



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000473

First-tier Tribunal Nos: PA/50658/2023
LP/01727/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 1st of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

XS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Ms. K. Wass, Counsel, instructed by Kalsi Solicitors

For the Respondent:

Mr. T. Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 16 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and/or any member of his family, 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

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Hanbury dated 29 December 2023 in which he dismissed the appellant's appeal against the respondent's decision to refuse his protection claim.
2. I make an anonymity direction, continuing that made in the First-tier Tribunal, given the appellant's age and the fact that this is a protection claim.
3. Permission to appeal was granted by First-tier Tribunal Judge Galloway in a decision dated 7 February 2024 as follows:

"I do note at paragraph 22 that it was clearly argued that the Appellant was at risk from the persons who trafficked him. This is considered within the decision letter. It does not, however appear to have been a point considered by the judge. The question of risk in this regard is a matter which ought to have been considered and determined and the failure to do so amounts to an arguable error of law. I therefore grant permission on ground 1. I also grant permission on Ground 2 as, for the reasons previously expressed, I consider that it is arguable that the judge has failed to consider the key issues in the appeal and their impact upon the Appellant's risk on return".
4. In a Rule 24 response dated 26 February 2024 the respondent accepted that the judge had materially erred in respect of ground 1.

The hearing

5. At the hearing Mr. Lindsay accepted that, as it had been conceded that ground 1 involved the making of a material error of law, it was difficult to argue that ground 2 did not also involve the making of a material error of law. In agreement with this, I set aside the decision and remitted the appeal to the First-tier Tribunal to be reheard.
6. As indicated at the hearing, given the respondent's concessions, it is not necessary for this decision to be overly detailed.

Error of Law

Ground 1

7. As accepted by the respondent in the Rule 24 response, I find that the judge did not consider the appellant's risk of being re-trafficked by those who trafficked him to the United Kingdom. I find, as set out in the grounds, that this was a matter relied on by the appellant. The Rule 24 response notes that it was not set out in detail in the skeleton argument. However it is clear from the appellant's appeal witness statement that he feared return on account of those people who had trafficked him to the United Kingdom. For example, at [12] and [13], he directly refers to the traffickers finding him if he returns to Albania.

"In response to (3) persecution, I would like to state that, Albania is a small country, and it is very easy to find anyone in Albania. The people who have trafficked me have connections with the police. If I go to complain or report to authorities these people will find me. When I was in Albania, people in my village were talking about these girls who went to report to the police against some guys who wanted to take them abroad, the police did not do anything and then the girls disappeared, and no

one knew what happened to them. Further, when I was working in the cannabis house, traffickers were talking about bringing more people from Albania.

In response to (5) Well-founded fear of persecution, I would like to state that, I am in contact with my family and worried if I had to go back this will put them at risk. My father is old, and my mother is paralysed, they are barely surviving themselves and cannot support me. My village is very small and the place I used to work was 4-5 km away from the house, sometimes I would take the bus and sometimes I had to walk to work. The traffickers will find me if I go back.”

8. At [47] of the decision the judge states:

“However, a number of factors need to be considered to decide whether the individual is at risk of re-trafficking. Obviously, the risk of past trafficking is a significant factor but is not the only factor. Given that this appellant was last trafficked three years ago and would probably, as Mr Thompson says, be more wary about approaches from strangers I assess the risk of re-trafficking to be low. He is still of school age and could be protected by his parents, brothers and sisters as well as his school or, if he decides to cease full time education, his employer. He has a supportive family and they would provide him with some degree of protection. Were he to obtain employment he would increasingly be able to be financially independent. It seems that his welfare and best interests are best served by returning to live in the family unit.”

9. This paragraph contains the judge’s consideration of the risk to the appellant from traffickers, but he has not considered the risk to the appellant from those who originally trafficked him. It is accepted by the respondent that Counsel referred in her submissions to the risk of re-trafficking from those who had trafficked him to the United Kingdom. I find that this formed a central part of the appellant’s account, and therefore to fail to make findings on it is a material error of law.

Ground 2

10. As accepted by Mr. Lindsay before me, I find that ground 2 also involves the making of a material error of law, following on from the error in ground 1. Ground 2 relates to the judge’s consideration of risk on return, as set out above in [47]. As the judge failed to make findings on one of the core elements of the appellant’s claim, to fail to consider whether this creates a risk on return is a further material error of law.

11. I find that the decision involves the making of material errors of law. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

12. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal. The judge failed to make findings on a core aspect of the appellant's claim. Given the extent of fact finding required, I consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

13. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
14. The decision is remitted to the First-tier Tribunal to be re-made.
15. The appeal is not to be listed before Judge Hanbury.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
24 April 2024