



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

Appeal Number: AA/11468/2015

THE IMMIGRATION ACTS

**Decided without a hearing
under rule 34 (P)**

**Decision & Reasons Promulgated
On 17 September 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**X V
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 06 August 2015 to refuse a protection and human rights claim.
2. After some considerable delay in the appeal process relating to attempts to obtain permission to call witnesses remotely from Albania, First-tier

Tribunal Judge Burnett (“the judge”) dismissed the appeal in a decision promulgated on 03 October 2019.

3. The appellant appealed the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal failed to apply relevant country guidance.
 - (ii) The First-tier Tribunal failed to take into account material considerations and evidence and failed to make findings in respect of material issues.
 - (iii) The First-tier Tribunal failed to give adequate reasons for its findings.
 - (iv) The First-tier Tribunal was procedurally unfair in relying on points that were not put to the appellant to answer at the hearing.
 - (v) The lengthy delay in promulgating the decision cast doubt on the safety of the credibility findings.
4. The Upper Tribunal granted permission to appeal in an order dated 12 December 2019. The hearing listed on 01 April 2020 was adjourned due to the Covid-19 pandemic. The Upper Tribunal reviewed the file and sent directions to the parties on 04 June 2020. Further directions were sent on 03 August 2020 because there was no record of a response from the respondent.
5. The respondent responded to the directions on 21 August 2020. The respondent accepted that there were material errors of law in the First-tier Tribunal decision in the following terms:
 - “2. Having perused the determination, the grounds of appeal to the First and Upper tier (sic) tribunals and the documents provided by Messrs Birnberg Peirce Solicitors the SSHD accepts that there are errors in the FTTJ’s determination. It is apparent that the report from *Operazione Columba* which according to the grounds of appeal were relied upon by the appellant was not considered. The FTTJ has found that the appellant would not be at risk in his home area, there is no alternative finding in relation to whether the appellant can internally relocate. It is not clear what material difference it would have made but it is also apparent that the FTTJ has not considered the evidence given by the appellant’s wife apart from a short sentence at [57]. It is also accepted that the FTTJ has only cursorily considered the Dr Kabashis’s report at [71]. Finally, it is accepted that there is some merit in the argument that the FTTJ inordinately took long (sic) to promulgate his decision taking more than 3 months.”
6. Although the respondent did not concede that the lack of consideration of other evidence relating to the best interests of the children was likely to have made any material difference to the assessment under Article 8, it was accepted that the consideration of the evidence was inadequate and that the decision was sufficiently flawed for it to be set aside. The respondent did not consider it necessary to hold a hearing in the Upper Tribunal and submitted that the case should be remitted to the First-tier Tribunal for a fresh hearing.

7. In response to this concession the appellant's representatives wrote to the Upper Tribunal on 24 August 2020 in the following terms:

"We are instructed by the above-named and are in receipt of the Response to Directions from the HOPOU in which they agree that the case be remitted to the FTT at Taylor House for a hearing de novo. Therefore if the UT are minded to accept this there is no need for an oral hearing and we only request that the case be remitted to the FTT at Taylor House for a hearing de novo."

8. In light of the respondent's concession I am satisfied that I can determine the question of whether there is an error of law in the First-tier Tribunal without a hearing. For the reasons given in the grounds of appeal and the respondent's concession, the decision involved the making of an error on a point of law. While most of the grounds go to the heart of the First-tier Tribunal's findings relating to the protection claim, it appears that the respondent accepts that the evidence relating to the Article 8 claim might not have been given adequate consideration albeit she does not concede that the evidence would have made out a claim. For this reason, the whole decision is set aside.
9. Given that the errors go to the credibility of the appellant's account, it will be necessary for the case to be heard afresh. Although the normal course of action would be for the Upper Tribunal to remake the decision, in such circumstances, a wholesale fact finding exercise will need to be carried out. On this occasion both parties consider that it is appropriate to remit the case for a fresh hearing in the First-tier Tribunal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The case is remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan Date 16 September 2020

Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the

Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email