



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001236
First-tier Tribunal Nos:
PA/52187/2023
LP/02971/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

B G
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. De-Ruano (Legal Representative) Simman Solicitors
For the Respondent: Mr Ojo, Home Office Presenting Officer

Heard at Field House on 31 May 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, 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. The Appellant is a national of Albania born on the 30 September 2004. He got into serious amounts of debt in Albania, as a consequence of which he agreed to work for the person to whom he owed money, which resulted in him being trafficked to the UK on the 9 May 2022 in order to discharge the debt. He was held for two nights but then escaped on the 11 May 2022 and immediately claimed asylum. He subsequently received a positive reasonable grounds decision on the 17 May 2022. The Appellant was interviewed in respect of his claim on the 12 August 2022 and representations were made on his behalf on the 23 August 2022. His application for asylum was refused on the 23 March 2023 and his hearing came before the First-tier Tribunal for determination on the 18 December 2023.
2. In a decision and reasons promulgated on the 29 January 2024, the First tier Tribunal Judge dismissed his appeal.
3. Permission to appeal was sought in time on the 10 February 2024 on the basis that:
 - (i) the judge had placed undue weight on the country expert report and risks for the Appellant from other gangs and ignored all other aspects of that country expert report;
 - (ii) no reasoning had been provided for the assertion that the Appellant would contact his family for help and they would provide it;
 - (iii) an unduly high standard of proof has been applied regarding whether the persecutor was seeking him in Albania; and
 - (iv) the First-tier Tribunal had erred in finding that the risk of re-trafficking was so remote that there would not be a reasonable risk of harm on return to Albania.
4. Permission to appeal was granted on the basis of the renewed grounds of appeal by Judge Chamberlain on the 30 April 2024 in the following terms:
 - “2. *It is arguable, as asserted at [4] and [7] of the grounds of appeal, that the judge has failed to take into account the expert report. The judge states that the appellant relies on an expert report at [20] but does not indicate whether he gives that report any weight. He has referred to it only in one particular context, the risk of re-trafficking from another gang [21]. There is no reference to the rest of the report.*
 3. *In relation to the assertion that it is arguable no reasoning has been given for the finding that the appellant’s family would offer assistance ([5] of the grounds), the judge refers to the appellant’s answers at his asylum interview, but it is arguable that these answers go to the issue of contact with his family rather than any willingness of the appellant’s family to offer assistance.*
 4. *There is less merit in the assertion at [6] of the grounds that the judge has applied too high a standard of proof, but I do not restrict the grant of permission to appeal.”*

Hearing

5. At the hearing before the Upper Tribunal, Mr De-Ruano appeared on behalf of the Appellant. He submitted there were two main issues, the treatment of the report of the country expert in relation to risk on return and internal relocation. He submitted that there was clearly a material error in the judge's assessment of the country expert report and manifestly insufficient reasoning. The second issue of internal relocation was one of support and contact between the Appellant and his family. As had been rightly observed in the grant of permission, there was minimal reasoning and the finding that the family would support the Appellant based on answers given by him in his asylum interview was more to do with contact with the family than any assistance they could provide. This was clearly a material and central issue to the appeal and the finding and reasoning was manifestly insufficient. In terms of materiality, Mr De-Ruano submitted that there was nothing wrong with the country expert report, which provided sources and was therefore material evidence that would have been needed to have been more expressly considered. The fact that the Appellant had been subjected to past persecution and was an accepted victim of trafficking was significant in relation to future risk and he maintained that there was a material error of law.
6. In his submissions, Mr Ojo submitted that this was not a case where the First-tier Tribunal Judge had failed to engage with the expert report, see [20] to [21]. The judge was experienced and would not have looked at one aspect only of the report and at [21], he found that there would be an inability to locate the Appellant if returned, as there was no evidence that the potential persecutor could locate or harm him and that that was accepted by the expert, which was the most important aspect of his report, see [21].
7. In relation to the Appellant's skeleton argument, Mr Ojo sought to rely on [9] on the basis that this was the only submission in relation to the country expert report. This states that the expert commented that it is entirely plausible that the Appellant was preyed upon by an Albanian criminal gang who tricked him into a form of bondage and then trafficked him to the UK. It was asserted that the expert found that the Appellant could still be of interest to the criminal gang, since he can be recaptured and coerced into working for the gang. The expert further found that relocation was not a viable option in order to avoid the risk of being located by those who previously threatened them and the Appellant would face a number of difficulties. Mr Ojo relied on [22] of the decision of the First-tier Tribunal Judge, where the judge was careful not to discount the possibility that the Appellant could be located by his persecutor and the reference at [23] where the judge took into account that at question 19 of the Asylum Interview Record, the Appellant had chosen not to contact his family and was not in contact with them.
8. In terms of [25] there was no evidence that his persecutor had sought the Appellant in his home area, he had not contacted his family and there was no way of knowing whether he had subsequently contacted the Appellant's family. A key aspect of the decision was at [25] where the judge concluded it was not necessary for the Appellant to physically receive support from his parents and at [26] the judge did take into account the fact that Albania is a small country and there is no meaningful evidence that his persecutor would be alerted to the Appellant's arrival if he was outside Tirana. Mr Ojo submitted the judge acknowledged the country guidance cases on trafficking, the fact the Appellant was a male and so would not have access to shelters but could access, for example, a rent subsidy and this had not been challenged in the grounds of appeal. At [29] the judge clearly set out his position that the Appellant could

internally relocate either with the help of his family or assistance from the Albanian authorities. The Appellant is now an adult. It is clear that the judge provided adequate reasons. It was not necessary for the judge to mention every point, there was clearly enough information in the decision to make it sustainable.

9. In his reply, Mr De-Ruano submitted that the submissions by Mr Ojo did not discredit the points made in the grounds of challenge, which did not need to go through the entire expert report, which spoke for itself and was adequately reasoned. The fact the expert was not acquainted with the gang in question does not discredit the report. The expert adequately explained what the reality is in Albania. There was a lower standard of proof and there needs to be only a reasonable degree of likelihood of persecution for the Appellant to succeed. The expert gave reasons as to why there were concerns about the Appellant's safety on return and it was normal in these kinds of cases for there to be an absence of evidence as to every risk and it was necessary to apply the lower standard of proof.
10. I reserved my decision, which I now give with my reasons.

Decision and reasons

11. I find that the First tier Tribunal Judge erred materially in law in respect of Ground 1, which asserted that the Judge erred in his treatment of the country expert report, in particular, that he focused on one aspect only and ignored the rest of the report at [21].
12. I have considered the decision and reasons of the First tier Tribunal which provides at [21] that: *"the expert witness also discusses the risk of being re-trafficked by a different gang ... I am not persuaded that there is a reasonable likelihood of the Appellant being re-trafficked by a different gang."* Whilst the judge went on to give reasons for so finding, there is no further reference either in [21] or elsewhere in the judge's findings to the country expert's opinion on the material matters of the risk of re-trafficking; the sufficiency of State protection and internal relocation. Consequently, in the absence of such findings, it is not possible to know what difference consideration of the expert report could have made to the outcome of the appeal.
13. In respect of Ground 2, the judge found as follows at [23]-[25]:

"23. I have taken into account that the Appellant has said that he has become estranged from his family because of the issue of his debt - with which they would not assist him. When he pleaded this matter in the context of reintegration and/or assistance in relocating, the Respondent's Presenting Officer suggested that the Appellant may rehabilitate himself with his family, noting in particular his response at question 19 of his interview - that he could get in touch with his family if required. In the answer to question 19 it is apparent that it was the Appellant's choice not to contact his family: in my judgment it is plain that were it necessary he could; further in my judgement it is highly likely that were it necessary, that he would - and in the circumstances of what has happened it is also highly likely that his family would offer what support they are able.

24. But, this would mean a renewed contact with the address known to J. Accordingly, one of the means by which the Respondent suggests the Appellant can seek support and assistance might put him within the potential reach of J...

25. However that prospect seems remote. The Appellant has not provided any evidence to suggest that J has sought him at the home address that he provided when first borrowing money, notwithstanding his subsequent escape. (Whilst of course I recognise that it is the Appellant's evidence that he has not had contact with his family, this does not negate that the burden of proof is on him). Moreover, it is not necessary for the Appellant to physically visit his family in order to have contact with them and seek support from them."

14. Ground 2 of the grounds of challenge asserts that it is arguable that the Appellant's answers in interview go to the issue of contact with his family rather than any willingness of the appellant's family to offer assistance. I agree. The judge has approached this aspect of the claim on the basis that the Appellant's family would, if approached, provide him with assistance which does not engage properly or at all with the Appellant's evidence that he is estranged from his family due to the debt he incurred. The judge does not reject the Appellant's evidence on this issue but rather side-steps it. I find that in so doing the judge erred materially in law.
15. Moreover, the finding at [25] that the prospect of J finding the Appellant at his parents' address is remote because it is not the Appellant's case that J sought him there before, when he first borrowed money, fails to take account of the fact that if the Appellant is indeed estranged from his family he would not know whether or not J has sought him there since he left Albania. Moreover, the relevant test, which the judge does not appear to have applied, is whether there is a reasonable degree of likelihood that the Appellant would face persecution. Consequently, I find that Grounds 3 and 4 are made out.

Notice of Decision

16. I find material errors of law in the decision and reasons of the First tier Tribunal Judge. I set that decision aside and remit the appeal for a hearing *de novo* in the First tier Tribunal.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 June 2024