IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001336

First-tier Tribunal No: HU/50306/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 November 2024

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

F M
(ANONYMITY DIRECTION MADE)

Applicant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Saleem – Malik and Malik Solicitors
For the Respondent: Mrs A Nolan – Senior Home Office Presenting Officer

Heard at Field House on 22 October 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. This is the appellant's appeal against the decision of First-tier Tribunal Judge K Gray who, in a decision promulgated on 2 January 2024 dismissed the appellant's appeal against the respondent's decision to refuse his protection and human rights claims. Because the appellant's claims involved the assertion that his life would be at risk in Albania the Judge made an anonymity order, restricting publication of details that may lead to the appellant's identification. Lest

anything said or done in these proceedings gives rise to a risk to the appellant I maintain that order.

Background

2. The appellant is 27 years old and an Albanian national. He was first encountered in the United Kingdom in March 2017, when he told immigration officers he had entered the country two years earlier, hidden in a lorry. He was served with notice of intention to remove him and in response claimed asylum stating that his life was at risk in Albania as a result of a blood feud. The respondent refused that claim in May 2017 and the appellant was removed to Albania on 1 June 2017.

3. The appellant says that he returned to the United Kingdom, again hidden in a lorry, in January 2020. On 5 November 2020 he made representations to the respondent which were treated as a fresh asylum claim. These representations maintained (i) that the appellant was as risk in Albania as a result of the blood feud, but asserted that he was additionally at risk in Albania (ii) because he is homosexual and his family disapprove and have threatened to kill him, and (iii) because he was the victim of trafficking and modern slavery in Belgium in 2020 where he was forced to work cultivating cannabis and he feared being re-trafficked by the same gang or a different gang. The respondent refused that claim in a decision dated 23 December 2022 and the appellant appealed against that decision to the First-tier Tribunal leading to the hearing before the Judge a year later on 5 December 2023.

The Judge's Decision

4. It was agreed at the hearing before the Judge that in relation to his protection claim, the Judge would need to resolve first whether the appellant's account of events was credible, then go on to assess whether the appellant faces a risk of persecution in Albania and if so whether sufficient protection could be provided by the Albanian state or whether the appellant could internally relocate within Albanian to evade the risk. It was additionally agreed that to resolve the appellant's human rights claim the Judge would need to determine whether the appellant would face very significant obstacles to his reintegration in Albania and conduct an assessment of whether refusal of the appellant's claim would amount to a disproportionate interference with his Article 8 Convention right to respect for his private and family life.

5. The Judge began the "Findings" section of her decision therefore with consideration of the credibility of the appellant's account and the risk of persecution on return to Albania, starting with a summary of the appellant's account at [39] followed by the analysis of that account and the extent of any risk arising as a result, at [40] – [83] of her decision. The Judge found that:

(i) there is no active blood feud between the appellant's family and family "V" and so the appellant is not at risk as a result ([50] – [54]) ;
(ii) the appellant's claim to be homosexual is not reasonably likely to be true [65] and that even if it were true he would not be at risk on Albania as a result [73];
(iii) the appellant's claim to be a victim of trafficking and to have been forced to cultivate cannabis in Belgium was reasonably likely to be true [77], but that the appellant would not be at risk from those who trafficked him previously or from other people traffickers on his return to Albania [83].

6. The Judge went on to find that even if the appellant were at risk in Albania for any of the reasons identified he would be able to rely on an adequacy of protection from the state authorities and in these circumstances it was not necessary to consider the appellant's ability to internally relocate within Albania. On this basis the Judge dismissed the appellant's protection appeal [100]. The Judge then found that the appellant would not face very significant obstacle to reintegration in Albania [109] and that the interference with his private life that removal from the United Kingdom would involve, was justified and proportionate and therefore did not breach Article 8 of the Convention [121].

The appeal to the Upper Tribunal

7. The appellant's grounds of appeal are set out in a narrative form across eleven paragraphs. It would have been far clearer had the grounds specified the error(s) of law which it is said the Judge made, however it is possible to discern from the grounds and from Mr Saleem's submissions during the hearing before me, the following challenges to the Judge's decision:

a) The Judge erred in her approach to the appellant's credibility by starting with and attaching too much importance to, factors set out in section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 (the 2004 Act) ([2] of the grounds)

b) The Judge erred by failing to put to the appellant matters held against him when deciding that there was not an active blood feud and finding that the appellant's account of being homosexual is not true ([3] and [4] of the grounds)

c) The Judge erred by giving insufficient weight to a country expert report submitted in the appellant's bundle of evidence ([5] of the grounds)

d) The Judge erred by giving inadequate reasons for her finding that the appellant would not be at risk from the gang that trafficked him in Belgium ([6] and [7] of the grounds)

e) The Judge erred by failing to "give appropriate weight and consideration" to a psychiatric report submitted, and failing to take into account the appellant's personal circumstances when considering the risk to the appellant of being re-trafficked in Albania ([8] and [9] of the grounds)

f) The Judge erred by failing to set out the appropriate objective evidence of why he would be able to relocate within Albania ([10] of the grounds)

g) The Judge erred by applying "a high test" when considering whether the appellant would face very significant obstacles to reintegration in Albania and whether the appellant's removal would breach his Article 8 Convention rights ([11] of the grounds).

8. Permission to appeal was refused by the First-tier but granted on renewal by Upper Tribunal Judge O'Brien who considered the challenge at (a) above to be arguable but granted permission on all grounds noting that the other challenges were "less meritorious".

9. I heard submissions from Mr Saleem and Mrs Nolan which I refer to in my analysis of the different challenges to the Judge's decision below. Having heard those submissions I indicated that I would be dismissing the appeal and that my reasons would follow. I now provide that decision, together with my reasons.

Analysis

(a) The Judge's assessment of the appellant's credibility and section 8 of the 2004 Act

10. Section 8 of the 2004 Act provides, so far as is relevant as follows:

> 8 Claimant's credibility
>
> (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
>
> (2) This section applies to any behaviour by the claimant that the deciding authority thinks–
>
> (a) is designed or likely to conceal information,
>
> (b) is designed or likely to mislead, or
>
> (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
>
> (3) [provides examples of behaviour which shall be treated as designed or likely to conceal information or to mislead]
>
> (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.
>
> (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
>
> (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless–
>
> (a) he had no reasonable opportunity to make the claim before the arrest, or
>
> (b) the claim relies wholly on matters arising after the arrest.

11. Both the grounds of appeal and the grant of permission make reference to JT (Cameroon) v SSHD [2008] EWCA Civ 878, a case in which the Court of Appeal considered and gave guidance on the approach to section 8 of the 2004 Act to be taken in a First-tier Judge's assessment of the credibility of an asylum claim. In JT (Cameroo) Lord Justice Pill described at [19] the danger of section 8 *"distorting the fact finding exercise by an undue concentration on minutiae which may arise under this section at the expense of, and as a distraction from, an overall assessment. Decision makers should guard against that. A global assessment of credibility is required."* At [21] Pill LJ said that section 8 *"is no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in Section 8 shall be taken into account in assessing credibility…. Where Section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact finder."*

12. On behalf of the appellant, Mr Saleem submits that the location and length of the Judges consideration of the Section 8 factors, which comes at the start of her

assessment of the appellants credibility and features in paragraphs [40] – [48] of the decision, demonstrated that she had not followed Pill LJ's guidance in JT (Cameroon) by failing to undertake a global assessment of the appellant's credibility and treating section 8 as determinative of the appellant's credibility. Ms Nolan argues that the positioning of the Judge's assessment of the Section 8 factors is not fatal, that the Judge makes it clear that she has conducted a global assessment of the appellant's credibility and that the Judge's assessment of the section 8 factors reveals no error of law.

13. Whilst it is correct that the Judge began her consideration of the appellant's credibility with her analysis of the section 8 factors, as Pill LJ made clear at [16] of JT (Cameroon) this was not fatal to the legality of her decision. As a linear document a Judge's written decision has to start somewhere, and I regard the criticism of the fact she started with an assessment of the section 8 factors as a criticism of form rather than substance. Similarly the complaint that the Judge spent e3ight paragraphs assessing the section 8 factors is in my judgment a complaint about the form of the decision rather than the substance. There was no suggestion that any of the content of those paragraphs was erroneous or contained irrelevant considerations. The length of the assessment of the section 8 factors was in fact a reflection of the number of different section 8 factors that were in play. This was an appellant who twice travelled through safe countries in Europe without claiming asylum and who twice having entered the United Kingdom clandestinely and without leave, failed to make an asylum claim immediately and on the first occasion only having been arrested and served with a removal notice. If the Judge had not considered all these relevant section 8 factors she would have been in error as there is a clear statutory duty to do so. The fact that it took her eight paragraphs to complete that assessment was not a reflection of the section 8 factors being given undue weight as has been suggested, but instead was a reflection of the appellant's long and unimpressive immigration history.

14. What was important was not where the section 8 assessment appeared ion the Judge's decision or how lengthy the assessment was. What mattered was whether the consideration of the section 8 factors formed part of a global assessment of the appellant's credibility or whether it distorted that exercise by concentrating unduly on the section 8 factors. The Judge was plainly aware of this as she explicitly stated on more than one occasion that her assessment of the section 8 factors formed only part of her "*global assessment*" of credibility see [44] and [46] of the decision. Mr Saleem's submission was that although this was what the Judge explicitly stated it is not what she in fact did. I do not accept that submission. The Judge's assessment of the section 8 factors was followed by a careful consideration of what she calls the substance of the different aspects to the appellant's asylum claim and it was in the light of both that the Judge reached her conclusions.

15. It is true that in her assessment of the substance of the appellant's claim to be homosexual that at [57] - [59] the Judge again refers to the fact the appellant failed to mention his sexuality to immigration officers when he had the chance to do so stating it is something that damages the credibility of his account. However, at [60] – [64] the Judge also refers in that assessment to other weaknesses in the appellant's account including it's lack of depth, his referring to having been in two short term relationships for the first time when asked questions in cross examination and the paucity of supporting evidence. In my judgment the Judge has not been distracted by the section 8 factors but has balanced all these features in the process of making her findings.

16. When read as a whole it is clear that the Judge has undertaken a global assessment of the appellant's credibility just as she explicitly states, having regard not only to the section 8 factors she assessed, but also to each of the different strands of the appellant's claim, the medical evidence and the country information. This ground does not identify an error of law in the Judge's decision.

(b) Failure to put matters held against him to the appellant

17. Mr Saleem did not make any oral submissions in connection with this complaint and in my view he was right not to do so as the challenge is misconceived. The grounds refer to [50] – [54] of the Judges decision in which the Judge considers the evidence about the appellant's claim to be subject to a blood feud, and [61] of the Judge's decision in which she considers the Judge's claim to be homosexual. The submission is that the Judge should have put the matters referred to in those paragraphs to the appellant when he was giving evidence.

18. On a fair reading of the Judge's decision however, it is clear that in paragraphs [50] –[54] and [61], the Judge is simply assessing the evidence that has been adduced before her and explaining why she reached conclusions, based on that evidence, that there was no active blood feud and that the appellant is not homosexual. The Judge did not raise any new points in those paragraphs, instead she was analysing the evidence, identifying its shortfalls (and where appropriate strengths) and then explaining the aspects of that evidence which led to her ultimate conclusion. IN addition in those paragraphs the Judge was identifying evidence that she considered could have been adduced if the appellant's assertions were correct but wasn't, and drawing a legitimate inference from, that omission. There was not requirement on the Judge to identify her misgivings about the evidence and invite the appellant to comment on them. As Lord Reed made clear at [8] of HA v SSHD (No 2) [2010] CSIH 28 (quoted with approval in Abdi v SSHD [2023] EWCA Civ 1455) there is no obligation on the tribunal to give notice to the parties during the hearing of all the matters on which it may rely in reaching its decision.

(c) insufficient weight to a country expert report

19. This was also a complaint that Mr Saleem chose not to expand upon in the hearing. The grounds submit that in [67] of her decision the Judge did not give appropriate weight to the report by Ivo Ngade. It is important to note that in this paragraph that the Judge is considering the risk in the event that she were wrong in her conclusion that the appellant is not homosexual. Given I find no error in the Judge's finding as a fact that the appellant is not homosexual, any error in this paragraph is not likely to be material in any event.

20. The Judge was clearly entitled to note in [67] that the report of Mr Ngade did not deal with the experience of LGBTQ people in the appellant's home area of Kamez, Tirana and therefore that it was not particularly helpful when assessing the risk to the appellant were he to return to that area. The suggestion in the grounds that the appellant could not return to his home area is simply a disagreement with the facts as found by the Judge. It is not the case that the Judge has failed to consider material information as the grounds suggest, the Judge has demonstrably clearly considered the report with care. The amount of weight the Judge attached to the report was unquestionably a matter for her to determine in the light of her findings of fact she made. That is precisely what she did.

(d) inadequate reasons for her finding that the appellant would not be at risk from the gang that trafficked him in Belgium

21. In this challenge it is submitted that having accepted that the appellant's account of being trafficked and forced to cultivate cannabis in Belgium, the Judge gave inadequate reasons for her subsequent conclusion that his traffickers (referred to in the decision as C and D) were not as well connected as the appellant was told they were, and that there was no evidence that they were continuing to search for the appellant. Mr Saleem submitted that the evidence indicated that C and D were in a position of power and influence with connections in Albania and Europe. As Ms Nolan pointed out however this argument amounts to little more than a disagreement with the Judge's conclusion, and an attempt to re-argue the appeal.

22. At [81] of her decision the Judge explains why she has reached the conclusion that C and D are not searching for the appellant and would not be alerted if he returned to Albania, referring to the four years that have passed since the forced labour occurred, during which there has been no suggestion of any interest in the appellant shown by C or D. The reasons given are unquestionably adequate to enable the appellant to understand, by reference to the evidence, why the Judge has found against him on this point. They do not disclose a basis for interfering with the Judge's decision.

(e) failing to "give appropriate weight and consideration" to a psychiatric report submitted, and failing to take into account the appellant's personal circumstances when considering the risk to the appellant of being re-trafficked in Albania

23. Mr Saleem submitted that having found that the appellant had been the victim of trafficking, the Judge's assessment of the risk of the appellant being re-trafficked on return to Albania was flawed. He submitted that the Judge did not give adequate consideration to the evidence of Dr Singh about the appellant suffering a depressive episode of moderate severity and unresolved psychological trauma when assessing the appellant's ability to resist attempts to re-traffic him and to reintegrate in Albania. Mr Saleem further submitted that the Judge did not consider all the factors identified in the case of TD and AD (Trafficked women) (CG) [2016] UKUT 92 and the Country Policy Information Note (CPIN) as being relevant when assessing that risk of the appellant being re-trafficked. In response Ms Nolan argued that the Judge had considered the report of Dr Singh, the caselaw and the CPIN and had given adequate reasons for her conclusion that the appellant was not at risk of re-trafficking on return to Albania.

24. Contrary to the arguments advanced by Mr Saleem, the Judge explicitly and demonstrably had regard to the report of Dr Singh, the case law and the CPIN when assessing the risk of the appellant being re-trafficked on his return to Albania. The Judge refers to the evidence of Dr Singh at [10] of her decision. She refers to the factors identified as relevant in TD and AD at [28] of her decision and she refers to the factors identified in the CPIN at [79] of her decision. There is no proper basis for concluding that having done so this specialist tribunal has then disregarded all these factors when she goes on to assess the risk to the appellant of re-trafficking. On the contrary. In a clear recognition of Dr Singh's report, the Judge refers at [82] to the appellant's "mental health problems" in the context of the risk of re-trafficking but concludes that with medication and treatment that is available in Albania they would not be impediments to the appellant resisting attempts to re-traffic him. Likewise in the same paragraph the Judge considers the appellant's support networks, his age, his experience, his physical health and his ability to form relationships when assessing the future risk of re-trafficking and her conclusion that the appellant would now be able to reintegrate without being re-trafficked is adequately explained.

25. As the complaint about "appropriate weight and consideration" in the written grounds indicate, this challenge is in reality a disagreement with the Judge's assessment and an attempt to re-argue the case. That assessment by the Judge's however had due regard to the evidence and the caselaw and there is no legal basis for interfering with the conclusions she reached.

(f) failing to set out the appropriate objective evidence of why he would be able to relocate within Albania ([10] of the grounds)

26. This complaint is hard to understand. It was not expanded by Mr Saleem in the hearing and it does not reflect the Judge's decision. Contrary to what is said in this paragraph of the grounds, the Judge did not find at [99] that the appellant would be able to relocate within Albania. Instead the Judge makes clear in this paragraph that she has not needed to go on to consider internal relocation because on her findings of fact there was no risk to the appellant in his home area. There is no error of law in this approach which reflected the Judge's earlier findings.

(g) applying "a high test" when considering whether the appellant would face very significant obstacles to reintegration in Albania and whether the appellant's removal would breach his Article 8 Convention rights

27. When assessing whether the appellant's removal would breach his article 8 Convention right to respect for his private life, the Judge first considered whether there were very significant obstacles to the appellant's integration in Albania. The grounds argue that when she did this the Judge applied a high test. They also argue that the Judge gave little weight to the appellant's mental health in her overarching assessment of whether the removal of the appellant would breach his article 8 rights. In his oral arguments Mr Saleem added that if it were accepted that those who trafficked the appellant were in a position of power and influence then that must be taken into account when assessing the proportionality of removing the appellant. As Ms Nolan correctly pointed out however, that was not the factual finding the Judge made and the assessment of proportionality had to be conducted in the light of the facts as the Judge found them to be.

28. As the Judge identified at [114] of her decision, the test of "very significant obstacles" is a stringent one, reflecting as Underhill LJ identified in Parveen v SSHD [2018] EWCA Civ 932, the elevated threshold that the words "very significant" connote. The Judge gives clear reasons for why she found that elevated threshold not to have been met. The Judge also gave clear reasons for why the public interest in the appellant's removal outweighed the private life the appellant had established in the United Kingdom. Within her explanation the Judge gives extensive consideration to the evidence about the appellant's mental health (see [102] – [109] of the decision). The complaint that the Judge gave little weight to this evidence is no more than a disagreement with the decision the Judge reached.

29. Overall, the Judge's assessment of the competing private life established by the appellant, against the public interest in the maintenance of effective immigration control was flawless and her conclusion that in circumstances where the appellant had twice entered the United Kingdom in breach of immigration control, had never enjoyed permission to be in the United Kingdom, and did not meet the requirements of the immigration rules, the public interest outweighed the appellant's private life was inevitable.

Conclusion

30. The Judge did not err in any of the ways asserted by the appellant. Instead she has provided a clear and cogent decision explaining why the appellant's asylum and protection claims did not succeed.

Notice of Decision

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

Luke Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 October 2024