IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-003024
First-tier Tribunal No:
PA/52834/2023
LP/02950/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MK (ALBANIA)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, Counsel instructed by SMA Solicitors
For the Respondent: Mrs Amrika Nolan, Senior Home Office Presenting Officer

Heard at Field House on 16 September 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. The appellant appeals to the Upper Tribunal from the decision of First-tier Tribunal Judge CL Taylor promulgated on 2 April 2024 ("the Decision"). By the Decision, Judge Taylor dismissed the appellant's appeal against the refusal of her protection claim which she had made on 30 November 2022, having entered the UK on a visit visa in July 2021.

Relevant Background

2. As set out in the appeal skeleton argument before the First-tier Tribunal, the appellant's case was that her father had threatened to kill her - with the help of his extended family - because she was seeking to divorce the husband (Mentor Kraja) whom he had chosen for her, because she had refused to leave her daughter in the custody of her husband's family and because she had had a relationship in the UK with a non-Albanian, non-Muslim man who he had not chosen for her.

3. In the Home Office decision letter ("HODL"), the respondent accepted that the appellant was married to Mentor Kraja (whom the appellant said was in the UK, and whom she said she had attempted to join in the UK with their daughter for the purposes of settlement). However, due to asserted inconsistencies in her account, it was not accepted that her father and his relatives had threatened to kill her, should she return to Albania.

4. The respondent said that, whilst they acknowledged her subjective fear of persecution, they were not satisfied it had an objective correlative. In the first instance, this was because she was not the member of a particular social group, and in the second instance it was because it was not accepted that her family had threatened to kill her.

5. Even though it was not accepted that she feared persecution for a Convention reason, or that her life had been threatened by her family, they had considered in the alternative whether she would have a well-founded fear, if it was true that her life had been threatened by her family. On the balance of probabilities, their assessment was that this was not the case, as sufficient protection against what she feared was available in Albania.

6. In the Respondent's Review, the Pre-Appeal Review Unit submitted that credibility was at the heart of the appeal, and therefore the appellant's account was in dispute and could only be resolved by the Tribunal's assessment of the evidence as a whole and the way in which the appellant responded to questions in cross-examination.

7. On the issue of sufficiency of protection and internal relocation, it was noted that the appellant's evidence was that her father's extended family occupied several positions in the security and civic services. However, it was significant that the appellant was unable to give their names and had never met them. It was also noted that the appellant had failed to provide independent evidence of the extended family's roles in the security and civic services. The background evidence demonstrated that the authorities

in Albania were able to provide the appellant with effective protection to the appropriate standard.

The Hearing Before, and the Decision of, the First-Tier Tribunal

8. The appellant's appeal came before Judge Taylor sitting at Birmingham on 11 March 2024. Both parties were legally represented, with Mr Holmes appearing on behalf of the appellant.

9. In the Decision at para [19] the Judge said that, having considered the issue of sufficiency of protection, she found that even if the appellant's claims were credible, she would be sufficiently protected and therefore there were not substantial grounds for believing that the appellant was at real risk of serious harm. The availability of protection was not, she accepted, perfect. However, it did not have to be perfect to meet the *Horvath* standard.

The Grounds of Appeal to the Upper Tribunal

10. The grounds of appeal to the Upper Tribunal were settled by Mr Holmes. He advanced a single ground of appeal, which was that the Judge had erred in law in failing to make findings upon material matters.

The Reasons for the Grant of Permission to Appeal

11. In a decision dated 27 June 2024, Designated Judge Paul Shaerf granted permission to appeal as in his view the Judge had arguably erred in law by making no findings of fact on the basis of which he could conclude that there was sufficiency of protection for the appellant upon return to Albania, and not producing a decision which showed a careful consideration of the appellant's claim.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether and error of law was made out, Mr Holmes developed the grounds of appeal. On behalf of the respondent, Mrs Nolan relied on the case of *Volpi & Volpi*, and submitted that the Judge had not been clearly wrong to dismiss the appellant's appeal for the reason which she gave in para [19] of the Decision. She submitted that it was open to the Judge to find that there was sufficiency of protection for the appellant, even taking her claim at its highest.

13. In reply, Mr Holmes submitted that the case of *Volpi & Volpi* had no traction in the current circumstances. If the appellant's case had been taken at its highest, this would involve an acceptance of her evidence about the influence that her father was able to exert throughout the country.

Discussion and Conclusions

14. In view of the nature of error of the law challenge, I consider that it is helpful to bear in mind both the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953 and also the

guidance given by Lewison LJ in *Volpi and Another v Volpi* [2022] EWCA Civ 464.

15. The observations of Lord Brown were cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

16. Lewison LJ summarised the relevant principles in *Volpi and another v Volpi* [2022] EWCA Civ 464 at para [2]:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
> 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."

17. Despite the high hurdle that the appellant has to surmount in light of the guidance given in *Volpi & Volpi*, for the reasons given below, I am persuaded that the Judge was clearly wrong in law not to make any findings on the appellant's credibility, especially on the credibility of her claim to have received death threats and on the credibility of her claim that she would not be able to access effective protection on return to Albania due to the power and influence of her father and his extended family.

18. I consider that the Judge was not assisted by the fact that the reasons for refusal are confusing and, in one respect, internally contradictory. The Judge was also not assisted by the representatives apparently agreeing that the first issue to be determined was whether the appellant had made out a case that she had a well-founded fear of persecution on return to Albania, when under NABA 2022 the Judge was required to answer Question 2 (Is the appellant in fact afraid?) on the balance of probabilities before going on to consider whether, if so, the appellant had a well-founded fear on return, applying the lower standard of proof: see *JCK (Botswana)* [2024] UKUT 00100 (IAC).

19. As to Question 2, the line taken in the HODL was confusing, because on the one hand the respondent appeared to accept that the appellant had a subjective fear of harm on return to Albania at the hands of her father and/or extended family members; but, on the other hand, the respondent did not accept that these people had made threats against her. Nonetheless, it is tolerably clear that - albeit badly expressed - the respondent invited the Tribunal to answer Question 2 in the negative: the appellant was not in fact afraid of her family in Albania because, on the balance of probabilities, it was unlikely to be true that her family in Albania had made threats against her.

20. As to Questions 3-5 (does the appellant have a well-founded fear of serious harm, and if so, will there be sufficiency of protection and/or the option of internal relocation?), it is clear from the HODL that the respondent's position was that, if (contrary to their primary case) the appellant was credible in her claim to have received threats from her family for the reasons which she said, the appellant was not credible in her claim that her father and his extended family had sufficient power and influence throughout Albania such that she would not be able to access sufficiency of protection from the Albanian authorities.

21. It was not the respondent's case that, even taking the appellant's claim at its highest - and thus accepting that her father and his extended family in Albania were as powerful and influential as she claimed them to be - nonetheless the appellant would have sufficiency of protection, and thereby there would be no real risk of her coming to harm.

22. In addition, the background evidence cited by the Judge did not go as far as stating that, no matter the particular individual circumstances, a claimant such as the appellant was bound to receive sufficiency of protection.

23. In short, it was not open to the Judge to resolve the appeal on the basis that she did not need to make any finding on the appellant's credibility. The parties were rightly in agreement that credibility was a principal controversial issue in the appeal, and the Judge's decision to ignore this was thus clearly wrong. Accordingly, the Decision is unsafe and must be set aside in its entirety.

24. Both parties have been deprived of a fair hearing in the First-tier Tribunal, and so the appropriate course is for this appeal to be remitted to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside. This appeal is remitted to the First-tier Tribunal at Birmingham for a fresh hearing before any Judge apart from Judge CL Taylor, with no findings of fact being preserved.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 October 2024