



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05166/2019

THE IMMIGRATION ACTS

Heard at Field House (via MS Teams)

**Decision & Reasons
Promulgated**

On 07 October 2021

On 09 November 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

EA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, counsel instructed by Virgo Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Lucas, promulgated on 18 February 2021. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 26 March 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below because the appellant is particularly vulnerable owing to his mental health concerns.

Background

3. The appellant left Albania, aged 14. He entered the United Kingdom clandestinely in 2016 and applied for asylum. He also made a trafficking claim and was referred to the National Referral Mechanism, albeit a negative conclusive grounds decision was made on 24 September 2018. His asylum claim was refused on 13 May 2019 and this is the relevant decision for the purpose of this appeal.
4. The appellant's protection claim was based upon him being targeted by a criminal gang who forced him, at gunpoint, to sell drugs. Thereafter his parents arranged for him to leave Albania for his own safety. The appellant also mentioned the ill-treatment he encountered owing to belonging to the Gorani tribe. The Secretary of State's reasons for refusal included that the appellant had identified no refugee Convention reason, that aspects of his claim to be forced to sell drugs for a gang were either inconsistent, implausible or lacking in detail. His nationality, age and ethnicity were accepted. In the alternative, the respondent considered that, if necessary, the appellant could approach the Albanian authorities for protection or relocate away from his home area.
5. The appellant lodged an appeal which was dismissed by First-tier Tribunal Judge Richardson on 22 January 2020. That decision was set aside by Upper Tribunal Judge Rimington following a hearing which took place on 23 September 2020. The appellant's appeal was remitted to the First-tier Tribunal for a de novo hearing.

The decision of the First-tier Tribunal

6. At the remitted hearing before the First-tier Tribunal, the appellant attended via video link and gave evidence. There was a psychiatric report before the judge which stated that the appellant was suffering from mental health issues. The judge rejected the appellant's claim to be at risk of criminals in Albania. While the medical report was described as helpful, the judge concluded that his symptoms were more likely to be related to his desire to remain in the UK. The protection, humanitarian protection and human rights claims (Articles 3 and 8) were also dismissed.

The grounds of appeal

7. In summary, the grounds of appeal were as follows. Firstly, the judge gave no consideration to the medical and background evidence prior to making adverse credibility findings. Secondly, the judge failed to consider the psychiatric evidence as part of his credibility assessment and looked at it only after he had reached his conclusions, *Mibanga* [2005] EWCA Civ

367. Thirdly and lastly, the judge failed to consider the appellant's private life claim under Article 8.

8. Permission to appeal was granted on the basis sought.

9. The respondent did not file a Rule 24 response.

The hearing

10. The appellant attended the hearing by video-link, along with Mr Naden, his support worker from the London Borough of Enfield.

11. Ms Everett confirmed that there was no Rule 24 response. In addition, she stated that she had discussed matters with Ms Yong and it was Ms Everett's view that the judge had failed to give reasons for concluding that aspects of the appellant's case were implausible. She had other reservations about the decision in question, while accepting that I was not bound by her concessions.

12. In view of Ms Everett's rightly made concessions, I had no need to hear from Ms Yong. I expressed my view to the parties that all the grounds of appeal were made out and amounted to material errors of law. I set aside the decision of First-tier Tribunal Judge Lucas in its entirety.

13. Ms Yong requested that the matter be remitted to the First-tier Tribunal, citing a need for further medical evidence owing to further developments as well as an expert report.

Decision on error of law

14. The judge was provided with an extensive appellant's bundle which contained, inter alia, a detailed report by the ARC Foundation regarding trafficked boys and young men. The judge did not mention this report nor give any indication of whether he accepted or rejected its contents. Nor did he consider the appellant's claim in the context of the medical evidence or the background material, including the ARC Foundation report. Had he done so, the judge might have realised that there was some support for the appellant's claim that violence was used to force him to deal drugs, that he was targeted owing to his ethnicity and that he would be more vulnerable to re-trafficking owing to his mental state and a history abuse within his family. There are many other parts of the report directly relevant to the appellant's claim which, if considered might have led to a different outcome.

15. The appellant relied on a psychiatric report in which he was diagnosed as suffering from PTSD and Mixed Anxiety and Depressive Disorder which was said to be attributable to the kidnapping incident. The judge considered the appellant's protection claim from [40-55] and rejected it as lacking credibility and plausibility. The judge turned his mind to the psychiatric report at [56] but concluded, after scant consideration, at [58] that the view of the Tribunal was that the appellant's psychiatric symptoms were unrelated to events which were said to have occurred in

Albania. In doing so, the judge erred materially in that he reached his adverse credibility findings without having considered the psychiatrist's conclusions and he also failed to consider the credibility of the claim in the light of the evidence that the appellant's concentration was impaired owing to his mental state, applying *Mibanga*. This was the principal reason this appeal was remitted previously. It is regrettable that Judge Lucas fell into the same error.

16. Lastly, the judge's Article 8 consideration was wholly inadequate. Submissions were made under Paragraph 276ADE(1)(vi) of the Immigration Rules as well as outside the Rules, based on the appellant's mental state and the private life he had developed during the time he has spent in the United Kingdom. The judge did not acknowledge those submissions at [36] and his consideration of Article 8 is contained in a very brief paragraph, as follows. [61] "*The appellant has family in Albania and only arrived in the UK in 2016. There is no realistic claim under Article 8 of ECHR. He has no other basis to be within the UK.*" That consideration was wholly inadequate in view of the medical evidence before the judge and the submissions made on the appellant's behalf.
17. I considered retaining this appeal in the Upper Tribunal given the history of this matter but decided that remittal was the more appropriate disposal in view of Ms Yong's submission on the point. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, I have considered the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his protection and human rights appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of 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 at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judges Lucas and G Richardson.

No interpreter is required.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of their family. This direction applies both to the

appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 24 November 2021

Upper Tribunal Judge Kamara