IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001924

First-tier Tribunal No: PA/51919/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 November 2024

Before

UPPER TRIBUNAL JUDGE RASTOGI

Between

FH
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A. Slatter, Counsel instructed by Morgan Pearse Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 14 October 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

1. An anonymity order was not made in the First-tier Tribunal and I was not asked to make one. However, as this is a protection claim and in light of the way I have decided the error of law hearing, I make one to protect the appellant's identity whilst his protection claim is being resolved.

2. The appellant appeals the decision of First-tier Tribunal Judge Dineen ("the judge") who, by way of a decision dated 15 March 2014 ("the decision"), dismissed the appellant's appeal against the respondent's refusal of his protection and human rights claim.

3. The appellant's claim for protection was founded on problems he had with a criminal gang in Albania prior to leaving there in 2014. He did not claim asylum in the UK until 17 July 2020. Following that claim being refused and certified he made fresh submissions on 11 February 2022 which were refused by the respondent on 27 February 2023.

4. The appellant appealed the respondent's decision to the First-tier Tribunal but the judge dismissed his appeal on all grounds. The judge dismissed the appeal on asylum grounds as the appellant did not seek protection for a Convention reason [28]; he dismissed the appellant's claim to humanitarian protection or on Article 2 and 3 having rejected the appellant's account on grounds of delay in the appellant's claim for asylum [29]; in any event, the judge decided the appellant had failed to show he was personally targeted in Albania and the risk was localised [30]; he could internally relocate as there is no evidence of a risk outside that area [31]; there was sufficient protection to him there [32] and notwithstanding the medical expert evidence of Dr Hameed as to the appellant's mental health, he does not meet the threshold required in AM (Art. 3; health cases) Zimbabwe [2022] UKUT 00131 for an Article 3 breach on medical grounds [36]; in any event he had not shown he could not be treated in Albania [37] or that he would encounter very significant obstacles re-integrating there [38] or that the respondent's decision represented a disproportionate interference with his Article 8 rights [39].

5. The appellant applied for permission to appeal the judge's decision to the Upper Tribunal on 4 grounds, summarised as follows:

   Ground 1: the judge erred in failing to consider the appellants credibility in the round instead of solely in light of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 contrary to the authority in SM (Section 8: Judge's process) Iran [2005] UKAIT 00116;

   Grounds 2 and 3: the judge erred in applying the incorrect test to internal relocation (unduly harsh) and when assessing internal relocation and sufficiency of protection, the judge failed to take account of the appellant's mental health, the issues raised in the appellant's skeleton argument ("ASA") and the country guidance in AM and BM (Trafficked women) Albania [2010] UKUT 80 (IAC) and failed to give adequate reasons why the persecutors could not trace the appellant;

   Ground 4: the judge erred in his assessment of the appellant's mental health as he failed to engage sufficiently with the expert evidence and the impact of the appellant's mental health upon return to Albania.

6. First-tier Tribunal Judge Gumsley found all grounds arguable and granted permission.

7. The error of law hearing took place before me for which I had the benefit of a 94 page hearing bundle ("HB"). I heard submissions on behalf of both parties and at the end of the hearing I reserved my position.

Discussion and Conclusions

8. The headnote of SM says:

> "even where section 8 applies, an Immigration Judge should look at the evidence as a whole and decide which parts are more important and which less. Section 8 does not require the behaviour to which it applies to be treated as the starting point of the assessment of credibility".

9. At [29] of his decision, the judge said:

> "I do not accept on the lower standard of proof that the appellant's account is credible, because he has offered no plausible explanation for delaying his first attempt at a claim for protection until encountered some six years after his arrival in the UK. I do not find it credible that he would for this period have been unaware of the ability to approach the authorities in order to claim protection".

10. This finding was made without any other analysis of the appellant's account or assessment of any of the evidence on which the appellant relied. The judge had set out a summary of the appellant's claim at [8]-[17] but therein there was no evaluation of the account. Therefore on its face, the judge failed to approach the assessment of the appellant's credibility in accordance with the guidance in SM or indeed as set out in the well-established cases of Karanakaran v Secretary of State for the Home Department [2000] 2 All ER 449 and others as discussed more recently in MAH v Secretary of State for the Home Department [2023] EWCA Civ 216.

11. At the hearing, Mr Tufan argued that [30]-[34] of the judge's decision showed that the judge looked at the appellant's claim in the round and then he made findings open to him on that evidence. I cannot accept that submission. It is clear that by then the judge had moved on to consider sufficiency of protection and internal relocation and then applied his adverse credibility findings at [34] to conclude that as a result "I am not satisfied that he has no continuing contact with family members in that country".

12. Whilst I accept Mr Tufan's submission that the judge would have fallen into error, applying JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878, if he did not consider the impact of section 8, I am nevertheless persuaded that the judge fell into error. Of course, at paras. 16 and 19 of JT (Cameroon) the Court of Appeal reminds us that notwithstanding the need to consider Section 8, a global assessment of credibility is still required.

13. It is clear from para. 14-16 of the refusal letter that the appellant's credibility was in dispute. In deciding that the appellant had not satisfied the respondent as to the truth of his account, the respondent noted that the appellant reported to Dr Hameed his fears of the local gangster community arising from a land dispute from his father's land which was consistent with the account he gave both in his original and his fresh claim. Nevertheless the respondent decided that was not sufficient to overcome the earlier adverse credibility findings made in the refusal on 22 September 2021.

14. Dr Hameed noted at [4.3] of his report the appellant's claim that his family was the victim of violence from a local gangster community in his home area and that the violence and threats of violence escalated to the point of threats of death. At

[4.5] Dr Hameed noted the appellant's fears about returning and his account of the gangsters' connections with the police and immigration authorities and the fact he would have no support on return. At [4.6] Dr Hameed noted the appellant's report of the impact the trauma has had upon him and his mental health and at [4.7], [4.10] and [5.3] his fear of the impact that returning him would have on his mental health. Having carried out a mental health examination, at [7.2] Dr Hameed said:

> "Mr Haziraj currently presents with symptoms in keeping with an Adjustment Disorder (Mixed anxiety and Depression Reaction) in accordance with the WHO International Classification of Diseases ICD 10th Edition F43.22. This disorder usually arises in response to an exceptionally stressful life event or a significant life change leading to continues unpleasant circumstances.".

15. The only part of the decision in which the judge considered Dr Hameed's evidence was in relation to the Article 3 (medical) risk [36]. At no point in the decision did the judge consider the credibility of the appellant's account of events in Albania and his fears through the lens of the medical report or the extent to which the findings of Dr Hameed supported the appellant's account of events in Albania. As stated above, neither did the judge evaluate any aspect of the appellant's account.

16. In failing to consider the appellant's credibility in accordance with the guidance in SM, or through the lens of the medical evidence, the judge has in my judgement failed to take into account other aspects of the appellant's evidence relevant to his credibility and failed to look at the matter in the round. For these reasons I find Ground 1 to be made out.

17. In light of the judge's findings at [34], his error infected his assessment of the appellant's circumstances on return. The judge viewed this through the lens of the appellant's adverse credibility so he rejected the appellant's claim that he would not have family support on return and that would have an impact on his mental health (see paras. 9-11 of his witness statement).

18. It was in this context that the judge made his findings on sufficiency of protection and internal relocation and, in my judgement, that makes the judge's error in Ground 1 material to the outcome of the appellant's claim that he would come to serious harm in Albania; that there would be very significant obstacles to his reintegration there [38]; and also to his treatment of the medical evidence and the appellant's risk of suicide as a result of his fears when the judge assessed the Article 3 medical claim [36].

19. In light of the extent to which the error at Ground 1 has infected the rest of the judge's decision, it follows that the judge's decision is to be set aside in full with no preserved findings of fact and I do not really need to deal with the remaining grounds. However, for completeness, for the reasons I have already given, the judge's assessment of the medical evidence was inadequate so Ground 4 is made out. Grounds 2 and 3 are made out as an inevitable consequence of the infections in Grounds 1 and 4.

20. As to disposal, whilst I have regard to the Court of Appeal's decision in AEB v SSHD [2022] EWCA Civ 1512, and the decision in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and para. 7.2 of the Senior President's Practice Statements, having regard to the nature of the error of law, I accept the

appellant was deprived of a fair opportunity to have all the evidence he relied upon considered by the First-tier Tribunal and the appropriate course is for the appeal to be remitted for rehearing before the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and is set aside with no preserved findings.

It is to be remade in the First-tier Tribunal before any judge other than Judge Dineen.

SJ Rastogi
Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024