extraordinarily long hiatus in this case: it was not until 19 June 2023 that the appeal was heard in the First-tier Tribunal.

The Judge's decision

5. We will deal with some of the Judge's key findings later in this judgment but it is relevant to note that in summary the Judge found that the Appellant was not a credible witness in respect of his claim to have been personally threatened by those who targeted his father; equally the Judge rejected the Appellant's claim that his father had a particular profile as a senior police officer in Albania.
6. The Judge went on to give little or no weight to the expert report of Dr Tahiraj (dated 19 February 2023) on the basis that the expert was not impartial and that the report was vague and unsubstantiated.
7. The Judge ultimately concluded that the Appellant would not be at risk on return to Albania and dismissed the appeal.

The error of law hearing

8. Preliminarily Mr Allison informed the Tribunal that an application for permission to appeal on the basis of a sixth additional ground had been made by his instructing solicitors. After further discussion it became clear that the application for permission had not in fact been properly lodged with the Upper Tribunal until the day of the error of law hearing.
9. We heard submissions from both representatives as to whether the Appellant should be given permission to effectively amend the grounds out of time and, for completeness, we also heard submissions as to the merits of this ground.

10. In light of the findings we have made on the existing grounds of appeal (which have already been given permission by the Tribunal) we have decided that it is unnecessary to decide the application for the sixth ground to be relied upon.
11. We also heard oral submissions from both representatives as to the five existing grounds of appeal and at the end of the hearing we formally reserved our judgment.

Findings and reasons

12. In coming to our conclusions, we have had careful regard to the stitched bundle of 763 pages and the skeleton argument authored by Mr Allison dated 16 September 2024.

Ground 1

13. In the first ground, the Appellant challenges the Judge's adverse credibility findings at §16 of the judgment. We have ultimately concluded that the Appellant has made out his assertion that the Judge materially erred when concluding that the Appellant had not given a credible account in respect of his own fear of persecution in Albania.
14. We firstly accept that the Judge does not explain in what way the Appellant was "very vague" in his evidence: see §16(a). If the Judge meant to explain this at §16(b) in which paragraph the Judge criticises the Appellant for not giving any approximate dates and for failing to give the words used in the threats made against him, we find that this reasoning contains an error of fact.
15. We accept the Appellant's argument that he did in fact specify the terms of those threats at questions 73 and 78 of the asylum interview. At question 73 the Appellant expressly states that he was grabbed by the jacket and told "*we will either kill you or your father*"; at question 78 he states that the people threatening him said that if he told his father they would kill him and the Appellant. We note that Mrs Nolan did not make any submissions about these particular answers in her response.
16. In our view the Judge has both given inadequate reasons for describing this evidence as "very vague" and mischaracterised (or overlooked) the Appellant's evidence as recorded in the asylum interview. We are satisfied that these errors do go to the core of the Judge's assessment of the Appellant's credibility.
17. Furthermore, in §17 the Judge describes her earlier adverse findings at §16 as being "inconsistencies". On analysis the only inconsistency that we can detect in §16 is that at (i), the other eight points are, at best, findings of implausibility.
18. The law is clear that an assessment of implausibility must take into account relevant background country material, as per Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 at §27:

"...A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the

case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree."

19. At §17 the Judge simply asserts that the 'inconsistencies' cannot be explained by the Appellant's age and limited education. We accept the Appellant's argument that this does not constitute a sufficiently *reasoned* finding as was required.
20. Furthermore, and relevant to our finding that the Judge did not carry out the assessment of plausibility in accordance with binding authority, we also conclude that the Appellant has made out his argument in respect of Ground 3: that the Judge unlawfully gave little weight to the expert report of Dr Tahiraj.

Ground 3

21. In this ground the Appellant challenges the Judge's reasons for giving little weight to the expert report at §21 of the judgment.
22. By way of context, it is important to note that the Judge did not engage with the expert report until §21 - by this point in the decision the Judge had already found the Appellant to lack credibility and concluded, in the alternative (at §19), that even if the alleged threats to the Appellant had been made that this was over seven years ago and there was no evidence of further threats to him or any indication of anyone trying to track him in the UK. At §19(e) the Judge concluded that the Appellant had not established a subjective fear of persecution or serious harm.
23. We start by observing that the Judge does not record any submissions made by either representative during the First-tier Tribunal hearing albeit she does record that the issue of the weight to be given to the expert report was an issue to be decided, see §6.
24. We also note that Mr Allison quite fairly accepted that the report is challenging to read, fails to make obvious when the Appellant's own circumstances are being assessed, lacks proper formatting and is, at times, difficult to understand.
25. We do however conclude that the Appellant has established that the Judge erred in the approach to the expert evidence when finding at §21:
 - a. Firstly, there is no indication in the judgment that the Respondent ever disputed that Dr Tahiraj had sufficient knowledge or experience as is raised by the Judge at §21(a). The expert's experience is set out over 3 pages of the report in section 1.4 and this cannot be described as an inadequate foundation of relevant experience without a sufficiently detailed explanation - this is missing from the judgment.
 - b. Secondly, we can see no proper basis for the Judge's criticism that the expert had acted improperly by relying upon "*anecdotal evidence*" from newspapers or websites. Experts routinely source from newspaper articles, and we can see nothing *in principle* wrong with that approach. The question was one of weight to be given to those conclusions by the Tribunal. The Judge therefore erred by seemingly refusing to engage with the report on that basis alone.

- c. Thirdly, we see no merit in the finding in (a) that the report should be given less weight because the underlying source material was not produced with the report. We note that there are 517 footnoted sources within the report and 11 pages of references to mostly publicly available country evidence. The vast majority of these footnotes and references contain hyperlinks - we therefore can see no reason in principle why this was not sufficient. Furthermore, there is no suggestion in the judgment that the Respondent argued that she was prejudiced by the fact that this material had not been produced.
- d. Fourthly, the Judge's conclusion at (c) that the report is "*vague and unsubstantiated*" because of the use of very long sentences and subordinate clauses is not a lawful justification for giving little or no weight to the report. As we have already explained above, the report is lengthy and contains hundreds of footnoted sources and quotes from the underlying material in English. We find that the expert gave substantiation for her conclusions which were explained clearly enough despite the occasional phrasing issue.
- e. Fifthly, the Judge's conclusion that the expert was not impartial in her presentation and assessment of the evidence because Dr Tahiraj had accepted the relevance of evidence about blood feuds is also materially problematic. It appears that in §21(b) the Judge partly relies upon her own earlier finding that the Appellant had not been threatened as claimed to question the objectivity of the expert.
- f. The Judge's finding that the expert was not impartial based on her conclusion that the Appellant was not credible puts the cart before the horse. It is evident from the report itself, as well as the Appellant's second skeleton argument for the First-tier Tribunal proceedings, that the expert report was being relied upon in respect of the Appellant's credibility and risk on return issues. We therefore conclude that the Judge impermissibly sidelined the expert report during the making of her own credibility findings before then assessing the weight to be given to the expert's conclusions. Surprisingly the Appellant did not argue that this approach was contrary to binding authority such as Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367 but nonetheless the Appellant did argue in the grounds that the Judge's approach to the report led to inadequate reasons being given.
- g. We accept Mrs Nolan's arguments that the weight to be given to an expert report is a matter for the judge. It is however trite law that a judge should give sufficient reasons for explaining why the report has been given (or not given) weight and we have already explained why, in our view, the Judge failed to do that in this particular case.

Notice of Decision

26. We therefore conclude that the Judge did materially err in her factual assessment and that the finding in the alternative at §19 is insufficient in light of the errors relating to the assessment of the expert evidence. We conclude that the judgment should be set aside in its entirety. We therefore do not need to make express findings on the other three grounds.

Remittal to the First-tier Tribunal

27. We find that the appeal should be remitted to the First-tier Tribunal because of the need for full fact-finding.

DIRECTIONS

- (1) The appeal should be listed in the First-tier Tribunal not before Judge Coll. The next substantive hearing is to be listed for hearing by a salaried judge bearing in mind the relative complexities of the issues.
- (2) At the next substantive hearing the parties will be expected to make submissions on the relevance of the ECtHR's recent decision in A.D. AND OTHERS v. SWEDEN - 22283/21 (No Article 3 - Prohibition of torture : First Section) [2024] ECHR 402.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 October 2024