IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000132
First-tier Tribunal Nos:
PA/55223/2021
PA/01015/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

The Secretary of State for the Home Department

Appellant

and

AH
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr C Avery, a Senior Home Office Presenting Officer
For the Respondent: Ms M Vidal of Counsel, instructed by Haris Ali Solicitors

Heard at Field House on 22 February 2024

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

1. In this case the Appellant is the Secretary of State for the Home Department represented by Mr C Avery, a Senior Home Office Presenting Officer. The Respondent, "AH" is represented by Ms M Vidal of Counsel, instructed by Haris Ali Solicitors. For ease of reference I shall continue to refer to the parties as they were in the First-tier Tribunal and I shall also refer to AH as the Appellant/Claimant within this decision.

2. This is my oral decision which I delivered at the hearing today.

3. An anonymity direction has previously been made. That continue because this matter relates to a protection claim, and as I have indicated previously, the parties have permission to apply to discharge the anonymity order with reasons.

Background

4. The matter concerns a decision of First-tier Tribunal Judge C J Williams sitting at the Taylor House hearing centre on 27 October 2023 when he considered the Appellant's protection claim which asserted that the Appellant would be at risk on return to Albania due to his membership of a particular social group as he was a victim of trafficking. The judge had allowed that appeal by way of a decision promulgated on 28th November 2023. The Secretary of State had sought permission to appeal against that decision.

5. The Secretary of State's grounds of appeal are dated 1 December 2023. The grounds of appeal were considered by First-tier Tribunal Judge S P J Buchanan on 3 January 2024.

6. The matter has then come for consideration before me, permission having been granted expeditiously. The grant of permission had recorded in part as follows:

> "2. The Grounds of Appeal contend that the FTT arguably erred in law because (1) failing to give adequate reasons for findings on a material matter.
>
> 3. The challenge now brought by the respondent must be considered in the context of the summary given at #10 of the Decision which records that: 'The starting point for my assessment is the fact that the respondent has accepted the appellant's claim in its entirety'. Separately, there is no challenge to the record given in the Decision that the judge asked how credibility might be damaged in circumstances in which the account had been accepted.
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> 4. However, it is arguable that having concluded that the appellant is a victim of trafficking at #10, the Judge then does not explain why the appellant would be at risk of persecution as a person falling within that particular social group. The judge arguably has failed to provide adequate reasons for concluding that the appellant has a well-founded fear of being persecuted for reasons of membership of PSG. That is the point made at #2 of the grounds.

5. There is no discussion about the source of feared persecution. It is arguable that the judge does not provide adequate reasons for concluding that the appellant requires protection from those who had trafficked him; and the state could not provide sufficiency of protection against those who had trafficked; and the absence of discussion about those who trafficked the appellant or about their influence over state authorities means that it is arguable that relocation is not adequately reasoned and also arguable that the issue of obstacles to integration are not adequately reasoned."

The Hearing Before Me

7. Mr Avery in his submissions today on behalf of the Secretary of State said that the National Referral Mechanism process (NRM) was positive. It had been accepted in the Secretary of State's decision and it is alluded to in the grant of permission in relation to the Appellant's credibility. Mr Avery said that the thrust of the challenge was the way in which the judge has approached the issue of protection and whether there was a sufficiency of protection in Albania. It was from paragraphs 10 to 11, said Mr Avery of the decision, that there was an issue. He submitted that the judge has skipped a vital stage of determining the risk to the Appellant. The judge had gone straight from the NRM and then to whether the Albanian authorities could protect the Appellant. There was no assessment of what the risk was and thereby this was a fundamental error. Although there might have been some suggestions by way of hearsay that there were connections to the authorities, there was no real supporting evidence to show that there was a well-founded fear for the Appellant. The risk was in the past. When looking at the sufficiency of protection one needed to see what the protection was from and the judge had fundamentally erred in respect of that. The Appellant did not have solid evidence of what his fear was and his own family in Albania had no issue and there was no continuing interest in these people or any follow-up enquiry. It was difficult to see, said Mr Avery, whether or not the authorities could offer a proper level of protection to the parties. The judge should have made findings and so the consideration of the background material was meaningless.

8. Mr Avery said that the judge's approach also affected whether the Appellant needed to relocate and whether he required support from his family. If there was no real threat to the Appellant then there was no reason why he could not stay with his family and obtain support from them and indeed why paragraph 16 of the judge's decision, in relation to relocation needed to arise at all. The judge referred to it being possible for the Appellant to live in rented accommodation but that only became relevant if there was somebody looking for the Appellant. Mr Avery said in conclusion he relied on the grounds of appeal but that the judge had missed a vital part of the risk to the Appellant in his home country.

9. Ms Vidal in her submissions said that there was no Rule 24 response, but she said that in relation to the grounds they had sourced the vital part being the issue of credibility. But here, the starting point was paragraph 10 of the judge's decision. The Appellant's account had been accepted in its entirety so the ground of appeal in respect of credibility was not made out. She referred to the Secretary of State's decision, particularly paragraphs 24 to 27 and paragraphs 36 and 43. She said notwithstanding the inconsistencies, the judge knew that they were there and so did the Secretary of State, so that was the starting point in

respect of the risk on return and indeed in respect of state protection and relocation. She said one does not start off with it would be safe for the Appellant and thereby what would be the issue. Even with the inconsistencies, and one had to consider the NRM decision, she referred to that within the bundle and she properly reminded me that the NRM decision is considered to the higher balance of probabilities standard and indeed it was clear here that the Appellant had satisfied that whereas the judge here only had to consider the claim to the lower standard. Ms Vidal said that against that backdrop the judge had then gone on to consider what was next. Would the Appellant be safe on return? He had been located in France and the judge had come to these matters and these were findings which were open to him. The assessment by the judge was adequate. The Appellant's account did not need to be dissected. It was entirely accepted.

10. Paragraph 13 referred to internal relocation. There was reference to the father having left, as had the Appellant's younger brother, because of a fear of what would happen to them. The family was now headed by the mother.

11. Paragraph 14 referred to the chief difficulty which is the Appellant's mental health. The objective evidence was in front of the judge and I was referred to those aspects as well.

12. In relation to the penultimate challenge from the Secretary of State's grounds in relation to very significant obstacles, one could see that here there were very significant obstacles to the Appellant's reintegration into Albania. The judge did not need to repeat what was being said, but these were pertinent matters which were provided. The Appellant had given a credible account, he was a victim of trafficking and indeed there was an insufficiency of state protection, internal relocation showed that it would be unduly harsh. Dr Hameed, in relation to the Appellant's mental health was referred to as well.

13. Ultimately, Ms Vidal submitted that the Appellant had been believed, there was nothing wrong with the decision, there was no error of law, it was a mere disagreement with the style of the Immigration Judge, the judge knew about the findings, he set them out in a logical way and Ms Vidal invited me to uphold the decision.

14. Mr Avery, in reply, said that he referred to his initial decision, there was no current threat, as set out at paragraph 50 of the reasons for refusal letter. What the judge had conspicuously failed to do was to consider the facts of the Appellant's case, as he had advanced them. It was a fundamental error and it fed into the further findings as to whether it was necessary for the Appellant to internally relocate. Ultimately what was said was that the judge had not shown the reasoning in respect of how it was that this Appellant would now be at risk.

15. I took the step of inviting Ms Vidal to say anything else that she wished to in relation to this claim and in particular, in response to Mr Avery's further submissions. She took me to paragraph 10 and I invited her to go through that with me in its entirety and Ms Vidal explained that it was also necessary to look at the Appellant 's witness statement and she took me to various paragraphs, such as paragraph 9 of the witness statement too. Ultimately, she said that although the style of the judge in setting out his decision was brief, it still met all of the issues. She urged me to find that there was no material error of law. The Appellant's account had been accepted in its entirety and thereby the decision ought to stand. Ms Vidal said that if I was to find an error of law then in view of

the more enlarged issues which arise in this case, then it would be appropriate for the matter to be remitted for a rehearing to the First-tier Tribunal whereas Mr Avery submitted that it was appropriate for the case to remain here at the Upper Tribunal for further consideration.

Consideration and Judgment

16. Having considered the rival submissions and having considered the documentation in respect of this case, I conclude that there is a material error of law in the judge's decision. In my judgment, it was essential for the judge not only to deal with the past events which had occurred but also to deal with what the future risk might be. I commend the approach of brevity in decisions, but in my judgment there is a missing step, as Mr Avery and the Secretary of State's grounds of appeal contend. The judge at paragraph 10 has not set out or explained what the actual current risk on return might be. I accept that within the documentation, if one traverses this very large 700 plus page bundle, there might be some information or evidence amongst the documents, but that is not the task which I have to undertake. I have to consider the First-tier Tribunal Judge's decision. I have to ascertain whether there is adequate reasoning to enable the parties to know why they have won or lost and in my judgment there is a significant material omission and that is highlighted within the grounds of appeal and amplified before me by Mr Avery today. It was incumbent upon the judge to set out and to explain why the Appellant would now be at risk on return. As a consequence, because of that fundamental error, the later findings by the judge, in relation to sufficiency of state protection and whether reasonableness or otherwise of internal relocation is also infected by that error.

17. I have considered whether for there to be a continuation hearing before me here at the Upper Tribunal. In my judgment, taking into account the Senior President's Practice Statement and paragraph 7.2 in particular, it is of importance in this case that the Appellant has an opportunity to put his case to the First-tier Tribunal because of the material error of law conclusion that I have reached. It is appropriate for that to take place there a re-hearing in view of the background to the case and in particular because the Appellant has been found to be credible in relation to some of the past events at the National Referral Mechanism stage in relation to the trafficking.

18. In the circumstances, despite the persuasive submissions of Ms Vidal, which have been very ably put, I am unable to agree with her. I conclude that there is a material error of law in the Judge's decision.

Notice of Decision

There is a material error of law in the decision of the First-tier Tribunal.

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

The matter is remitted to the First-tier Tribunal for rehearing on all matters.

An Anonymity Direction is made.

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A. Mahmood.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 February 2024