



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000328
First-tier Tribunal No:
HU/50915/2022
IA/02100/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 25 June 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MARJAN VUKELAJ
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Atas, Counsel, instructed by Oaks solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 30 May 2023

DECISION AND REASONS

1. The Appellant is a national of Albania born on 13 May 1996. He arrived in the United Kingdom on 1 February 2013 aged 16 and claimed asylum the following day. This application was refused on 4 July 2014 and his appeal against that decision was dismissed in a decision of First-tier Tribunal Judge Boyd promulgated on 6 October 2014. Thereafter the Appellant became appeal rights exhausted on 14 November 2014.

2. The Appellant subsequently made a human rights application on 21 September 2018 which was refused on 4 June 2021. He then made an application on 24 August 2021 which was refused on 28 January 2022. The basis of that application was Article 8 and very significant obstacles to integration based on the Appellant's private life pursuant to paragraph 276ADE(vi) of the Immigration Rules, due to the length of time that he had been absent and his poor mental health and vulnerability.
3. The Appellant's appeal came before First-tier Tribunal Judge Hussain for hearing on 8 December 2022. There was no Home Office Presenting Officer at the appeal which appears to have proceeded by way of submissions only, although the Appellant did adopt his statement as his evidence-in-chief. There do not appear to have been any questions for him from the judge or his own representative.
4. In a decision dated 27 December 2022, the judge dismissed the appeal. Permission to appeal was sought against that decision, grounds being submitted, in time, on 9 January 2023.
5. The grounds of appeal in summary asserted that:
 - (i) the judge had erred in misapplying the Devaseelan guidance, in particular treating the previous decision of Judge Boyd as determinative as opposed to a starting point for assessment of the appeal;
 - (ii) the judge failed to take account of Presidential Guidance Note No 2 of 2010 regarding vulnerable witnesses and failed to make a finding to that effect or otherwise in respect of the Appellant;
 - (iii) there had been procedural unfairness in that despite no questions having been put to the Appellant the First-tier Tribunal Judge made adverse findings against him;
 - (iv) the judge erred in that he accepted that the Appellant suffered from mental health issues at [28] but failed to apply this finding when assessing whether or not there were very significant obstacles to the Appellant's integration in Albania: see [29] and [31].
6. Permission to appeal was granted by First-tier Tribunal Judge Evans in a decision dated 10 February 2023 on all grounds but with reference to ground 2 and the failure to determine whether or not the Appellant was a vulnerable witness.

Hearing

7. At the hearing before the Upper Tribunal I heard detailed submissions from Ms Atas in line with her written grounds of appeal, beginning with ground 2 and the judge's failure to make any finding as to whether or not the Appellant is a vulnerable witness. Ms Atas drew attention to the fact the judge at [27] noted that the Appellant suffers from PTSD and had been prescribed with antidepressants. She drew attention to the fact that page 40 of the Appellant's bundle was a letter from the Appellant's GP, who stated that she had rarely met a patient with more marked PTSD and that there was a substantial amount of medical evidence before the judge. At [28] of the decision and reasons the judge accepted the Appellant suffers from mental health difficulties but found that this was not severe enough to impact on his ability to integrate: see Kamara [2016] EWCA Civ 813.
8. As to the Presidential Guidance Note No 2 of 2010, Ms Atas drew attention to the fact that she had made express reference to this guidance at [2] and [5] of her skeleton argument which was before the judge, and also to the case of AM (Afghanistan) [2017] EWCA Civ 1123 which held that it was an error of law to fail to follow the Presidential Guidance. Ms Atas submitted that the judge had failed to make any finding as to whether or not the Appellant was vulnerable and if he was vulnerable what impact this had on the credibility of the Appellant and his evidence.
9. In relation to ground 1 of the grounds of appeal, the assertion that the judge had misapplied the guidance in Devaseelan, Ms Atas relied on the fact that the determination of Judge Boyd was not before the First-tier Tribunal and that the judge should have asked for it and that it was material at the very least in relation to the issue of whether or not there were very significant obstacles to the Appellant's integration in Albania.
10. In relation to ground 4 of the grounds of appeal, Ms Atas submitted that the judge erred in failing to apply his finding at [28] that the Appellant suffers from mental health problems to his assessment of whether or not there would be very significant obstacles to his integration in Albania. She submitted the Appellant was someone with severe mental health problems and a further level of consideration ought to have been made that given the length of time the Appellant had been suffering from mental health issues, nor was any consideration given to how stigma and discrimination would impact the Appellant on return: see [19] of her skeleton argument.

11. In her submissions, Ms Isherwood acknowledged that the judge did not refer to the Appellant asking to be treated as a vulnerable witness, however this does not mean that this evidence would have been accepted. She submitted that this was a human rights claim only as the asylum appeal had been dismissed and could not be reopened and that it was clear that the asylum claim was settled from [14] of the determination. Ms Isherwood submitted it was clear the judge had considered the evidence before him: see [27] and [28] and at [31] that it was open to the judge to make the findings he did. Whilst it was disappointing that the judge did not have the First-tier Tribunal determination of Judge Boyd there was no material error of law.

Findings and Reasons

12. I found that there are material errors of law in the decision and reasons of First-tier Tribunal Judge Hussain. I gave my decision with brief reasons at the hearing and I now provide my full written reasons.

13. At [28] of the determination the Judge held:

"I am satisfied that the appellant suffers from mental health issues."

It is clear from the medical evidence that was before the judge, and which he largely accepted, that the Appellant is a person with mental health difficulties and that this was clearly material to an assessment of his human rights claim. In these circumstances, and particularly given that reference was made to the Presidential Guidance Note No 2 of 2010 in relation to vulnerable witnesses in the skeleton argument, it was incumbent upon the judge to determine whether or not he found the Appellant to be a vulnerable witness and then to make his findings on that basis. That he failed to do.

14. At [28] the judge held:

*"I find they (the mental health issues) are not severe to enough impact his ability to integrate in the sense the expression is explained in **Kamara** (op cit)"*

I find that the judge has failed to provide reasons as to why he has reached his finding, in light of the medical evidence that was before him. This error is clearly material both in terms of the decision that the judge had to make and the context in which the judge had to consider the appeal.

15. I further find that ground 3 is also made out in that the judge reached adverse findings in relation to the Appellant's ability to function on a day-to-day basis at [28] and in relation to the Appellant's contact with his family at [31] without specifically putting these points to the Appellant in order to give him the opportunity to respond. In the absence of a Presenting Officer I find it was incumbent upon the judge, if he had concerns about aspects of the evidence, that these needed to have been put to the Appellant either directly or through his own representative.
16. Lastly, I find that the judge's decision to proceed with the hearing in the absence of sight of the previous decision of First-tier Tribunal Judge Boyd gives cause for concern. This is because, as Ms Atas submitted, following Devaseelan that determination was the starting point and also because the findings made by Judge Boyd were clearly material in relation to the human rights aspect of that appeal to the findings that needed to be made in relation to this human rights appeal. I find that the appeal could not be fairly determined given the absence of sight of that previous decision given its materiality and relevance.

Decision

17. For these reasons I set the decision of First-tier Tribunal Judge Hussain aside and remit the appeal for a face to face hearing *de novo* confined to consideration of the Appellant's human rights appeal, at Taylor House.
18. Both parties should utilise their best endeavours to make available to the First tier Tribunal and the other party a copy of the decision and reasons of First tier Tribunal Judge Boyd promulgated on 6 October 2014.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 June 2023