



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Numbers: PA/05684/2019 (V)

PA/05677/2019

PA/05693/2019

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Working Remotely by Skype**

**On 29 April 2021**

**Decision & Reasons Promulgated**

**On 17 May 2021**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**XE**

**LE**

**FE**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms B Smith instructed by Wimbledon Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellants. This direction applies to both the

appellants and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

### **Introduction**

2. The appellants are citizens of Albania who were born respectively on 7 December 1998, 16 February 2000 and 15 May 2003. The first appellant is the sister of the second and third appellants, who are her brothers.
3. The appellants left Albania around 10 September 2015 and travelled via a number of countries to the UK where they claimed asylum on 2 November 2015. They were then aged 16, 15 and 12 years old respectively.
4. The following day, the appellants were referred to the National Referral Mechanism (“NRM”) and, on 9 November 2015, the NRM decided that there were reasonable grounds to believe that the appellants were victims of trafficking and modern slavery. However, on 24 August 2019, the NRM in its Conclusive Grounds decision concluded that the appellants were not the victims of human trafficking or modern slavery.
5. On 3 June 2019, the Secretary of State refused each of the appellants’ claims for asylum, humanitarian protection and under Art 8 of the ECHR. The respondent did not accept that the appellants had been trafficked from Albania by individuals in order to repay a debt owed by their father in Albania.

### **The Appeal to the First-tier Tribunal**

6. The appellants appealed to the First-tier Tribunal. In a determination sent on 30 January 2020, Judge Hatton dismissed each of the appellants’ appeals on all grounds. In particular, the judge made adverse credibility findings and did not accept the appellants’ accounts that they had been trafficked from Albania as they claimed. Instead, the judge found that “the appellants had left Albania and travelled to the UK with the full knowledge and consent of both their parents and that no trafficking gang was involved in this process” (see para 78 of his determination).

### **The Appeal to the Upper Tribunal**

7. The appellants sought permission to appeal to the Upper Tribunal challenging the adverse credibility finding on four grounds.
8. Ground 1: the judge had been wrong to discount the medico-legal expert report produced by Dr Agnew-Davies simply on the basis that she had not had sight of the NRM decisions when preparing her report.
9. Ground 2: the judge had been wrong to take into account that a travel proxy had been signed by the appellants’ father allowing the appellants to leave Albania in reaching the finding that, rather than being trafficked from Albania, the appellants had left with the consent of their parents.

There was no evidence that the travel proxy had, in fact, been signed by the appellants' father.

10. Ground 3: the judge had impermissibly found aspects of the appellants' account implausible, inconsistently with the approach set out in HK v SSHD [2006] EWCA Civ 1037.
11. Ground 4: the judge had wrongly found a number of inconsistencies in the appellants' evidence and had failed to take into account, not least following Dr Agnew-Davies' report, that the appellants were young children who might have difficulty recalling the detail of their accounts.
12. On 10 March 2020, the First-tier Tribunal (Judge Landes) granted the appellants permission to appeal on all grounds.
13. Following the UT's directions, the appellants made further submissions requesting an oral hearing and, albeit in substance, repeating the basis upon which permission had been sought and granted.
14. The appeals were listed at the Cardiff Civil Justice Centre on 29 April 2021 working remotely. The appellants were represented by Ms Smith and the respondent was represented by Mr Kotas, both of whom joined the hearing via Skype.

## **Discussion**

15. Ms Smith relied upon the four grounds of appeal. In particular, however, she relied upon ground 2 concerning the travel proxy which she submitted was, if established, sufficient to make the decision unsustainable as it was fundamental to the judge's reasoning that he accepted that the appellants' father had agreed to them leaving Albania inconsistently with their claim of having been trafficked. Nevertheless, Ms Smith, having made oral submissions in relation to ground 2, also made further submissions in relation to the remaining grounds 1, 3 and 4.
16. Having heard those submissions, Mr Kotas indicated that if ground 2 was established he would not seek to uphold the decision and it should be set aside and remitted to the First-tier Tribunal for a rehearing.
17. In the light of that concession, I indicated that I was satisfied that ground 2 was established and, as was then agreed between the representatives, I indicated that the First-tier Tribunal's decision should be set aside and the appeal remitted for a fresh hearing. I now give my reasons for concluding that ground 2 is established.
18. At para 42 of his determination, the judge referred to a letter (at page 78 of the respondent's bundle) dated 12 September 2017 from the British Embassy in Tirana. At paras 42-46, the judge said this:
  - "42. The above letter additionally confirms that the Appellants and their mother submitted a travel proxy No 45 dated 3 September

2015, issued by the Consul of the Republic of Albania, based at the Embassy of Albania in London. Although the letter states that a copy of this travel proxy has not been retained, I note that the Respondent's reasons for refusal decision dated 3 June 2019 confirms [at para 28] that '*your father, [HE] signed a travel proxy in London for you and your siblings to travel out of Albania with your mother on 10 September 2015*'.

43. Conspicuously, the Appellants have failed to adduce any documentary evidence capable of rebutting the assertion made by the Respondent in this regard. In particular, there is no evidence before me that the Appellants made any attempt to contact the Albanian Embassy in London regarding this issue, notwithstanding its central importance to the substance of their protection claim, in spite of having had an ample opportunity to do so.
44. During her closing submissions, Miss Smith suggested that rather than the Appellants' father having signed a travel proxy at the Embassy of Albania in London, it was '*far more likely that somebody would have forged that document if it indeed exists*'. I note that no documentary evidence has been adduced in support of Miss Smith's suggestion.
45. Further, I consider the suggestion that someone forged [HE's] signature on the travel proxy is fundamentally incompatible with the documentary evidence from the British Embassy in Tirana, which confirms that the Appellants' father was issued with a biometric passport No BR8562069, issued on 12 August 2015 and valid to 11 August 2025, which was applied for in a Consular Section of an Albanian Diplomatic Mission abroad [Respondent's Bundle p.78].
46. Accordingly, as the Appellants' father was able to obtain an Albanian passport overseas, it follows that he would have been required to provide biometrics in order to be issued with such documentation. Correspondingly, it also follows that the bearer of a valid biometric passport would have been able to satisfy the Albanian Embassy in London that they were in a position to sign a travel proxy on the Appellants' behalf. Conversely, it follows that a person other than the Appellants' father would not have been able to satisfy the Albanian authorities as to their identity and/or relationship with the Appellants. Further, I consider it exceedingly unlikely that any member of a trafficking gang would have risked attending an embassy for the purpose of forging a signature on a travel proxy".

19. Then, at para 73 the judge said this:

- "73. Further, it is clear from the travel proxy signed by the Appellants' father at the Albanian Embassy in this country that he was fully aware and supportive of their journey from Albania to the UK, especially in view of the fact that the Appellants' father renewed his Albanian passport on 12 August 2015 and signed a travel proxy authorising his children to come to this country just 22 days later, on 3 September 2015 [see above]".

20. At para 78, the judge reached the following conclusion:
- “Accordingly, I am satisfied that all three Appellants arrived in the UK with the full knowledge and consent of both their parents, and that no trafficking gang was involved in this process”.
21. In her oral submissions, Ms Smith referred me to the letter from the British Embassy in Tirana at p.78 of the respondent’s bundle. Whilst that document refers to the appellants travelling with a “travel proxy No 45 dated 03.09.2015, issued by the Consul of the Republic of Albania, based at the Embassy of Albania in London”, it makes no reference to that travel proxy having been signed by the appellants’ father. As it also makes clear, no copy of that travel proxy has been retained. Neither representative was able to assist me as to how the Secretary of State came to conclude in paras 28–29, for example of the first appellant’s decision letter, that:
- “28. This is inconsistent with the information from the British Embassy Tirana we have which states that your father, [HE] signed a travel proxy in London for you and your siblings to travel out of Albania with your mother on 10 September 2015.
29. It therefore cannot be accepted your father, left your family in 2005 or that you had no contact with him since. This has damaged your credibility and therefore it cannot be accepted that he fled the country because he was in debt and could not make the payments”.
22. In my judgment, there was no evidence before the judge that the appellants’ father had, indeed, signed the travel proxy. In reaching his adverse conclusion, in those circumstances, the judge erred in law.
23. That the judge accepted the appellants’ father signed the travel proxy was a significant and material part of the judge’s reasoning that led him to disbelieve the appellants’ account as to what had occurred in Albania to their father and which, they claimed, had led to them being trafficked to the UK in order to be forced to repay the debt said to be owed by their father to the traffickers. That is, in my judgment, clear from the passages in the judge’s determination which I have set out above and in his conclusion juxtaposing (consistent with the appellants’ claim) that they had been trafficked by a gang with the fact that they had left Albania and come to the UK with the full knowledge and consent of both their parents. As I have said, Mr Kotas accepted the materiality of that conclusion, based upon no evidence, made the judge’s adverse credibility finding and his determination unsustainable in law.
24. I agree and for that reason the First-tier Tribunal’s decision contained a material error of law. It cannot be sustained and it is set aside. It is unnecessary, therefore, to consider the other grounds relied upon by Ms Smith.

**Decision**

25. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellants' appeals involved the making of an error of law. The decision cannot stand and is set aside.
26. As was agreed by the representatives, given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Hatton.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
5 May 2021