IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003486

First-tier Tribunal No: PA/52378/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th Of October 2024

Before

UPPER TRIBUNAL JUDGE NEVILLE

Between

E H
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: The Appellant in person
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 9 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. The appellant is a 19 year old Albanian national, who arrived in the UK as an unaccompanied child at the age of 14 and made a protection claim. By the time his claim was refused by the respondent on 1 March 2023, he had turned 18. His appeal against the respondent's decision was dismissed by

Judge J G Raymond in a decision dated 27 February 2024. The Judge introduced his decision as follows: (I have made some minor redactions, indicated by square brackets)

> 3. The basis of the claim by the appellant is that in Albania he was the victim of a father, a gambler and a drunk, who was abusive to him and his family when he was in drink, beating him up, and his mother many times, and his siblings as well. His family, with whom the appellant says he has had no contact since November 2019 […] consists of his mother, and four brothers all now adults, three of whom still live in Albania, whilst one, with whom the appellant had travelled to Italy has remained there. Italy being from where he says he was individually trafficked into the UK to work as a beggar. […]. The appellant initially said that he stopped his schooling and went to Italy with his brother SH for medical treatment for a hip problem, associated with his having broken his leg, which has left him with a limp.
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> […]
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> 5. The appellant claims that he travelled by air to Italy with his brother, who had a house there, using his own passport which his brother took from him when they arrived, for his leg to be checked in Italy […]. That his brother was a drug addict who would beat him up when in a drugged state. The appellant therefore only spent one week with him and went to a park, where he made the acquaintance of a young Albanian of his own age, by the name of [X], who in response to being told about the appellant's brother, took him to a place where he said they could stay. There were three men there who forced the appellant to go out begging by beating him up and threatening him with death. He spent the next three days being taken to a place to beg. After three days he was taken in a van by the three men with [X], both having "our mouths covered by tape", the appellant sitting in the back of the can, and he was in the UK in the morning. Where he was again forced to beg on the streets for about three days, but on third day he heard a man speaking Albanian on the phone who directed him to a building where he was able to claim asylum.

2. The respondent accepted all this as true, including that the appellant was a victim of trafficking and modern slavery. The appellant claimed that if returned to Albania he would be re-trafficked and forced into begging again; he would be unable to rely on his family for support, due to the previous abuse from his father and brother, and would be unable to relocate elsewhere in Albania as he would be unable to support himself and be destitute. This was rejected by the respondent. She concluded that the appellant would be able to access sufficient protection from the Albanian authorities against re-trafficking or other action at the hands of any criminal gang, because the appellant had not shown his former traffickers to have any corrupt links to the state; furthermore, the appellant would be able to support himself by relocating elsewhere in Albania, work using his skills and education, and from assistance provided by the state and other bodies.

3. The parties maintained the same positions in the appeal to the First-tier Tribunal. To address one point made on behalf of the respondent, I agree that the appellant has never put forward any claim that he would be at risk from his father and brother simply by returning to Albania, in the sense that they would detect his return and pursue him. Their abusive behaviour was only ever put forward as the reason why he left his family, and as why the appellant fears a violent reaction if he were to return to Albania and resume contact with his family.

4. The Judge concluded that the appellant could return to Albania, finding by reference to the appellant's education, training in this country as a plumber, and (the leg injury aside) his good health that:

> 21. ...the appellant has all the necessary attributes that would enable him to lead an independent life upon his return to Albania, and which would also enable him to call upon the aid and protection of the authorities if such was required, but which I consider would not be necessary in his case.

5. The basis of that finding was the Judge's rejection of the appellant's claim that he had lost contact with his family since leaving Italy for the UK:

> 22. ... I find that there is in fact no question of the appellant having to re-establish a contact with his family, for which there is no credible basis for considering that it has ever been lost. His only explanation for so claiming is that he just wants to get on with his life with the friends he has established in the UK. But this provides no basis for considering why he would have turned his back upon a family, in which his own evidence identifies his mother as having been the guiding spirit who had in hand his health and welfare. I find that it is not credible that the appellant would have lost contact with his mother, who according to his own evidence supported him while he was treated in Albanian hospitals for some 6 months and was concerned to be kept abreast of his welfare when he was in Italy. It must follow, given what the appellant says of his drunk and inveterate gambler father, that she would have been instrumental in facilitating his travel to Italy for further medical assessment and treatment. I find that his account of the treatment he received in Albania, and of the steps taken to send him to Italy for specialised treatment, and where according to him a hospital appointment had been made before circumstances led to his being trafficked to the UK. All point to a family background of family support for the personal welfare of the appellant, even if the role of his abusive father in this is questionable, and given that there is not the slightest suggestion for any of his three other brothers having participated in the abusive behaviour of his father, of which they were all victims according to the appellant, or in that of his drug addict eldest brother towards him. I therefore find that the claim of the appellant that he has lost contact with his family since November 2019 is an illusion that he has sought to create, and the falsity of which is intended to support his position that through isolation and without any support he would be destitute upon his return.

6. In support of that analysis the Judge also found the appellant's credibility had been damaged by inconsistencies on how he had suffered the injuries to his leg; this had not, the Judge found, been caused by the appellant's father as had been claimed. The Judge continued:

> 27. … I find that the appellant would not need to relocate because there is no evidence that the three Albanian men whom he met by chance in Italy, who are meant to have trafficked him into the UK, have any connection with Albania, or even that they had knowledge of his personal and family circumstances in Albania. Neither would he need to dos so to avoid his father, I find that the appellant would not need to relocate because there is no evidence that the three Albanian men whom he met by chance in Italy, who are meant to have trafficked him into the UK, have any connection with Albania, or even that they had knowledge of his personal and family circumstances in Albania. Neither would he need to do so to avoid his father, as his personal attributes, further developed through his education in the UK, would enable him as an adult to lead an independent life in Albania, with the support of other members of his family, as my findings have established, and not least his mother.

7. While the appellant was represented before the First-tier Tribunal, he has prepared his appeal to this Tribunal without legal representation. I therefore avoid an over-restrictive interpretation of his grounds of appeal, and summarise them as follows:

a. The Judge was wrong to conclude that the appellant could lead an independent life in Albania, because his education ceased at the age of 18 and he had no formal plumbing qualifications that he could use in Albania.

b. The Judge was wrong to find that the appellant could rely on support from his family, which would be "limited to emotional support" as they did not have the financial ability to support him. His father is the "sole breadwinner" and would find and harm the appellant if he discovered that he had been in contact with his mother and other brothers.

c. The Judge had misapplied the country evidence in finding that there would be NGOs who would provide him with support or shelter as a trafficking victim.

d. The Judge was wrong to find that there was a sufficiency of state protection in Albania against a criminal organisation of the type that had the reach and resources to have trafficked the appellant, and failed to take into account relevant country evidence.

8. Permission was granted by First-tier Tribunal Judge C Scott on all grounds, based on the Judge having arguably erred in finding that the appellant could access support from his family given the accepted history of abuse. Notice that the appeal would be heard at the Upper Tribunal on 9 October 2024 was sent to appellant by post and email on 10 September

2024 to the addresses he had provided, and a copy of the appeal bundle was later sent by email on 25 September 2024. The appellant has never responded and did not attend the hearing. I arranged for the Tribunal's clerk to try to contact the appellant using the details held by the Tribunal as well as another email address helpfully provided by Mr Terrell. He also confirmed that the postal address to which the Notice of Hearing had been sent was the same as appears on Home Office records. Contact with the appellant could not be established and, being satisfied that proper notice of the hearing had been given in accordance with the rules and there was no apparent reason to adjourn, I proceeded with the hearing.

9. I start by rejecting that the Judge failed to take into account any relevant country evidence, and nor can any error be found in the Judge's application of the country evidence to the facts as he had found them to be. The Judge gave clear reasons for his conclusion that the appellant's attributes, when taken together with family support, would enable him to lead an independent life in Albania without facing any risk of re-trafficking. I accept Mr Terrell's arguments to that effect, and this disposes of the grounds summarised at 7(c) and (d) above.

10. Nonetheless, the conclusion that the appellant could lead an independent life without fear of retrafficking or other serious harm explicitly relied on material family support being available. Mr Terrell emphasised the Judge's finding at [27], as recorded above, that support could be provided from the appellant's and his mother without any need for him to actually live in the family home. I agree, but the appellant's challenge is to the Judge having concluded that material family support would be available at all. When considering such a challenge to a Judge's findings of fact, numerous authorities have reiterated the need for appellate caution. In *Walter Lilly & Co Ltd v Cli*n [2021] EWCA Civ 136 at [83], Carr LJ (as she then was) relevantly held as follows:

> 83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:
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> i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed;
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> ii) The trial is not a dress rehearsal. It is the first and last night of the show;
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> iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case;
>
> […]

11. At [85] Carr LJ then summarised some of the circumstances in which appellate interference with findings of fact might still be justified. They include:

> i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support;
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> […]
>
> iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.

She continued:

> 86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.
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> 87. The degree to which appellate restraint should be exercised in an individual case may be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case, or from first-hand experience of the testing of the evidence, or because of particular relevant specialist expertise.

I note a similar exposition by Lewison LJ in *Volpi v Volpi* [2022] EWCA Civ 464 at [2].

12. Carefully taking that approach, I nonetheless consider that the Judge materially erred in the way he reached his finding that the appellant had sought to deceive when describing his family circumstances.

13. At the start of [22], as extracted above, the Judge refers to the appellant having claimed that he had lost contact with his family and rejects it as "an illusion that he has sought to create". His principal reason for that conclusion was the sheer unlikeliness of the appellant not wishing to have contact with either his mother, when she had done so much to assist him with his leg, or his older brothers who were not perpetrators themselves. The appellant had been asked questions by the Judge about his relationship with his mother, as the Judge records earlier in his decision. In answering, the appellant referred twice to the violence he suffered, then said "I do not want to have contact with them and have started a new life here". Pressed by the Judge to acknowledge that his mother loved him, the appellant accepted this, but then asked by the Judge how he felt about

her, he answered “I do not know”. The Judge’s response to this evidence can be fairly summarised as disbelief that a person in those circumstances would want to cut ties with his mother and older brothers, as well as the actual abusers. It is clear from the Judge’s reasons at [16] and [22] that this consideration carried great weight in his assessment.

14. In *HK v SSHD* [2006] EWCA Civ 1037, at [28]-[30], Neuberger LJ urged significant caution before relying on actions seeming implausible before account is taken of an appellant’s social and cultural background, and warned that inherent probability is a dangerous factor in some asylum cases. In *KB & AH (credibility-structured approach : Pakistan)* [2017] UKUT 491 (IAC) the Upper Tribunal confirmed that plausibility remains a legitimate indicator of credibility, but requires a certain degree of caution in its application. That caution is absent from this part of the Judge’s consideration, not only on the basis of the appellant’s different cultural background but, more importantly, the appellant’s status as a victim of abuse.

15. There is no acknowledgment in the Judge’s reasons that he might be poorly placed to judge how a victim of violent family abuse might feel or act towards a parent who failed to protect him from it, or to his older brothers who were also victims but remain part of the family structure. A wish to cut ties is not obviously implausible. Even applying due appellate restraint, I conclude that the Judge was not rationally entitled to assume such authority on how victims of abuse might think or behave, such as to place such adverse weight upon this part of the appellant’s account.

16. It is right to observe that the Judge found that the rejection of the appellant’s account to have been ‘confirmed’ by another matter, being that the appellant was held to have been inconsistent over time about the cause of his leg injury. Yet this conclusion is, in turn, justified by reference to the previous adverse credibility finding. There is nothing objectionable about considering two matters together, or ‘in the round’, but this circularity of reasoning means that the Judge’s concerns over the leg injury cannot relieve the consequences of his earlier irrational approach to plausibility.

17. The appellant’s lack of credibility appears to be the only explanation for the Judge’s conclusion that material support would be available from family members. The error of law argued by the appellant, as summarised at paragraph 7(b) above, is therefore established. As that conclusion underpinned the overall decision on the appeal, it was material and the Judge’s decision must be set aside.

18. Applying the principles set out in the Practice Direction and the Practice Statement, according to the guidance given in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), I consider it appropriate to remit the appeal to the First-tier Tribunal for complete re-hearing. This is because it is unclear that the appellant has yet had the benefit of a fair hearing in the First-tier Tribunal. Despite their open phrasing, the Judge’s

questions at the hearing bore some similarity to cross-examination, going into matters that had remained undisturbed by the presenting officer's questions and eliciting the very answers upon which the Judge relied in rejecting credibility. The appellant did not raise any procedural unfairness in his grounds of appeal, nor was any concern apparently raised by his then-representative at the hearing, and I stress that I have had no regard to the matter in finding an error of law. Nonetheless, that potential loss of a fairly conducted two-tier decision-making process justifies remitting the appeal to the First-tier Tribunal. It is unnecessary to preserve any of the Judge's other findings of fact, as they were largely common ground between the parties.

Notice of Decision

(i) The decision of the First-tier Tribunal contains a material error of law and is set aside.
(ii) The case is remitted to the First-tier Tribunal in Hatton Cross for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge Raymond.

J Neville

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024