



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03349/2014

THE IMMIGRATION ACTS

Heard at Field House  
On November 11, 2014

Determination Promulgated  
On November 13, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR NUSRET DOMI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Stevens (Legal Representative)

For the Respondent: Mrs Holmes (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant, citizen of Albania, was born on February 26, 1996. On February 27, 2013 he entered the United Kingdom clandestinely and on March 5, 2013 he claimed asylum. He was granted discretionary leave to remain until he was 17½ years old. On August 29, 2013 he applied for further leave to remain in the United Kingdom and the respondent refused this

application on May 2, 2014 and issued removal directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On May 23, 2014 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended. The matter came before Judge of the First-tier Tribunal Khan (hereinafter called "the FtTJ") on June 24, 2014 and he dismissed the appeal after an oral hearing in a determination promulgated on July 17, 2014.
3. The Appellant lodged grounds of appeal on July 29, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Renton on August 18, 2014. He found it arguable the FtTJ had not demonstrated he had considered the appellant's case in the context of the background information.
4. The matter came before me on the date set out above. The appellant was not in attendance but was represented by his legal representative.
5. The respondent had filed a Rule 24 response dated September 8, 2014 but this did not deal with the issues.
6. I invited Mrs Holmes to set out the respondent's position. She accepted the FtTJ had not demonstrated he had considered the appellant's case against the background evidence and more worryingly had made no reference to the country guidance case of EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) but had made reference to AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). She accepted there was an error in law.
7. I was satisfied the FtTJ had not demonstrated any engagement with the correct country guidance case or any of the background material and in assessing credibility and risk on return this was essential. I was satisfied there was an error in law.
8. Having established there was an error in law I invited submissions on what should happen to the appeal. I was advised the key issue was credibility and fresh oral evidence and findings would be necessary. I considered Part 3, Section 7.1 to 7.3 of the Practice Statement.
9. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

"Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

- 10. In light of the Practice Direction I agreed the case should be remitted to the First-tier Tribunal to be reheard on all matters except article 8 ECHR. There were no grounds of appeal in respect of article 8 ECHR so the dismissal of the appellant's article 8 claim remains.
- 11. No additional directions are needed as there is a full bundle on the court file. An Albanian interpreter will however be required.
- 12. The parties should ensure compliance with any directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 will apply to this appeal from hereon.

### **Decision**

- 13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 14. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
- 15. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order has been made and no application has been made to alter the position.

Date: **November 11, 2014**

DEPUTY UPPER TRIBUNAL JUDGE ALIS  
IMMIGRATION AND ASYLUM CHAMBER