IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001879
UI-2024-002330
First-tier Tribunal No:
PA/54309/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of November 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms C Wigley, counsel instructed by Asylum Justice
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 5 November 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.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lester who dismissed his appeal following a hearing which took place on 5 March 2024.

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Anonymity

2. An anonymity direction was made previously and is maintained because this appeal concerns a refugee claim.

Factual Background

3. The appellant is a national of Albania now aged twenty who entered the United Kingdom by lorry and applied for asylum on 15 December 2021 after having been arrested at a cannabis farm.

4. Briefly, the appellant's claim is based on a feud which began when his uncle shot a person during a disagreement. In addition, the appellant states that he after fleeing Albania he was trafficked from Belgium to the United Kingdom by a Romanian man, in order to work on a cannabis farm. The appellant fears the family of his uncle's victim as well as those that trafficked him.

5. The appellant's asylum application was refused in a decision dated 29 June 2023, which is the decision under challenge in these proceedings. The Secretary of State accepted the appellant's identity and that he is a victim of trafficking, with reference to the positive Conclusive Grounds decision made on 22 June 2022. The appellant's claim regarding a blood feud was rejected on credibility grounds. It was considered that the appellant could obtain sufficient protection in Albania or relocate to avoid harm.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the appellant was treated as a vulnerable witness for the purpose of the conduct of the hearing. There was no Article 8 claim advanced. The judge found that the appellant was not credible in relation to the blood feud claim and was not at risk from his traffickers.

The appeal to the Upper Tribunal

7. The grounds of appeal can be summarised as follows:

   Ground 1: Misdirection in Law (Standard of Proof)

   Ground 2: Failure to consider Country Expert Report

   Ground 3: Failure to consider corroborative evidence

   Ground 4: Failure to consider Trauma Report and Medical Records

   Ground 5: Failure to consider objective evidence (schedule of reading)

   Ground 6: Irrationality

8. Permission to appeal was granted on grounds 2, 3 and 5 by First-tier Tribunal Seelhoff and grounds 1 and 4 by Upper Tribunal Judge Rintoul who also refused permission with respect to ground 6.

9. The respondent confirmed in writing that there would be no Rule 24 response filed in this case.

<u>The error of law hearing</u>

10. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. A bundle was submitted by the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal. In addition, an application was made under Rule 15 (2)A to adduce a letter from the country expert, responding to the decision under appeal.

11. The hearing was attended by representatives for both parties as above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary.

12. At the end of the hearing I announced that I was satisfied that the decision of the First-tier Tribunal contained material errors of law and that decision was set aside in its entirety.

<u>Discussion</u>

13. I will address the grounds in order of strength. The First-tier Tribunal erred in its treatment of the expert country evidence of Mr Erion Fejzulla. In his 140 page report, Mr Fejzulla describes himself as a specialist in human rights, the rule of law and justice. His attached curriculum vitae reveals that at the beginning of his career he lectured in constitutional law, since then he has been involved in high-level work in the legal field with US and European organisations aimed at developing government institutions in Albania and by the time of the hearing he was engaged with several pieces of justice-related work with the European Union.

14. In that report, Mr Fejzulla commented favourably on the plausibility of the appellant's account and proffers his opinion on a range of relevant matters including, but not limited to the availability of state protection, police corruption, blood feud fatalities, barriers to living anonymously, the appellant's particular circumstances in the context of internal relocation and risk of re-trafficking. In response to all this information, Judge Lester made one finding.

> The author may have acquired a knowledge of these matters through his work but as stated above his CV relates no specific expertise in blood feuds.

15. The judge repeated this remark on approximately 25 occasions during his assessment of the country report [56-85], before concluding that the report was deserving of only limited weight [85].

16. It is apparent from Mr Fejzulla's report that he has worked in the legal field, at a relatively high level for more than fifteen years and furthermore the respondent had not criticised the relevance of his expertise. The judge's repetition, mantra-like, of the phrase set out above was nonsensical. Even had he thought that Mr Fejzulla lacked the experience to comment on blood feuds from a perspective of the law, it does not follow that he was ill-equipped to comment on state protection and corruption. The judge's discounting of the expert's expertise is undermined by his repeated acceptance that he may have acquired knowledge through his work.

17. The report of Mr Fejzulla was detailed and referenced throughout, albeit the judge did not consider the underlying material nor the data included in the report. Ground two is made out.

18. Addressing the third ground, I accept that the judge erred in finding that there was no evidence to prove that the incident which the appellant says sparked the blood feud and which was mentioned in two news articles was 'linked to the appellant in any way' [47]. The report of Mr Fejzulla referred to him having carried out a detailed analysis of various sources which led the expert to conclude that it was 'highly probable' that the individuals involved in this incident were the people the appellant had named. The expert noted that the perpetrator and victim originated from the same small locality as the appellant and that the names, age and gender of those involved matched evidence seen by the expert in the leak from the Civil Registration Office database. The expert provided specific details and the extracts from the database, which I have not reproduced here to avoid any potential identification of the appellant. The database also confirmed that the appellant was related to his uncle who he states was involved in that incident. The judge did not explore this evidence, stating that he had already addressed the news reports in an earlier paragraph.

19. Ground four contains criticism of the judge's treatment of the trauma report prepared by Ms Morris, who is a psychotherapist and counsellor specialising in acute trauma. Ms Morris is the Clinical Director of a named counselling service with fifteen years of experience as a health professional of working with survivors of abuse and torture, domestic violence, human trafficking and asylum seekers and refugees. She also cites experience with working with those diagnosed with depression, PTSD and anxiety, among others. Ms Morris also has an MSc in Clinical Psychiatry and a Post-Graduate Diploma in Psychological trauma. The service run by Ms Morris is regulated by the British Association for Counselling & Psychotherapy (BACP) and receives referrals from the NHS and Social Services among others.

20. At [33] the judge discounts the evidence of Ms Morris for the following reasons

> The author sets out no history or experience of having been a treating clinician in a hospital, medical or NHS environment. I note that at no point in the report does the author describe themselves as a clinical psychiatrist. Within the extensive and detailed history set out in the CV there appears to be no evidence of treating patients in a medical environment whether that be hospitals or care in the community. Having gone through the report I conclude and find that the author does not appear to possess the relevant qualifications to give weight to the assertions made in the report.

21. In concluding that Ms Morris was not a clinician, the judge failed to address the evidence of her particular expertise and discounted her detailed conclusions and recommendations.

22. Contrary to what is said by the judge at [36], Ms Morris did not seek to provide a diagnosis of PTSD or any other mental illness as is demonstrated in the following extract from the report.

> (A) has symptoms consistent with PTSD. This includes three core elements or clusters: re-experiencing of the traumatic events in the present (he gets nightmares and flashbacks), avoidance of traumatic reminders (he finds

talking about the things that have happened to him very difficult and avoids it when he can) and a sense of current threat (he stays in his house a lot to avoid as much as possible). Individuals, who experience chronic, repeated and prolonged traumas, such as forced labour tend to experience more complex reactions, when faced with further trauma, extending beyond those typically observed in PTSD.

23. The expert is, however more than qualified to make an assessment as to whether or not the appellant displayed or reported symptoms of PTSD, dissociative disorder and depression and anxiety. Ms Morris was evidently qualified to reach conclusions as to the appellant's symptoms based on her observation of him and her expertise as a healthcare professional.

24. The evidence of Ms Morris is relevant to an assessment of the appellant's circumstances at the very least in relation to internal relocation as well as the risk of him being re-trafficked.

25. There is also merit in the criticism of the judge's comment that there was no reference to mental health in the appellant's GP notes. That assessment was incorrect as the GP notes include a prescription for sleeping tablets, record that the appellant is suffering from stress which is contributing to his chronic IBS and include a mental health referral form which indicates that in the view of the GP, the appellant is suffering from PTSD and stress/anxiety.

26. The manner in which the judge rejected the medical evidence lends weight to the error alleged in ground one, that is that the judge applied a higher standard of proof than that required. That the judge erred as argued is further supported by the lack of weight applied to the fact that the appellant had given a consistent account of events, that he had been a minor when exposed to traumatic events and that he had been accepted as a victim of trafficking. In rejecting the credibility of the blood feud aspect of the claim the judge takes no account of the fact that the appellant was to be treated as a vulnerable witness. Furthermore, at [103] the judge describes themselves as being 'unconvinced' by a key part of the appellant's evidence which by itself indicates a higher standard was applied.

27. The errors made by the judge in his employment of too high a standard, his rejection of the country report, corroborative evidence relating to the blood feud and the medical evidence is material because if this evidence had been considered properly and fairly, in the round, it could have reasonably led to a different outcome of this appeal.

28. I canvassed the views of the parties as to the venue of any remaking and both were of the view that the matter ought to be remitted if there were no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of a fair consideration of his protection appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Lester.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email