IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001947
First-tier Tribunal No:
PA/51817/2020
IA/01287/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RR
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A Smith, counsel instructed by Sutovic & Hartigan Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 15 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Courtney promulgated on 9 November 2021. Permission to appeal was granted by First- tier Tribunal Judge Carolyn Scott on 5 January 2022.

Anonymity

2. An anonymity direction was made previously and is maintained because this is a protection appeal.

Factual Background

3. The appellant is a national of Albania, aged twenty-two. He entered the United Kingdom clandestinely on 3 June 2018 and shortly afterwards made an asylum claim. The appellant was referred into the National Referral Mechanism (NRM) as a potential victim of modern slavery and on 20 November 2018 he received a positive reasonable grounds decision. On 2 July 2020, the NRM made a positive conclusive grounds decision that the appellant was a victim of trafficking under the category of forced labour.

4. The protection claim was refused by way of a decision dated 22 September 2020. Firstly, it was stated that the appellant did not meet the definition of a refugee because he was not part of a particular social group, namely that of a male victim of trafficking. The respondent accepted that the appellant had given a plausible account of being forced to work in Albania to provide an income for his father. In addition, the appellant's credibility was not damaged by his failure to apply for asylum in other safe countries because he was a minor when he left Albania. The application was refused because it was not accepted that there was a risk of the appellant being re-trafficked, there was effective protection available to the appellant from the Albanian authorities and it was reasonable to expect the appellant to relocate to avoid a non-state agent.

The decision of the First-tier Tribunal

5. The judge found that the appellant was a member of a particular social group as a male victim of modern slavery, that he was at risk of serious harm from his father in his home area of Tirana and that there was no sufficiency of protection there. The judge further found that the appellant could safely relocate to avoid his father and that it was reasonable to expect him to do so, notwithstanding his claimed mental health issues. The appellant's Article 8 claim was also refused with the judge noting that he could not meet the requirements of the Rules regarding his relationship with his fiancée or on a private life basis and that the respondent's decision was not disproportionate.

The grounds of appeal

6. The grounds of appeal can be summarised as follows.

1. There was a failure to take material evidence into account, to give adequate reasons for rejecting that evidence in concluding that the appellant could safely relocate within Albania.

2. There was a failure to give adequate reasons for rejecting the opinion of the Consultant Psychiatrist, Dr Singh, that the appellant's mental state would be likely to deteriorate on removal to Albania.

3. There was a failure to take relevant factors into account in the overall assessment of proportionality under Article 8 outside the Rules, including that the appellant is accepted to be a victim of modern slavery which reduces the public

interest in his removal as well as the impact of his removal on his British partner who also has a history of abuse and grew up in care.

7. Permission to appeal was granted on the basis sought, with the judge granting permission finding that the first ground amounted to an arguable error of law and making the following comment.

> The Judge failed to have regard to the evidence contained in the Asylos/ARC report, notwithstanding that at [55] of her decision, the Judge stating that she was prepared to afford 'substantial weight' to the report.

8. The respondent did not file a Rule 24 response.

The error of law hearing

9. Ms Ahmed confirmed that no Rule 24 response had been filed. She indicated at the outset that the grounds were opposed. Thereafter, I heard detailed submissions from both representatives which are set out in the note I took of the proceedings. At the end of the hearing, I reserved my decision.

10. There was some discussion as to the appropriate venue for remaking should a material error of law be found. Ultimately, the view of both representatives was that the matter ought to be remitted to the First-tier Tribunal for a de novo hearing. Ms Smith alluded to a rule 15(2A) application which had yet to find its way to the Upper Tribunal file which was accompanied by evidence relating to developments in the appellant's relationship, the treatment of his mental health as well as an application for leave as a victim of forced labour.

Decision on error of law

11. In the light of the guidance given by the Court of Appeal at paragraph [77] of *KM* [2021] EWCA Civ 693, I recognise that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for their decision and that it should not be assumed too readily that the Judge misdirected themselves owing to not every step in their reasoning being fully set out.

12. Addressing the grounds in order. The first ground is that the judge failed to take into account evidence relevant to the ability of the appellant to safely relocate in Albania. At [45] the judge found that 'the possibility of the Appellant's father tracing him through word of mouth is a very remote one. [A] could safely relocate within Albania to avoid a risk of harm at the hands of his father.' On the face of the decision, the judge appeared to have given adequate reasons for coming to this conclusion. Those reasons included that the appellant's father had not appeared to have searched for the appellant's brother, that the appellant's father had no official connections and there are no family members in Vlores or neighbouring counties. The difficulty with this part of the decision is that the judge made no reference to what Stephanie Schwandner-Sievers said in the Asylos/ARC report:

> "…you can't anonymously live in Albania— that is very different from London or from Bristol or any UK city—because it's such a small country and because also for cultural reasons, the ways in which people situate you socially. You encounter somebody and you meet somebody, and any social contact you make you are defined as a person through

where you are from and who your family is… There is no anonymous living such as in Europe's large cities. What chance do you have to reintegrate into a society, without your family, where everything is reliant on family? Just being given a rented flat in a city without pre-existing social contacts would make you very conspicuous and attract attention and suspicion."

13. The above extract from the Asylos/ARC report was relevant to the ability of the appellant to safely relocate to the south of Albania and suggested that the prospect of the appellant's father tracing him were not remote and that it was not necessary for the father to have influence to do so. The judge was referred to this part of the report in the appellant's skeleton argument. Furthermore, the opinion of Ms Schwandner-Sievers was summarised in *AM and BM* (Trafficked women) Albania CG [2010] UKUT 80 (IAC) at [186]. Ms Ahmed made valid points during her submissions as to the existence of other views contained in the Asylos/ARC on the ability to live anonymously however, if the judge preferred those views over that of Ms Schwandner-Sievers, the judge ought to have said so and given reasons. Ground one is therefore made out.

14. Moving on the second ground where the principal point is that the judge failed to provide adequate reasons for rejecting the opinion of Dr Singh, a consultant psychiatrist, that the appellant's mental state would be likely to deteriorate on removal to Albania. Despite the judge accepting at [48] that Dr Singh was an expert, the judge found that the psychiatrist was engaging in speculation in reaching that opinion. The basis for the judge's rejection of Dr Singh's evidence was the finding at [52] that it was 'unclear what symptoms might be exacerbated by the appellant's removal as the appellant did not appear to have exhibited any significant sighs of mental distress while in the UK.' This finding is problematic because it does not take account of the indicators that the appellant's mental health was a concern which includes the appellant's own account of suffering flashbacks on arrival in the United Kingdom, his leaving care team advisor's concerns as to the appellant's emotional state and the concerns the appellant raised during his psychiatric assessment regarding his subjective fear of coming to harm in Albania.

15. Dr Singh noted that the appellant avoided talking about events to avoid experiencing distress and that he had unresolved psychological issues including 'low self-esteem, low confidence and shyness.' Furthermore, Dr Singh's opinion is that the appellant's mental state had improved by feeling safe in the UK as well as the support he gains from his partner but that his previous experiences 'would have made him vulnerable' to a mental health episode.

16. The role of the judge was to evaluate whether it was reasonable to expect the appellant to relocate within Albania which would inevitably involve him losing the support of Social Services and the support of his partner which Dr Singh found to have had a protective effect as well as the appellant's subjective fear of harm from his father. The reasons provided by the judge did not demonstrate that this evaluation was undertaken with anxious scrutiny. This error is material as it goes to the reasonableness of the internal flight alternative, which is the basis for the refusal of the appellant's protection claim, all other components having been either accepted by the Secretary of State or the judge.

17. Lastly, in relation to the third ground, I can be brief. The judge's article 8 assessment took no account of the fact that the appellant has been found to be a victim of modern slavery. The relevance of this to the assessment was that the argument was made that the appellant's status as a victim of modern slavery

reduced the public interest in his removal. Nowhere does the judge engage with that argument. In addition, the judge in finding that the appellant's relationship could continue by remote means or that the partner could visit the appellant, took no account of the support provided to the appellant by his partner as noted by Dr Singh or that the appellant's partner is also a vulnerable person in that she has experienced abuse and was herself in care. I find that the judge's proportionality assessment was inadequate and without these omissions, a different outcome might have been reached.

18. As indicated above, I canvassed the views of the parties as to the venue of any remaking and both were of the view that the matter ought to be remitted. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his protection and human rights appeal. In addition, the appellant wishes to adduce further evidence. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Courtney.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 June 2023