IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2024-000874

First-tier Tribunal No:
PA/50615/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

10th December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

HD
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms R Akther, Counsel instructed by Malik and Malik Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on Thursday 26 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. Although the First-tier Tribunal did not make an anonymity order, a precautionary order was made when the appeal was listed due to the health conditions of the Appellant's wife which are discussed in this decision. It is appropriate to continue that order for that reason. No-one shall publish or reveal any information, including the name or address of the Appellant or his wife, likely to lead members of the public to identify the Appellant or

his wife. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Shakespeare ("the judge") promulgated on 14 December 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 20 January 2023 refusing his claim for international protection and his human rights claim.

2. The Appellant's protection claim was made on the basis that his family were involved in a blood feud and that he was a victim of trafficking with mental health difficulties. The Appellant's human rights claim was based on his private life; he entered the UK as an unaccompanied asylum-seeking child and has mental health difficulties.

3. The judge heard evidence from the Appellant and a witness. Having considered their evidence, alongside medical and expert country reports, amongst other things, the judge reached an adverse view of the Appellant's claim that his family was involved in a blood feud. The judge observed there was a general lack of detail in the Appellant's account and the country expert report was of limited assistance. The judge accepted the Appellant was forced to work by a criminal gang in the UK but concluded that he was not at risk of being re-trafficked. As for the Appellant's mental health, the judge accepted the appellant experienced mixed anxiety and depression and was taking anti-depressant medication, but nonetheless concluded that he could access appropriate treatment and medication in Albania.

4. The judge then turned to address the Appellant's Article 8 ECHR private life claim. The judge concluded that whilst the Appellant had established a private life in the UK, there were not very significant obstacles to his integration in Albania. She then dealt with Article 8 ECHR outside the Rules and found that removal of the Appellant would not be disproportionate. She therefore dismissed the appeal on all grounds.

5. The Appellant appealed the Decision. The grounds on application sought to challenge the judge's conclusions in respect of the Appellant's claim for international protection and on human rights grounds. Permission to appeal was refused by First-tier Tribunal Judge Gumsley on 17 February 2024. Following renewal of the application for permission to this Tribunal, permission was granted by Deputy Upper Tribunal Judge Chamberlain on 9 April 2024. Judge Chamberlain found there was no arguable error in the judge's consideration of the Appellant's asylum claim, but she was persuaded the judge arguably erred in her consideration of Article 8 for the following reasons:

> "5. … it is arguable that he has failed to give adequate reasons for why the appellant would be able to obtain work having found that his mental health would make integration difficult.
>
> 6. Permission is granted in relation to the consideration of Article 8, paragraphs [5] and [6] of the grounds of appeal to the Upper Tribunal dated 1 March 2024."

6. I had before me a composite bundle which included the documents relevant to the appeal, and the Appellant's and Respondent's bundles before the First-tier Tribunal. I pause to observe here that the bundle contains background evidence, including that which post-dates the Decision, however, the representatives did not refer to this evidence in their respective submissions. The Respondent has not filed a Rule 24 response, but Mr Terrell confirmed the Respondent opposed the appeal.

7. The matter comes before me to determine whether the Decision contains an error of law. If I conclude that it does, I must then consider whether to set aside the Decision. If I set aside the Decision, I must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

8. I heard submissions from Ms Akther and Mr Terrell. Their respective submissions are reflected in my reasoning where necessary below.

DISCUSSION

9. Judge Chamberlain made it clear that the grant of permission to appeal is limited to the ground raised in respect of Article 8 and, specifically, to the challenge contained in paragraphs 5 and 6 of the grounds. Those grounds (not authored by Ms Akther) challenge the judge's findings at [48] and [49] of the Decision where the judge said this:

> "48. I accept that the appellant may not be in regular contact with his family in Albania. I also accept that he has been out of the country for some time and came to the UK when he was only 16. I also accept that his mental health difficulties would mean that he would find integrating into Albania difficult. However, these facts are not sufficient, in my view, to meet the high threshold in paragraph 276ADE(1)(vi). The appellant is now 26 years old. He is physically in good health, speaks Albanian and has been educated in the UK for some years. There is no reason to think he would not be able to obtain work, and thus obtain access to health insurance and continue to access antidepressants in Albania. He has been refused temporary leave as a victim of trafficking, and has not challenged this decision, therefore there is no outstanding leave decision pending. The respondent has noted that it would be open to him to take advantage of the voluntary returns scheme to obtain some financial support. He is not, in my view, at risk from his traffickers in Albania, and I have not accepted that he is a member of a family party to a blood feud. I am therefore not persuaded that he would not be able to take part in day-to-day life such that he would face very significant obstacles to integration in Albania.

> 49. I therefore turn to consider whether there are exceptional circumstances which mean his removal would result in unjustifiably harsh consequences for the appellant or his family so as to render it a breach of Article 8. I conduct the proportionality balancing exercise, taking into account the various public interest considerations listed in section 117B of the 2002 Act. In particular, section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. Under section 117B(5) I am required to give little weight to a private life established by a person at a time when the person's immigration status is precarious. In accordance with Rhuppiah v Secretary of State [2018] UKSC 58 "everyone who, not being a UK citizen, is present in the UK and who has leave to reside here other than to do so indefinitely has a precarious immigration status for the purposes of s 117B (5)". Therefore, the appellant's private life was established at a time when his immigration status was precarious."

10. Paragraph [5] of the grounds assert that at [48] the judge did not give "… adequate and sufficient weight…" to the Appellant's mental health difficulties in view of her finding that the Appellant would find integration in consequence difficult. It is further asserted that the judge did not consider the impact of the Appellant's mental health *viz.* on his ability to obtain work and "…failed to give weight…" to the Appellant's length of residence in the UK from the age of 16. Likewise, paragraph [6] of the grounds, takes issue with the judge's application of section 117B of the 2002 Act, asserting that the judge failed to give sufficient weight to the factors on the Appellant's side of the balance, such as, "…the fact that he had spent his entire adulthood in the UK and the fact that the appellant has now adjusted and has severed his ties with the Albanian culture, customs, norm ties (sic)".

11. Ms Akhter in her amplification of these grounds, began her submissions by seeking to challenge the judge's purported failure to adequately consider the addendum medical report which referred to the dosage of the Appellant's anti-depressant medication being increased from 50mg to 100mg and to the Appellant's risk of self-harm. Ms Akther submitted that this indicated the Appellant's mental health had in fact worsened and not improved and, accordingly, in failing to take these factors into account the judge misapplied the test under paragraph 276ADE(1)(vi) of the Rules by applying a higher legal threshold. Ms Akther further submitted that the judge failed to consider whether the Appellant could access medical treatment in Albania.

12. It is appreciably clear, from my summary of the grounds on which permission to appeal was granted at [10] above, that Ms Akther's submissions strayed beyond that which is stated therein. Without criticism, whilst that is perhaps a temptation in cases where counsel is not the author of the grounds, it is nonetheless an impermissible approach. The Appellant has not been granted permission to appeal on this basis and I agree with Mr Terrell that they are out of scope of the grounds themselves. There was no application to amend the grounds of appeal, and had there been so, I would have refused permission to appeal. At [38] the judge referred to the addendum report and to the conclusions of the medical

expert, and, at [39], [41] and [48] considered the issue of access to medication and treatment within the context of the evidence as a whole. Whilst the judge did not expressly acknowledge the increase in dose of the Appellant's medication, that does necessarily lead to a presumption that the judge failed to take it into account. I agree with Mr Terrell that there was no obligation on the judge to set out all the opinions and conclusions of the medical expert and reading the Decision as a whole it is not arguable in my view that the judge reached findings in a vacuum.

13. Returning to the grounds as pleaded, I begin by reminding myself that an appellate court may interfere with a First-tier Tribunal's findings of fact and credibility only where they are 'plainly wrong' or 'rationally insupportable': see Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. I note, particularly, the guidance at [2(iv)-(vi)] in Volpi:

> "2. ...iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

14. The grounds of appeal do not in my judgement reach that high standard and are no more than a disagreement with conclusions which were unarguably open to the judge for the reasons given in the Decision. I reach that conclusion for the following reasons.

15. I agree with the submission of Mr Terrell, that the Decision is detailed and the judge gave comprehensive, intelligible and adequate reasons for concluding as she did at [48] and [49]. At [48] the judge grappled with the competing factors on both sides and conducted a balanced evaluation of both subjective and objective factors, having correctly identified the relevant test at [47]. The weight to be attributed to those factors was entirely a matter for the judge. The judge was plainly aware of the medical evidence and made continual references to it throughout the Decision to support her findings at [34], [35], [37], [38], [41] and [48] for example, and at [41] in particular considered the Appellant's claim and concluded that he was not at risk on return as a result of his mental health difficulties applying DH (Particular social group: mental health) Afghanistan [2020] UKUT 00223 (IAC). I do not agree with Ms Akhter therefore that the judge treated the Appellant as an "ordinary Albanian". The judge plainly had in mind the medical evidence in her assessment of the issues raised before

her by the Appellant, which I note did not include a claimed risk of suicide. In an issue focused appeal regime that prevails in the First-tier Tribunal, the judge fully considered the issues raised before her by the Appellant's representative. In that context, the submission of Ms Akhter that the judge failed to consider the risk of self-harm as either a Robinson obvious point or perverse is not made out on the evidence.

16. Further, it is not correct, as asserted in the grounds, that the judge failed to give weight to the fact that the Appellant had been in the UK since the age of 16 - the judge makes express reference to that at the outset at [48].

17. Essentially, paragraph [5] of the grounds appears to focus on the judge's findings that the Appellant could obtain work and in consequence could obtain access to health insurance and access to medication. Ms Akther was not able to point to any evidence that was before the judge that could support a contrary conclusion, namely, that the Appellant could not obtain work in view of his mental health difficulties. The expert medical evidence did not address that point and I agree with Mr Terrell that a contrary finding would have required the judge to make assumptions about the Appellant's inability to work.

18. I find the judge's conclusions at [48] have not been shown to be either irrational or wrong in approach. I find that the contentions raised in paragraph [5] of the grounds are disagreements with judge's unassailable findings on the evidence.

19. Paragraph [6] of the grounds is a direct challenge to the judge's approach in carrying out the balancing exercise under Article 8(2) ECHR. The alleged error can be characterised as a failure to give sufficient weight to factors on the Appellant's side of the balance. These factors are said to include the fact the Appellant has spent his entire adulthood in the UK and has severed ties with his Albanian culture and customs. The evidential basis for that latter assertion is not however made clear.

20. Analysed correctly, it is plain the judge took into account all relevant factors put forth by the parties on both sides of the balance sheet. If the author of the grounds had read down to paragraph [50] of the Decision, it is abundantly clear that the judge took all the factors the grounds complain about into account and more. On any fair reading of the Decision, the judge in a focused and comprehensive decision gave adequate reasons supported by the evidence in dismissing the appeal. I find that this ground does not establish an error of law let alone a material error.

CONCLUSION

21. I therefore conclude that the Appellant has failed to identify an error of law in the Decision, and I therefore uphold it with the result that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The Decision of Judge Shakespeare did not involve the making of an error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
1 December 2024