



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-004077

First-tier Tribunal Nos:
PA/52788/2023
LP/0244/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th December 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

**AK
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr K Mukherjee, counsel instructed by, Rodman Pearce Solicitors Limited

For the Respondent: Mrs S Nwachuku, a Senior Home Office Presenting Officer

Heard at Field House on 7 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

1. This is my oral decision which I delivered at the hearing today.

The Appeal and Procedural History

2. The Appellant, a national of Albania, appeals with permission against the decision of First-tier Tribunal Judge Malcolm by way of a decision which was sent to the parties on 12 July 2024.
3. Permission to appeal was granted by First-tier Tribunal Judge Mills by way of a decision dated 2 September 2024. The learned Judge said:
 - "2. The appellant is a now 19-year-old citizen of Albania who appeals against the refusal of his protection claim, based on his account of having been a victim of trafficking and forced employment while still a child, in order to pay off debts incurred by his father. The Judge has rejected that account, and so dismissed the appeal.
 3. The appellant now seeks permission to appeal, contending that the Judge has erred in the following ways:
 - a. Through a factual mistake as to the appellant's evidence, recording him having said that he was free to come and go while in his initial place of forced employment, when his answers at both interview and at the hearing were the opposite.
 - b. Through reaching a number of 'unreasonable findings', and in general providing inadequate reasons for rejecting the credibility of the claim;
 4. I find that the challenge does identify arguable errors of law in the Judge's decision. A copy of counsel's note of proceedings is attached to the grounds, and it shows that the appellant stated that he 'was not free to come and go' from the original place of employment. While his answer to the equivalent question in interview was somewhat confusing, it also appears to have been to the effect that he was not free to leave."
4. Following the grant of permission, an Upper Tribunal Judge considered the matter and then provided directions dated 26 September 2024 stating,
 - "1. The Appellant has provided his Counsel's note of the hearing in support of his submission that the Judge has mis-recorded his evidence at [38] of the determination, with the Appellant stating that he had been permitted by his claimed traffickers to leave his accommodation, when he says that he stated at the hearing that he was not so permitted.
 2. The Respondent is to confirm within 14 days of the issue of these directions whether he agrees with the Appellant's note of the hearing on this issue. If the Respondent does not agree, the Respondent is to file and serve within 14 days of the issue of these directions evidence in support of his position."
5. In response to those directions, the Secretary of State in a note dated 30 September 2024, by Corona Newton stated in part as follows:

“This is the response to the Tribunal directions dated 26th September 2024 issued by the Upper Tier Tribunal in respect of the above appeal.

The Respondent has not had sight of Counsel’s record of Proceedings but will submit that there is no argument with this. The R will state that he is not in a position to submit the Presenting Officers own record of proceedings so will not therefore challenge what counsel has provided as their verbatim notes.

The Respondent does however submit that that error is a small element of the overall credibility findings of the FTTJ, and it is submitted it does not materially alter the Judges findings. It is therefore submitted that this error does not infect the overall findings of the FTTJ when considered holistically.”

The Hearing Before Me

6. At the hearing before me today, Mr Mukherjee amplified his grounds of appeal dated 16 July 2024 and he also very helpfully obtained from his instructing solicitors the directions and response of the Secretary of State which were not in the composite bundle provided to the Upper Tribunal by his instructing solicitors. Mr Mukherjee was also counsel at the hearing before the Judge.
7. Mrs Nwachuku said that the Respondent was not in a position to challenge counsel’s note as there were no counter-note from the Respondent. She said it was not being submitted that there was any dishonesty in respect of counsel’s note but that simply the Respondent was not in a position to say more than it was not challenged.
8. I invited Mrs Nwachuku to clarify her submission because the written note dated 30 September 2024 from the Respondent clearly said that there was “no argument with this” and also that “that the Respondent will not therefore challenge what Counsel has provided as a verbatim note”.
9. Mrs Nwachuku said in any event, even if there was that factual error by the Judge, it was not material as there were other adverse credibility findings. By way of example, she said that there were adverse credibility points in relation to the Appellant’s access to his telephone. The Judge did not find it credible that despite being under the control of alleged traffickers, the Appellant had access to his telephone.
10. Mrs Nwachuku said that the Appellant’s submissions in respect of National Referral Mechanism did not nullify any of the findings which the Judge had made. In any event, even if there had been positive grounds, the Judge could have come to a different view and it would not have swayed the decision.

Analysis and Consideration

11. An important feature of this case is the Appellant’s age. The Judge correctly noted that the Appellant was aged 18 at the time of the hearing at the First-tier Tribunal.

12. The added difficulty was that the Appellant's evidence related to matters when he was a child. Some of the evidence that he provided of what he said had happened to him was when he was age 15 or 16 years of age.
13. It is against that background I consider the Judge's conclusion that the Appellant was "free to come and go as he pleased".
14. The unchallenged note of the evidence provided by Mr Mukherjee shows that the Judge incorrectly concluded that the Appellant was "free to come and go as he pleased". The problem which arises is that that was not the Appellant's oral evidence. Nor was it the Appellant's written evidence whether, in his witness statement or in typed Asylum Interview Record. In the circumstances, the Judge's decision was based on a fundamental error in relation to her understanding of the factual matrix of the case. The Judge had based her conclusions on a fundamental error when finding that the Appellant was an unreliable witness.
15. I remind myself that it has been made clear by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 that the decision of first instance judges be respected on appeal. There must be appropriate judicial restraint against granting permission to appeal of the findings of the specialist tribunal. The Judge saw and heard from the Claimant. In my judgement in this instance in this protection claim the most anxious scrutiny was required. Noting the Appellant's age and the fundamental error of the Judge which attributes words to the Appellant which he did not say, I conclude that the decision of the Judge is not sustainable. The other adverse findings by the Judge were built upon the original fundamental error.
16. I therefore set aside the decision of the First-tier Tribunal. None of the current findings shall stand.
17. I had invited the parties to address me if I was to find that there was a material error of law in the Judge's decision. Both parties had invited me to remit the matter to the First-tier Tribunal for a rehearing if I was to do so.
18. I apply *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and I consider paragraphs 7.1 and 7.2 of the Senior President's Practice Statement. I conclude that the matter be remitted to the First-tier Tribunal for rehearing.

Notice of Decision

The Decision of the First-tier Tribunal contains a material error of law and is set aside. None of the current findings shall stand.

The matter is remitted to the First-tier Tribunal for rehearing.

Abid Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 November 2024