IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003073

First-tier Tribunal Nos: PA/54018/2023
LP/00572/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

LD
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr. M. Saleem, Malik and Malik Solicitors
For the respondent: Mr. N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 17 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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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. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Quinn (the "Judge"), dated 14 May 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse the appellant's protection

claim. The appellant is a citizen of Albania who made a protection claim on the basis that he would suffer ill-treatment as a result of a land dispute.

2. I have made an anonymity direction, given that this is a protection claim, and given the appellant's age when he came to the United Kingdom.

3. Permission to appeal was granted by First-tier Tribunal Judge Connal in a decision dated 1 July 2024 on the limited basis that ground 4(i) disclosed an arguable material error of law. The grant states:

> "Under the heading "Background and Matters Not in Dispute", the Judge recorded that the Appellant claimed to have arrived by lorry in the UK on 24 February 2019 ([5]), that he made an application for asylum the very next day ([6]), and that his account of past events was accepted as was his account of past mistreatment ([9]). The Appellant's position that he claimed asylum very shortly after arrival in the UK is set out in the Appeal Skeleton Argument, and in the immigration history section and the private life section of the Respondent's reasons for refusal letter (RFRL).
>
> However, at [33]-[35] the Judge considered the Appellant's journey to the UK, concluding at [36] that the Respondent was entitled to conclude that Section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applied (I note in passing that the RFRL appears to conclude at section 9 that the Appellant's behaviour is one to which section 8(4) does not apply), and at [37] found: "*In the UK the Appellant had delayed one month in making his asylum claim and again that was a factor that I took into account. If he had been in genuine fear, I would have expected him to claim asylum on arrival"* (my emphasis). The decision contains no further reasoning as to the finding regarding a delay of one month. While this was only one factor taken into consideration by the Judge, it is arguably material in circumstances where the Judge did not accept the Appellant's evidence on key matters and found that "[t]*he Appellant's case relied totally on his account of events and he had been shown to be an unreliable and inconsistent witness, even allowing for his age*" ([66])."

4. In a Rule 24 response the respondent opposed the appellant's appeal.

The hearing

5. The appellant attended the hearing. I heard oral submissions from Mr. Saleem and Mr. Wain following which I stated that I found the decision involved the making of a material error of law. I set the decision aside and remitted it to the First-tier Tribunal to be reheard.

Error of Law

6. At [35] to [37] of his decision the Judge states:

> "The Appellant's journey to the UK had the flavour of an economic migrant and not somebody fleeing persecution and fear of their life.
>
> The Respondent was entitled to conclude that Section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applied.
>
> In the UK the Appellant had delayed one month in making his asylum claim and again that was a factor that I took into account. If he had been in genuine fear I would have expected him to claim asylum on arrival."

7. As set out in the grant of permission, in section 9 of the decision letter the respondent states:

> "Consideration has been given to your age, at the time when you were travelling to the UK, and the fact that you were following an agent for part of the journey, and then paid two adults, namely Arjan and Hidajet, to help you with the rest of your journey to the UK. It is therefore concluded that your behaviour is one to which section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 does not apply."

8. I find that the Judge has gone behind a concession of the respondent. Owing to the appellant's age, the respondent had conceded that section 8(4) did not apply. I further find that the respondent had accepted a large part of the appellant's account. This is acknowledged by the Judge at [23] of his decision where he states:

> "My starting point was that the Respondent accepted that the Appellant was Albanian and that he faced problems in Albania due to a land dispute and had been attacked by Arlind."

9. Having made the finding that the respondent had accepted a large part of the appellant's account, the Judge then goes on to find that the appellant is an economic migrant and not somebody fleeing persecution in fear of their life. This is on the basis that he delayed a month in making his asylum claim. In addition to the fact that he has gone behind a concession that section 8(4) did not apply, this is factually wrong.

10. At [5] and [6] the Judge states that the appellant arrived in the United Kingdom on 24 February 2019 and made a claim for asylum "the very next day". It is therefore contradictory that he has later found that the appellant waited a month in the UK before making his asylum claim.

11. It was accepted by Mr. Wain that the Judge had gone behind a concession, but he submitted that it was not material as the Judge had then gone on to find that the appellant could internally relocate and that state protection was available. He submitted that the Judge had considered the appellant's circumstances as a whole. However, I find that this cannot be the case if the Judge has found the appellant to be lacking credibility. Any consideration of the appellant's circumstances has been done against a backdrop of a finding that the appellant was an unreliable witness who lacked credibility, and whose journey "had the flavour of an economic migrant and not someone fleeing persecution".

12. I find that the finding that the appellant was not a credible witness in reliance on section 8(4) has coloured the rest of the decision, including consideration of the appellant's circumstances and his ability to internally relocate. I find that the decision involves the making of a material error of law.

13. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is*

that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."

14. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given that the credibility findings cannot stand, there are no findings which can be preserved. Given the extent of fact-finding necessary, it is therefore it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

15. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside. No findings are preserved.

16. The appeal is remitted to the First-tier Tribunal to be heard de novo.

17. The appeal is to be heard at Hatton Cross.

18. An interpreter in Albanian is to be booked for the hearing.

19. The appeal is not to be listed before Judge Quinn.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 September 2024