



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

Appeal Number: PA/07171/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2017**

**Decision & Reasons
Promulgated
On 29 November 2017**

Before

**RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE STOREY**

Between

**[L A]
(AKA ['L M'])
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Arkhurst, Counsel, instructed by Caulker & Co,
solicitors

For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with leave against a decision of First tier Tribunal (FtT) Judge NMK Lawrence promulgated on 29 August 2017. The appellant

was convicted under the name ['ML'], otherwise ['LM'], a Slovakian national, of five counts of burglary and an offence under the Sexual Offences Act 2003 at Southwark Crown Court on 14 March 2017. He was sentenced to a cumulative sentence of two years eight months. He was served with a Notice of Decision to Deport but in the meantime admitted that he was really an Albanian from Kosovo with the name [LA]. On 3 February 2016 the appellant was served with a Notice of Decision to Deport. On 10 March 2016 the appellant claimed asylum. On 10th June the appellant was served with a notice under section 72 of the Nationality, Immigration and Asylum Act 2002. On 13 July 2017 the Secretary of State refused the appellant's application for protection. The decision was certified under section 72(9) of the 2002 Act. Both the decision and the certificate were the subject of appeal by the appellant. Both were refused by Judge Lawrence.

2. In the course of his asylum interview the appellant claimed that he had been trafficked to the UK. The issue was referred to the National Referral Mechanism. On 26 August 2016 the Competent Authority made a positive Reasoned Grounds decision in relation to the claim and gave a 45 day reflection and recovery period. The Home Office decision letter states that on 21 December 2016 a Conclusive Grounds decision was made but it was decided not to grant the appellant any leave. We asked the parties whether they had a copy of the decision of 21 December but they did not. It appears not have been before the F-tT.
3. In granting permission to appeal FtT Judge Gibb noted *inter alia* that the strongest ground was in relation to the section 72 certificate. Judge Lawrence appeared to have taken the fact that the appellant's sentence was in excess of two years as determinative of the certificate whereas it was a presumption; the judge had an obligation to consider the evidence presented in rebuttal. Judge Gibb also noted that he appeared not to have noted the trafficking finding in his reasoning.
4. Mr Duffy accepted that there was an error of law in relation to the s.72 certificate but argued that it was not material since Judge Lawrence found that he was not at risk on return. Accordingly the Refugee Convention did not apply. So far as the Judge's treatment of him as a victim of trafficking is concerned Mr Duffy argued that it was significant that the appellant had not been granted leave. On the findings it looked as if the appellant had come through the experience relatively unscathed. If there was an error it was not material.
5. At paragraph 15 of the decision Judge Lawrence says that if a person is convicted by a UK court and sentenced to at least two years imprisonment that means that he or she has *ipso facto* committed a particularly serious crime and to constitute a danger to the community in the UK. The appellant presented evidence of the training schemes that he had undertaken while in custody. Nowhere is this evaluated in the decision letter. It is clear therefore that rather than treat the certificate as raising a presumption that may be rebutted the Judge has proceeded on the basis

that, having been sentenced to at least two years imprisonment, the certificate must stand. That was a clear error of law.

6. At paragraph 24 of the decision in evaluating the ability of the appellant to re-integrate to Kosovo the Judge states that the appellant has no recognised vulnerabilities. In reaching that conclusion he appears not to have considered the positive finding that the appellant is a victim of trafficking. Other than in the preamble he has not mentioned the fact or made any attempt to include it in his evaluation. It may be, as Mr Duffy says, that he did not require help as a victim of trafficking but without the Conclusive Grounds decision and any other supporting material it is difficult to be clear about that. Moreover the starting point for the Judge's consideration ought to have been that the appellant, as a victim of trafficking, was a vulnerable witness.
7. These errors of law are material and go to the heart of the assessment of the evidence for the appellant. Accordingly we shall allow the appellant's grounds of appeal, set aside the decision of the FtT and remit the case back to the FtT to be heard before a judge other than Judge Lawrence.
8. We asked Mr Duffy to make available the Conclusive Grounds decision of 21 December 2016 and any other relevant material connected with the National Referral Mechanism. As a victim of trafficking the FtT should be alive to the appellant's vulnerabilities. In that connection we would draw attention to the terms of the joint Presidential Guidance Note No. 2 of 2010 and to the further guidance to be found in **AM (Afghanistan v Secretary of State for the Home Department [2017] EWCA Civ 1123**.

Notice of Decision

The appeal is allowed and remitted to the First-tier Tribunal to be remade.

No anonymity direction is made.

Signed

Date 29 November 2017

Right Honourable Lord Boyd of Duncansby