Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-001433**
PA/52422/2021; IA/06266/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 7 November 2022

Decision & Reasons Promulgated
On the 24 January 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

BM (ALBANIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Harris, Counsel instructed by Rashid & Rashid (a firm of solicitors)
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish any information, including the appellant's name or address, which is likely to lead members of the public to identify the appellant, without that

individual's express consent. Failure to comply with this order could amount to a contempt of court.

Introduction

1. The appellant, who has re-entered the United Kingdom in breach of a deportation order, appeals against the decision of First-tier Tribunal Judge Groom promulgated on 18 February 2022 ("the Decision"). By the Decision, the Judge dismissed his appeal against the decision made by the respondent on 10 May 2021 to refuse his protection and human rights claim.

Relevant Background

2. The appellant is a national of Albania, whose date of birth is 6 May 1988. He claims to have first entered the UK illegally in January 2010. On 8 October 2012 he applied for a residence permit as a family member of an EEA national. His application was successful, and on 17 December 2013 the appellant was issued with an EEA residence card that was valid until 17 December 2018. On 13 February 2017 the appellant was convicted at Kingston-upon-Thames Crown Court of an offence of entering into or being concerned in the acquisition/retention/use or control of criminal property. On 10 March 2017 the appellant was sentenced to a term of 24 months' imprisonment.

3. In her sentencing remarks delivered on 10 March 2017, Her Honour Judge Coello said, *inter alia*, as follows:

> "There will be no victim surcharge applicable in this case because there are confiscation proceedings.
>
> Both defendants can remain seated while I just explain the basis of the sentence in this case. You have both pleaded guilty, both of you on count 1, to entering into a money laundering arrangement on or before 14th January this year and you, Hong Chen, to a second count of being in possession of criminal property, some £2,635.
>
> These offences arise largely out of surveillance being carried out by NCA officers in Bromley when on the date you, Hong Chen, was seen to approach a vehicle with you, Mr [M] inside and you, Hong Chen, collected as it turned out, £91,240 in cash. You were seen putting on gloves before you approached the car which in my judgement was an indication for the need to make sure that you covered your back forensically. It is from the prosecution's evidence that you were fully involved and knew of the arrangement, for example, to use the code for the purpose of transferring that money, i.e. the £5 note and the serial number.
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> …
>
> In my judgement you, Hong Chen, clearly played a significant role in this. You were the person doing the collecting, engaging with the plans that had been made in furtherance of this criminality and there is clear evidence, as I say, that you were engaged in hiding further cash which

> you knew all of it was the proceeds of criminal conduct, both on what you collected from the car and what was stashed at your home.
>
> The prosecution say that your role was not as great as that of your co-defendant and I accept that and sentence you on that basis. However, I am not prepared to accept that you came under any pressure to involve yourself in any of this activity without evidence. I therefore treat you as a willing and fully engaged participant and in my judgement, you were furthering your husband's criminal activity because he had been arrested by then and was under investigation.
>
> …
>
> In your case, Mr [M], you were clearly in direct contact with the central figure in this money laundering criminal operation and you were in very frequent contact with whoever that was in the month preceding this offence.
>
> The level of contact and the nature of it indicates to me that you cannot [be] considered to be just a mere courier. Even if you are operating on instructions and you would have had to be anyway, in passing this money over, it was a significant amount of cash. You were obviously a trusted operative and the operation relied upon you.
>
> I am entitled, therefore, to find that you did play a significant role and, as I say, the prosecution accept it is of greater seriousness than your co-defendant for those reasons."

4. On 2 May 2017 the appellant was notified by the Home Office of his liability to deportation. He is recorded as having subsequently signed a disclaimer indicating that he did not want to raise any reasons why he should not be deported. On 28 June 2017 a signed deportation order was served on the appellant at HMP Wandsworth.

5. On 11 October 2017 the appellant returned to Albania voluntarily. On 8 January 2018 the appellant's EEA residence card was revoked.

6. On 8 October 2019 the appellant was encountered by Immigration Officials at Gatwick Airport. He was identified as an illegal entrant after admitting to the authorities that he was in the UK illegally. He claimed to have entered the UK clandestinely in the back of a lorry approximately one month previously.

7. The appellant was detained, and while in detention he claimed asylum on 9 October 2018 and he was examined by Doctor Babalola on 10 October 2019. In his subsequent medico-legal report dated 16 October 2019, Dr Babolola diagnosed the appellant as suffering with Paroxysmal Episodic Anxiety (panic disorder) along with major depressive symptoms within the context of his continued detention at Brook House IRC Detention Centre and a significant fear of repatriation. Dr Babalola opined that his continued detention was having a significant negative impact upon his mental well-being, and that Immigration Bail would be appropriate as it would be likely to allay several of his anxieties, and would help reduce the impact upon his mental state. The appellant was not currently receiving any treatment for his mental ill-health at the detention centre, and he

strongly advised that the appellant required assessment and treatment by the medical staff there.

8. The appellant was interviewed about his asylum claim on 10 January 2020, by which time he had been released on bail and was living with a friend in Worcester. He said that he was suffering from depression, and that he was taking three types of medication for depression, stress and memory loss. But he could not remember the names of the medication. It had been prescribed by the doctor at the detention centre who had written the medical report. He had been suffering from depression for several months before he came to England, and he used to take medication for this in Albania. He paid for this himself, but it was not very expensive.

9. In a note at the end of the interview, the interviewing officer recorded that the appellant had refused to give him the medical report in order that he could make a copy of it. The medical report from Dr Babalola was eventually disclosed in the appeal bundle.

10. As summarised in the Decision, the appellant's claim was that a few months after returning voluntarily to Albania, he went for a drink with three people who were part of the organised criminal gang ("OCG") for whom he had been working in the UK. His drink was spiked, and he was then beaten and taken to a cannabis farm in Vlora. This was to re-pay the debt which they considered that he owed them as a result of the UK police having seized the money that he was carrying in a bag in a taxi. He was not certain how much it was, but he guessed that it was £80-90,000. He stayed there for a few months and was forced to carry out whichever jobs he was instructed to do. He managed to leave the farm, stating that he had walked away when he discovered the OCG were planning on taking him to a different location. He went to stay with an uncle in Sukh to avoid being found by the OCG. Sukh was 11 km from Durres, the appellant's hometown. He did not encounter any particular difficulties there, but he did not feel entirely safe. On his journey back to the UK, he had passed through Italy, Belgium and France, but he had not claimed asylum in those countries as he felt safer in the UK.

11. On 24 February 2020 a referral was made to the National Referral Mechanism ("NRM") in order for a competent authority to make a decision as to whether the appellant fell within the definition of a victim of trafficking. A NRM decision was made on 28 February 2020 and it was concluded that there were reasonable grounds to show that he was a victim of human trafficking or slavery, servitude, or forced/compulsory labour.

12. On 25 November 2020 the appellant's solicitors served on the Home Office a medico-legal report from Dr Hameed, who said that he had examined the appellant on 9 November 2020. His other sources of information were background information from the solicitor and "*his statement from the solicitor*".

13. He said that BM had no previous formal diagnosis of mental illness. BM had noticed a deterioration of his mental health for quite some time now, which had worsened over recent months. He had visited a GP and the GP had prescribed Mirtazapine 45mg *nocte*, which was an anti-depressant, Promethazine 25mg *nocte* for sleep, and Propranolol 80mg for anxiety-related issues. He had taken this medication for some time, but later he did not have any money and as a result he could not buy them and his condition had become worse (6.3). But he had [now] agreed to buy and take the prescribed medications with the help of a friend (7.5).

14. Dr Hameed said that the appellant was currently presenting with symptoms consistent with an adjustment disorder (mixed anxiety and depressive reaction). He recommended that he continue with his medication under monitoring from his GP, and that his GP should refer him to his local CMHT for a proper psychiatric follow-up.

15. In his view, the appellant was fit to give oral evidence in Court with the support of his legal representative. However, the Court should bear in mind that he might become distressed by the experience under questioning to the extent that the accuracy of his testimony might be affected.

16. On 10 May 2021 the respondent gave her reasons for refusing the appellant's protection and human rights claim. There was no background information to confirm that the OCG for whom he had worked in the UK was the same OCG that he claimed had forced him to work on a cannabis farm in Albania. His account of his claimed experiences was also inconsistent and lacking in credibility. He had not been able to name or give details of the three people who he said he had gone for a drink with, although he claimed to know they were part of the same OCG for whom he had worked in England. The ease with which he had escaped from the watchful eyes of the gangsters was inconsistent with his claim that his movements were restricted. His taking refuge with his uncle in Sukh, close to his hometown, was inconsistent with him being searched for by the OCG and with him having felt any real threat to his life from the OCG. It was not consistent with his core claim that he should feel safer in England, when the OCG he claimed to fear operated in England.

17. It was noted that he claimed to suffer from depression, for which he was taking medication. He claimed that his anxiety and depression had been exacerbated by his current situation and the fear of returning to Albania. He had stated in his asylum interview that he had been on medication for several months and started taking medication in Albania before he came to the UK, which he paid for and which was not very expensive. In support of this claim, he provided a medical report dated 16 November 2020 from Dr Hameed. This did not indicate that his medical conditions were life-threatening.

18. In support of the appellant's appeal, the appellant's solicitors served a further report from Dr Hameed, dated 6 September 2021, which was

purportedly based on an interview of the appellant on that date and "*his statement from the solicitor*".

19. The 2021 report largely repeated what had been said in the 2020 report word for word, including at paragraph 7.17 where Dr Hameed said that BM was taking his medication on and off. At 7.5 Dr Hameed said that for some time the appellant had not been able to buy his medication, but that he was currently on Mirtazapine 45mg *nocte*, which was an anti-depressant, Promethazine 25mg *nocte* for sleep, and Propranolol 80mg for anxiety-related issues.

20. The main discernible difference between the two reports was at 7.28, where Dr Hameed said as follows:

> "In my professional opinion, Mr [M] is not fit to give oral evidence in Court as he gets confused and cannot follow the proceedings. He gets distressed due to cross-questioning as it brings back all his trauma from the past. The Court should bear in mind that Mr [M] might become distressed by the experiences under questioning to the extent that the accuracy of his testimony may be affected by his current psychological state of mind."

21. In a Respondent's Review dated 10 November 2021, the HOPO unit observed that the appellant had failed to adduce medical documentation of treatment that he may have sought for depression in Albania, or documentation of medical treatment and/or prescription medication that had been prescribed by the NHS or a UK doctor. They also highlighted the fact that the appellant had disclosed that he was taking his medication on and off, for which there was no explanation in a GP-issued medical report. Consequentially, they submitted that the weight that could be attached to Dr Hameed's report was reduced, citing **JL (Medical reports - credibility - China) [2013] UKUT 00145 (IAC**) at paragraph [34], where the Tribunal stated: "*Even where a medical report relies heavily on the account given by a client, that does not entail that his or her report lacks or loses its status as independent evidence, although it may reduce very considerably the weight that can be attached to it.*"

The Hearing Before, and the Decision of, the First-tier Tribunal

22. The appellant's appeal came before Judge Groom, sitting at Birmingham, on 10 February 2022. Both parties were legally represented, with Ms Wass of Counsel appearing on behalf of the appellant.

23. In her skeleton argument prepared for the hearing, she submitted that the issues before the Tribunal were, firstly, whether the appellant was credible in his claim for asylum; and if so, secondly whether there was a sufficiency of protection available to the appellant upon his return; thirdly, whether internal relocation would be available to the appellant; and, fourthly, whether there were any other reasons which would warrant a revocation of the deportation order.

24. Ms Wass relied on the medico-legal reports of Dr Babalola and Dr Hameed in support of the proposition that there were exceptional compassionate circumstances which would warrant the revocation of the deportation order. At paragraph 19 of her skeleton argument, she submitted that - as set out in medico-legal reports - the appellant was suffering from a major depressive disorder. His mental health had deteriorated "sufficiently" such that he was no longer fit to give evidence in his appeal. Dr Hameed was of the opinion that he would be unlikely to engage with or access mental health care in Albania because of his psychological state of mind. Removal and separation from his therapeutic and social networks in the UK would be likely to cause a significant deterioration in his mental state. The appellant's mental health would significantly impair his ability to be able to re-establish a private life in Albania.

25. In the Decision, Judge Groom gave an account of the hearing at paragraph [31]. The appellant and the Home Office Presenting Officer had attended the hearing in person, whereas Ms Wass attended the hearing via CVP. The Judge was notified that the Albanian Interpreter booked to attend the hearing could no longer do so. However, Ms Wass indicated that the appellant would not be giving oral evidence in any event. This was because a medico-legal report had been obtained from Dr Hameed, and one of the conclusions reached by Dr Hameed was that in his opinion the appellant was not fit to give evidence. The Judge continued: "*No application was made to treat the appellant as a vulnerable witness.*"

26. The hearing proceeded on a submissions-only basis. At paragraphs [34]-[44] of his Decision, Judge Groom set out the submissions made by the representatives. Consistent with her skeleton argument, Ms Wass only relied on the appellant's mental ill-health in the context of a submission that due to his mental ill-health he would struggle to integrate into Albania on his return.

27. The Judge's findings began at paragraph [45]. He said that it was not disputed that the appellant was served with a deportation order following on from his conviction and sentenced to 24 months' imprisonment. The appellant accepted that he had left the UK voluntarily and returned to Albania. He did not claim asylum when he returned to the UK. He had not made his presence known to any immigration official or sought to regularise his stay in the UK. He only claimed asylum after he had been encountered by Immigration Officials at Gatwick Airport on 9 October 2019. The purpose of his presence at the airport appeared to have been to accompany his uncle who was the person flying out of Gatwick. The appellant had made a witness statement for the purpose of the proceedings. However, he did not give oral evidence, and the contents of his statement were unable to be challenged in cross-examination. The Judge said he had therefore concentrated on the version of events that the appellant had provided in his initial contract and asylum registration form (which was dated 20 December 2019) and in his SEF, combined interview and NINO application. The Judge continued:

"49. The Appellant first left Albania when he was approximately 14 years of age and went to work in a fruit farm in Greece until he was approximately 22 years of age. He then made his way to France and eventually to the UK where he entered illegally in 2010. He was granted an EEA residence card on the basis of a relationship with a Polish national, this relationship no longer exists.

50. Following on from his [conviction] and sentence in 2017, the Appellant was served with a Deportation Order and voluntarily returned to Albania.

51. It is notable that upon the Appellant's voluntary return to Albania he went to live with his parents in his hometown of Durres.

52. The Appellant claims that the money he lost, which was confiscated, on his arrest in 2017, he claims he had to repay. He estimates the total to be between £80,000 to £90,000.

53. At page 52 the Appellant then claims that the problems did not start straight away when he returned to Albania but a few months later. The Appellant stated "*they found me, then they took me to work on a farm, they ill-treated me, they hit me because I refused."*

54. It is notable that at no stage the Appellant confirms who "*they*" are. He was unable to say what make of car the three people were in who apprehended him in Durres. He claims that he *"went with them because I didn't suspect anything wrong as it usually happens in Albania. People usually sit and having coffee with other people*." The Appellant then went on to agree that he didn't find it strange that complete strangers stopped him and invited him for coffee.

55. The Appellant then went on to state that "*maybe they spiked my drink. I felt dizzy for a moment*." He then describes that the three people threatened him that he has to pay the money, or he will be killed. He was then taken to a farm in Vlora where he was instructed to carry out various jobs or whatever he was told to do.

56. Despite the Appellant's claim that his drink was spiked and that he was forcibly taken to a farm for forced labour for at least a few months, on his own account he was able to leave the farm and walked for a few hours to a village that he was unable to name. He described that the farm was usually guarded but not at the time the he left.

57. The Appellant then claims he managed to get a lift back to his hometown of Durres after which time he went to stay with his uncle in Sukh and stayed there for some time before leaving because he felt frightened.

58. The Appellant then left Albania to travel to Italy where his sister resides. He left Albania by plane and his sister had provided the funds for his ticket. He claims to have stayed with his sister for just one night before travelling to Belgium where he stayed for approximately one month. The Appellant then travelled to France where he remained for approximately one week before making his way to the UK.

59. I have carefully considered the Appellant's version of events as described to immigration officials and I do not accept it as credible.

60. If the Appellant feared Albanian gangs as he claims, I find it implausible that the Appellant would have voluntarily returned to

Albania and to his hometown. Ms Wass invites me to conclude that it is credible to suggest that due to the nature of the offence for which the Appellant was imprisoned in the UK, it therefore follows that the Appellant would naturally owe money which those involved in such criminality would seek to recoup from him. This is quite a significant conclusion that I am being asked to draw. Without further evidence to substantiate this claim, I am unable to conclude that this is the case.

61. I find the Appellant's version of events to be vague and completely lacking in detail. He never states who the people were who took him to a farm and furthermore I find it wholly incredible that if he had been forcibly taken to a farm as he describes that he would have been able to walk away as freely as he claims, particularly if he owed money to the level of £80,000 to £90,000. The fact that he went to stay with his uncle in Sukh which is relatively close to his hometown of Durres in any event, simply reinforces in my view that the Appellant is not telling the truth about his circumstances in Albania and that he is not fearful for his life.

62. I also find that the Appellant's credibility has been damaged further as not only did he travel by plane to Italy, but his journey was also to stay with his sister who paid for his air fare. The Appellant has offered no real explanation in my view as to why he felt unable to remain in Italy with his own sister or why he did not seek to claim asylum there. The Appellant has travelled to Belgium and France and yet again did not claim asylum in either of those countries in addition.

63. I further find on the evidence and timeline of events presented before me that this is an Appellant who clearly had no intention of making himself known to the authorities in the UK when he returned illegally in 2019. The claim for asylum was only made once he had been apprehended by immigration officials at Gatwick Airport. Again, I conclude that the Appellant's inaction in claiming asylum when he returned to the UK [damages] his credibility further.

64. In relation to the Appellant's mental health, I note the contents of the two reports which have been provided from Dr Hameed and Dr Babalola. However, it is apparent that the two reports are in conflict with regard to the Appellant's medical history. It is notable that Dr Babalola states that the Appellant doesn't have a previous history of psychiatric illness yet Dr Hameed states that the appellant has a past history of depression in Albania. Furthermore, when interviewed the Appellant stated that he takes medication, however he was unable to state previously what medication he was taking. I do not accept that if the Appellant's mental health is as severe as is being claimed, he would have been unable to recall such an important aspect of his treatment.

65. As I do not accept that the Appellant has told the truth about his circumstances in Albania, I further find that he has not been candid with regards to his mental health either, given the discrepancies as highlighted above.

66. I accept the Respondent's position as set out in the reasons for refusal letter and review document that there are adequate mental health facilities in Albania which the Appellant could access should he wish.

> 67. As I have rejected the Appellant's account of his apprehension and forced labour in Albania, I am not satisfied to the lower standard that the Appellant has a well-founded fear of persecution on return to Albania or that the situation is such that the Appellant would be at risk of treatment contrary to Articles 2 or 3 or meets the high threshold on Article 3 (medical) grounds.
>
> 68. The evidence placed before me did not suggest that the Appellant had established private life exceptions to Deportation. Furthermore, I do not consider that very compelling circumstances exist such that this Appellant should not be deported. Any private life established by the Appellant has been obtained during a period of time where there has been no leave to remain and is further aggravated in my view that the Appellant returned to the UK in breach of a Deportation Order, and I therefore attach little weight to this aspect of the Appellant's case."

The Application for Permission to Appeal

28. Ms Wass settled the appellant's application for permission to appeal to the Upper Tribunal. In Ground 1, she submitted that the Judge had come to an irrational conclusion about the appellant's credibility, and in Ground 2 she submitted that the Judge had come to an irrational conclusion about the appellant's mental health.

29. Permission to appeal was refused by First-tier Tribunal Judge Bulpitt in a decision dated 18 March 2022. He observed that the test of irrationality represents a very high hurdle. It was not arguable, in his view, that this hurdle had been reached in the present case. The Judge had made findings which were open to him and which were adequately explained when the decision was read holistically. Those reasons included more than the limited parts of the evidence which were mentioned in the Grounds. There was nothing to suggest that the Judge had failed to consider the appeal with anxious scrutiny.

The Reasons for the Eventual Grant of Permission to Appeal

30. In a renewed application for permission to appeal to the Upper Tribunal dated 23 April 2022, Ms Wass submitted that not only were the conclusions reached by the Judge on the appellant's mental health unreasonable and/or irrational, but there had also been a failure by the Judge to provide any or any adequate reasoning for rejecting the evidence of the three medical professionals (sic) who had commented on the appellant's mental health and who had reached consistent conclusions.

31. Ms Wass further submitted that inherent within the conclusion reached by the Judge was a suggestion that the appellant was in fact fit to give evidence at the hearing and had failed to do so. Such a suggestion was extremely damaging to the appellant's credibility and should have been accompanied by adequate reasoning. The failure to do so was a material error.

32. On 5 July 2022 Upper Tribunal Judge Jackson granted the appellant permission to appeal for the following reasons:

> "Whilst irrationality is a high threshold, both grounds are arguable on the basis that the findings were arguably reached against the evidence before the First-tier Tribunal and arguably contained inadequate reasoning. It is further arguable, in the context of both grounds, that the First-tier Tribunal erred in considering the appellant's credibility first, before any assessment of the medical evidence or whether he should be treated as a vulnerable witness, in circumstances where there was consistent medical evidence that the appellant was not fit to give evidence and the effect [on] his mental state. This is directly relevant to the issues of credibility and a proper assessment of the same in accordance with the Joint Presidential Guidance Note No.2 of 2010. One of the First-tier Tribunal's reasons for rejecting the medical evidence was the adverse credibility findings already made which arguably takes matters in the wrong order."

The Hearing in the Upper Tribunal

33. At the hearing before us to determine whether an error of law was made out, Ms Ahmed confirmed at the outset that the appeal was opposed.

34. Ms Harris developed the grounds of appeal. With reference to Ground 2, she acknowledged that there had apparently been no application to treat the appellant as a vulnerable witness, but she submitted that the Judge should have asked himself whether the appellant was a vulnerable witness, and whether this had a bearing on his testimony. She submitted that the medical evidence said in effect that he had difficulty in remembering things.

35. Ms Ahmed submitted that Ground 1 was in effect a mere expression of disagreement with findings that were reasonably open to the Judge. With regard to Ground 2, she conceded that it would have been better if the Judge had considered whether the appellant was a vulnerable witness, but she submitted that this was irrelevant as he did not give evidence, and Dr Hameed's assessment of his vulnerability was limited to his ability to cope with cross-examination.

36. Ms Ahmed submitted that the Judge had not erred in dealing with the medical evidence towards the end of his adverse credibility findings, citing **QC (Verification of document; Mibanga duty) China [2021] UKUT 00033 IAC**. In that case, the Tribunal held that the greater the apparent cogency or relevant of a particular piece of evidence, the greater was the need for a judicial fact-finder to show that they had had due regard to that evidence; and, if the fact-finder's overall conclusion was contrary to the apparent thrust of that evidence, the greater was the need to explain why that evidence had not brought about a different outcome. Here, the medical evidence was flawed, because there was no report or documentation from the appellant's GP, which lessened the probative value of Dr Hameed's report, following **HA (Expert evidence, mental health) [2022] UKUT 000111 (IAC)**. Any shortcomings in the Judge's

approach were also not material for another reason, which was that the appellant was not advancing a mental health case under Article 3 ECHR, but only a case under Article 8 ECHR, which could not succeed, following **GS (India) [2015] EWCA Civ 40**.

37. In the course of her reply to Ms Ahmed, we asked Ms Harris to direct our attention to the passage in Dr Hameed's report where she said that he diagnosed that the appellant was suffering from problems of memory. She directed our attention to Dr Hameed's explanation for holding that the appellant was unfit to give evidence in Court. Ms Harris acknowledged that the medical evidence was silent about the appellant's capacity and/or vulnerability at the time when he gave his substantive asylum interview, and she submitted that it could be taken as read that there were no vulnerability concerns with regard to the appellant's ability to give accurate instructions to his solicitors for the purposes of preparing his witness statement for the hearing. Nonetheless, she submitted that the Judge had breached the principle set out in paragraph 21(c) of **AM (Afghanistan) [2017] EWCA Civ 1123**, which was that the findings of medical experts must be treated as part of the holistic assessment: and that they are not to be treated as an add-on and rejected as the result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence.

38. After a brief adjournment to confer, we informed the legal representatives and the appellant that we were going to reserve our decision.

Discussion

39. We consider that the most strongly arguable ground of appeal is that articulated by Upper Tribunal Judge Jackson when granting permission on the renewed application to the Upper Tribunal. The issue which she raises is whether the Judge materially erred in law in not following the guidance given in paragraphs 13-15 of the Joint Presidential Guidance Note No.2 of 2010 and/or whether the way in which the Judge structured his decision constitutes a breach of the "*Mibanga duty"* to consider credibility "*in the round",* following **Francois Mibanga -v- SSHD [2005] EWCA Civ 367** and a number of subsequent authorities which are discussed by the Tribunal in **QC (China) [2021] UKUT 00033 (IAC)**.

40. In **AM (Afghanistan)** the Court said at [33]:

> "Given the emphasis on the determination of credibility on the facts of this appeal, there is particular force in the Guidance at [13] to [15]:
>
> > "13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.
> >
> > 14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence

> before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.
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> 15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and this whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.”"

41. It is undoubtedly the case that the Judge did not make a clear finding as to whether or not he accepted that the appellant was a vulnerable person; and, if so, whether the account which he had given in his asylum interview could be explained by him being a vulnerable person. Although there was not apparently a formal application that the appellant should be treated as a vulnerable person, Dr Hameed expressly stated in both his reports that the appellant was a vulnerable person.

42. Accordingly, ordinarily we would have been minded to hold that the Judge had materially erred in law on procedural fairness grounds. However, on analysis, we do not consider that the Judge’s error was material on the particular facts of this case.

43. Firstly, as previously noted, Counsel for the appellant did not run a case that the discrepancies and inconsistencies identified in the RFRL were a manifestation of the appellant’s mental ill-health.

44. Secondly, it was not anywhere suggested in Dr Hameed’s report of 2021 (or in his earlier report of 2020) that the symptoms of mental ill-health which he had diagnosed in the appellant had affected his ability to provide an accurate account of his material history. In particular, Dr Hameed did not opine that the appellant’s mental ill-health meant that he had previously been unable to recall precise details of what had happened to him in Albania. The appellant’s assessed vulnerability was confined to an asserted inability to cope with cross-examination in a Court environment. But as the appellant was not tendered for cross-examination, the question of whether his responses in cross-examination were affected by his vulnerability did not arise.

45. Thirdly, although the appellant complained of memory loss at his substantive interview and also to Dr Hameed, there was no clinical diagnosis of memory loss by Dr Hameed or by any other medical professional, and no independent evidence that the appellant had been prescribed medication for memory loss, although this is what the appellant claimed at his substantive interview. The medication which the appellant told Dr Hameed he had been prescribed by his GP did not include medication for memory loss.

46. In their discussion of the scope and extent of the **Mibanga** duty, the Tribunal in **QC (China)** observed as follows:

> "43. In S v Secretary of State for the Home Department [2006] EWCA Civ 1153, the Court of Appeal, faced with a similar submission, emphasised the exceptional nature of the factual matrix in Mibanga. Rix LJ said:-
>
> > "21. ... The injuries described in the medical report in Mibanga were extraordinary in their severity and in their nature. There was a mass of scars of different kinds all over Mibanga's body, described in detail, for instance, at paragraph 11 and 12 of Wilson J's judgment in that case. Some of them were consistent with beatings with a belt. Many of them were consistent with bites from leeches, which reflected Mibanga's allegation that he had been thrown by way of punishment into a barrel of leeches. In particular (and when I say in particular, I reflect the use of that expression found repeatedly throughout Wilson J's judgment in referring to this aspect of the evidence in that case) there were two injuries, one at the tip and one at the base of Mibanga's penis, which were consistent with the application of electrodes to his genitals. Indeed, Dr Norman in that case had referred in her report to a book on the medical documentation of torture which provided the basis, or one of the bases, upon which she concluded that those injuries were consistent with the application of electrodes; see paragraph 25 of the judgment in that case.
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> 22. It is against that background that although Wilson J, at paragraph 23 and elsewhere in his judgment, stated that he wished to be cautious about what he said about the facts of the case in the light of the consequence that the matter would have to be remitted for reconsideration at a new hearing, it is nevertheless clear from that paragraph 23 and elsewhere that he, and this court, had the very gravest doubts about the fact finding process which had been conducted by the adjudicator in that case. That, therefore, was the context in which Wilson J stated that the adjudicator had fallen into legal error by addressing the medical evidence only after she had conclusively rejected central features in the appellant's case as incredible. One only has to recite the facts of that case to see why the approach of the adjudicator there should have led to such concern.
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> 23. In a concurring judgment, Buxton LJ referred to the error of law as being one in which there had been an artificial separation amounting to a structural failing, and not just an error of appreciation, in dealing with credibility entirely separately from the medical evidence.
>
> 24. It seems to me that the logic of Mibanga does not apply to this case, essentially for two separate reasons. One is that the structure of the immigration judge's reasoning here does not fall foul of that artificial separation and structural failure which were found to exist in Mibanga, and the other is that

> the medical evidence in Mibanga was so powerful and so extraordinary as to take that case into an exceptional area."
>
> 44. Rix LJ went onto distinguish the striking facts of Mibanga from the medical report of Dr Steadman in S, which "was not consistent with direct assault of any kind at all. It was merely consistent with debris falling from above, in itself an essentially lacklustre gloss of what the appellant had really relied upon, which was shrapnel from a bullet or flying debris caused by ricocheting bullets" (paragraph 27)."

47. At paragraph [52], the Tribunal observed that in **MN & Others [2020] EWCA Civ 1746** at paragraph [108], the Court of Appeal held that the basic principle established by **Mibanga** was summarised by Sir Ernest Ryder in **AM (Afghanistan)**, when he said at paragraph 19(a) that: "*It is an error of approach to come to a negative assessment of credibility and then ask whether that assessment is displaced by other material.*"

48. The Tribunal reached the following conclusion at [57]:

> "To sum up, the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome."

49. Applying this concluding principle to the facts of this case, we accept that Dr Babalola's report had apparent cogency, but his assessment and diagnosis had been made over two years ago, just after the appellant had been arrested and detained; and his diagnosis and prognosis was based upon the appellant's presentation in detention, from which he had been released shortly afterwards. Dr Hameed's 2021 report had much greater relevance, as it was the most up to date, but both his reports lacked apparent cogency.

50. It is clear from his first report that Dr Hameed was not provided with Dr Babalola's report, and hence he incorrectly stated that there had been no previous formal diagnosis. The consequence was that his assessment and diagnosis was not informed by Dr Babalola's previous assessment and diagnosis. This also appears to be true of Dr Hameed's second report.

51. It is clear from both reports that Dr Hameed was also not provided with any GP correspondence or records, or (apparently) with any written material which would have enabled him to make a reliable assessment as to whether, when and for how long the appellant had been receiving

treatment from a GP; and/or whether, and to what extent, his current presentation might reflect a failure to take appropriate medication.

52. In his second report, Dr Hameed did not refer back to his previous report, and he did not acknowledge that he had examined the appellant a year earlier. He also did not comment on any changes between what the appellant had told him in 2020 and what the appellant had told him a year later, or on any changes that he had observed, such as the appellant reporting for the first time in 2021 that he got confused at times due to a lack of concentration and also got confused about the chronology of events in his life (6.4). Both reports stated that the appellant had told Dr Hameed that his condition had worsened. In the 2020 report the appellant's explanation was that he did not have the money to carry on buying the prescribed medication, but that this was no longer an issue. In the 2021 report the statement that the appellant has been taking his medication on and off was repeated, as was the explanation for this which was lack of money, However, there was no reference back to the appellant agreeing a year earlier to ensure that he took his prescribed medication with the help of funding from a friend.

53. There was also no explanation given by Dr Hameed as to why the appellant was assessed as being unfit to give oral evidence in the 2021 report when he was assessed as being fit to do so in the 2020 report. Both reports gave the appellant the same PHQ-9 depression score of 20 out of 27, and the GAD-7 anxiety score had gone down in 2021, albeit marginally. In both reports the appellant reported that his condition had worsened, but Dr Hameed conveyed the message in both reports that the appellant's professed failure to take his medication consistently lay in the past, and that he was currently taking his prescribed medication.

54. The appellant's presentation was wholly consistent with causes unrelated to his claimed enslavement in Albania. While the medical evidence constituted independent evidence of him suffering from anxiety and depression, it did not constitute cogent independent evidence that his condition was exacerbated by what had happened to him in Albania, not least because there was no formal diagnosis that the appellant was suffering from PTSD.

55. Against this background, it was procedurally fair for the Judge not to engage with the medical evidence upfront, before he embarked on his credibility assessment. Moreover, the Judge did not conclude his credibility assessment and then ask himself whether his adverse credibility findings were displaced by the medical evidence. On the contrary, he engaged with the medical evidence on its own terms, and drew from it two additional adverse credibility findings, which we comment on further below in our discussion of Ground 2.

56. For the above reasons, we do not consider that the Judge breached the **Mibanga** duty.

57. Ground 1 is that the Judge came to an unreasonable/irrational conclusion in respect of credibility. The first alleged manifestation of irrationality is said to be at paragraph [60], where the Judge declined to draw the conclusion that the nature of the appellant's conviction would mean that he would owe money to those involved in the criminality who would seek to recoup the money from him. The allegation of irrationality is sought to be supported by reference to the remarks of the Sentencing Judge, which (it is submitted) show that the conclusion which the Judge was invited to draw was supported by the evidence, and was a logical inference that could have been drawn by the Judge had he given anxious scrutiny to the evidence that was before him.

58. We consider that the details of the offending provided by the Sentencing Judge do not support the case that the Judge was invited to accept.

59. Firstly, the sentencing remarks do not disclose any Albanian dimension to the money-laundering operation in which the appellant was involved. His co-conspirator presents as being of Chinese/South-east Asian heritage, and there is no indication that the money laundering operation has an international dimension as opposed to being a purely domestic operation.

60. Secondly, as we pointed out in the course of oral argument, it would appear from the details given that the police seized the cash from the appellant's co-conspirator Hong Chen after she had collected it from the appellant. Thus, the error of law challenge is based on a mischaracterisation of the underlying evidence, which is that the appellant was the person who "*lost*" the money.

61. Thirdly, the error of law challenge is based on the false premise that the appellant was merely a courier, whereas the Sentencing Judge held that the appellant was higher up in the chain of command.

62. Fourthly, as we also pointed out in the course of oral argument, the appellant and his co-conspirator were tried and convicted at a public trial in which the appellant's identity was not anonymised. It was therefore a matter of public record, accessible by the person or persons masterminding the money laundering operation, that the appellant had not lost or made off with the cash in question, but that as a result of a police surveillance operation he and his co-conspirator had been caught with it, with the consequence that they had been tried, convicted and sent to prison. Accordingly, contrary to what is asserted in Ground 1, there was not *prime facie* evidence that the appellant's actions had *"deprived"* a criminal money laundering operation of £91,240; and it was not a logical inference that the appellant would "*naturally"* owe the money to those involved in the criminality; or that they would "*naturally"* seek to recoup the money from him.

63. For the above reasons, we consider it was entirely open to the Judge to make the finding which he did at paragraph [60].

64. The second alleged manifestation of unreasonable/irrationality is said to occur in paragraph [61], where it is said that the conclusions reached by the Judge show that he failed properly and fully to consider the issue of trafficking; or to make a finding as to whether or not the appellant was a victim of modern slavery.

65. The jumping off point for this attack is the Judge expressing incredulity that the appellant would have been able to walk away from the cannabis farm as freely as he claimed, if it was true that he had been forcibly taken to the farm.

66. We do not accept Ms Harris' submission that the Judge mischaracterised the appellant's evidence on this issue. Having given his account of how he escaped from the farm, he agreed with the interviewing officer that he just walked away. The officer posed this question in response to the appellant's account that he had walked out of the farm when it was unguarded. The appellant never resiled from this position, and so it was entirely open to the Judge to find that the ease with which the appellant had been able to leave the farm was inconsistent with the core claim that he had been abducted and forced to work on the farm in order to work off the debt which he owed to the money laundering gang.

67. It was not in dispute that the appellant's claim was reflective of the components and indicators of trafficking, as it was for precisely that reason that the reasonable grounds decision had been made in the appellant's favour under the NRM. The issue for the Judge to determine was whether the appellant was credible in his claim that he had been a victim of trafficking in the form of modern slavery at the hands of the same OCG for whom he had worked in the UK. We consider that, viewed holistically, the Judge gave adequate reasons for finding that the appellant was not credible in his account of his claimed experiences on return to Albania, and it therefore followed that his account of being a victim of modern slavery was not made out.

68. The central charge in Ground 2 is that the Judge unreasonably focused on two perceived contradictions in the appellant's medical history, while placing no weight, or giving no reasons as to why weight could not be given, to the findings and opinions of two qualified and independent psychiatrists, and the opinion of the appellant's GP who prescribed him medication.

69. It is not suggested that the Judge's identification of two contradictions in the appellant's account of his medical history was not open to him, or that it was not open to the Judge to draw an adverse credibility inference against the appellant on account of these two contradictions. Although the appellant said he had been prescribed medication by the doctor who had written the medical report, Dr Babalola did not say in his report that he had prescribed the appellant with medication. On the contrary, he said that he had advised that the appellant should access treatment from the medical staff at the detention centre. The only source of information for

the appellant being on medication at the time of the interview was the appellant himself. Against this background – and the fact that no issue had been raised in Dr Hameed's reports as to the appellant's competence at the time of the interview - it was fully open to the Judge to draw the inference that his professed inability at interview to state what medication he was taking for his mental ill-health indicated that he was not in fact taking medication to address the symptoms of anxiety and depression, and so his mental ill-health was not as severe as he was claiming. Similarly, we consider that it was open to the Judge to draw an adverse credibility inference from the fact that whereas the appellant did not convey to Dr Babalola a previous history of psychiatric illness consistent with him having been made mentally unwell by his claimed experiences in Albania, he said in interview (and repeated to Dr Hameed) that he had a past history of depression in Albania, for which he had taken medication in Albania.

70. The Judge went on in [65] to give an additional reason for finding that the appellant had not been candid about his mental health, which was that he did not accept that he had told the truth about his circumstances in Albania. But he made it clear that this was not the only reason for this finding. The other reason was, *"the discrepancies as highlighted above".*

71. We accept that the Judge's engagement with the medical evidence was very limited. However, we do not consider that he thereby erred in law. Contrary to what is asserted in the grounds of appeal, the Judge was not presented with an internally coherent and cohesive body of medical evidence which pointed to a consistent conclusion. Firstly, as highlighted in the respondent's review, there were no GP records or primary documents evidencing the medication which the appellant claimed that he was taking, or the period or periods over which he had been prescribed such medication. So vital information necessary for a proper evaluation of the appellant's true state of health was missing. Secondly, there were manifest shortcomings in Dr Hameed's reports which we have identified above.

72. The other critical consideration is that the medical evidence primarily went to the issue of the appellant's ability to re-integrate into life and society in Albania. The Judge gave adequate reasons for finding that such a case was not made out, because the appellant could access support from his family in Albania, and also because the same medication that he had been prescribed in the UK was available to him in Albania.

73. In conclusion, the Judge gave adequate and sustainable reasons for resolving the two principal issues in controversy between the parties, the first of which was whether the appellant's account of past persecution and future risk was made out to the lower standard of proof; and, the second of which was whether the appellant would be unable to re-integrate into life and society in Albania on his return on account of his mental ill-health.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of material error of law, and accordingly the decision stands. The appellant's appeal to the Upper Tribunal is dismissed.

Signed Andrew Monson Date 21 November 2022
Deputy Upper Tribunal Judge Monson