Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06121/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd October 2018	**On 22nd October 2018**

Before

THE HONOURABLE MR JUSTICE DAVIS
UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR MG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Tinsley, Counsel instructed by CLP Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. We shall refer to the appellant throughout as MG, there having been an anonymity order made in this case. MG is an Albanian national. On 20 May 2016 at Wood Green Crown Court he was convicted after trial of an offence of robbery. It is appropriate, for reasons that will become apparent shortly, to set out the circumstances of that offence very briefly. It is an offence that occurred in the early hours of the morning. The victim was a taxi driver. The taxi driver was taking MG and two others home

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after an evening out and in the course of that late night journey MG robbed the taxi driver. He was sentenced to two years' imprisonment. The Secretary of State for the Home Department notified MG that a deportation order would be made under Section 32 (5) of the UK Borders Act 2007 unless he demonstrated he could fall within one of the exceptions. MG claimed deportation would infringe his Article 8 rights. The Secretary of State refused that claim on 27 March 2018 and made a deportation order on the same date. MG appealed against the refusal of his human rights claim as he was entitled to do.

2. The decision of the First-tier Tribunal was promulgated on 16 May 2018, by which time MG was living either in Germany or Albania. His claim was certified under s.94B of the 2002 Act and he did not have an in-country right of appeal. The appeal was dismissed. He now appeals to this Tribunal with leave of the First-tier Tribunal. His appeal is not opposed by the Secretary of State because the Secretary of State accepts that the decision of the First-tier Tribunal cannot be supported. The Secretary of State, supported by the appellant, points to a number of problems with the decision. We highlight the following:-

3. First, some 23 paragraphs of a lengthy decision were taken up with discussion of sentencing guidelines and whether MG was wise to have contested his trial. Not only was this discussion wholly irrelevant but also it was littered with errors of fact and principle. This ill-informed and irrelevant exposition, in our judgment, inevitably vitiates the conclusions reached at the end of the decision.

4. Second, the Judge at the First-tier Tribunal considered what compelling reasons there might be to justify overturning the deportation order. There was a focus on a description of the prevailing conditions and culture in Albania. This description was without any evidential foundation. It was largely irrelevant and not remotely in accordance with current in country guidance in relation to conditions in Albania.

5. Third, there was an assessment of the appellant's risk of reoffending described as low. There was no evidence at all to support that finding, not least because MG himself was not present at the hearing and gave no evidence.

6. However, the fundamental problem, notwithstanding all of those matters, appears from paragraph 3 of the decision. This reads as follows:-

> "The simultaneous human rights decision of 27 March 2017 [we interpose, that is a reference to the Secretary of State's decision] (at page 19) makes it clear that there is simply no right of appeal against that deportation order. At present that deportation order stands. The grounds of appeal in this human rights case state that an application to revoke the deportation order is made but the grounds do not explain how or where that revocation application is being made;

further, that is an application, not an appeal. The case put to me is purely a human rights appeal."

7. The judge went on to consider a whole raft of issues relating to human rights and then reverting back to that fundamental point made at the outset of the decision, determined that the appeal had to be dismissed. It follows that the First-tier Tribunal proceeded on a complete misapprehension. With some diffidence on behalf of the appellant it was suggested that we could remake the decision based on the factual findings of the judge and cure that misapprehension. We consider that not to be a tenable proposition. The findings of the judge were so infected by error, both of fact and law, that it is impossible for that to be done. The only possible outcome of this appeal is that we set aside the decision pursuant to section 12 (2) (b) (i) of the Tribunals, Courts and Enforcement Act 2007 (the "2007 Act"). We have regard to paragraph 7 of the Practice Statement of 25 September 2012. In our view the cumulative effect of the errors deprived the parties of a fair hearing. We remit the case for rehearing before a different First-tier Tribunal Judge.

8. We say only this in terms of the findings of fact of the First-tier Tribunal Judge. We do not, and indeed, cannot preserve them, but we do note that the appellant's wife gave evidence to the Tribunal from which this appeal lies, as indeed did the appellant's mother. The Judge in the First-tier Tribunal below spoke of that evidence being truthful and straightforward. It will be a matter for the First-tier Tribunal Judge as to the extent to which he or she takes account of that, but it is a matter which in our judgement should play some part in the assessment of the judge who rehears this case.

9. The FTT and the parties need to consider whether there are fairness issues arising from the certification of the case. In doing so regard should be had to *R (on the application of Watson) v (1) Secretary of State or the Home Department and (2) First-tier Tribunal (Extant appeal: s94B challenge: forum) [2018] UKUT 00165*. Other cases on the issue are *Nixon [2018] EWCA Civ 3* and *AJ (s 94B: Kiairie and Byndloss questions) Nigeria* [2018] UKUT 115. It may be that the FTT will send directions to the parties to address the issues relating to this appellant giving evidence via video link prior to the date of hearing.

<u>Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008</u>

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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
Mr Justice Davis	12 October 2018