



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04932/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 January 2016

Decision & Reasons Promulgated
On 12 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

RONALD HALILI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Hole of Duncan Lewis, solicitors
For the Respondent: Mr P Nath of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is an Albanian national born on 28 December 1998. He states he arrived on 24 November 2013. Two days later he applied for asylum on the basis that he feared to return to Albania because his family was involved in a blood feud.

The Respondent's Decision

2. On 3 May 2015 the Respondent refused the Appellant's application for subsidiary protection and also his claim that his removal would breach his rights to a private and life protected by Article 8 of the European Convention. The Respondent decided

to remove the Appellant to Albania by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. On 19 March 2015 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert that the Appellant's family is engaged in a blood feud on account of which he fled and fears to return to Albania. The other grounds assert the Appellant cannot relocate elsewhere in Albania and general disagreement with the Respondent's decision.

The First-tier Tribunal Proceedings

4. By a decision promulgated on 9 September 2015 Judge of the First-tier Tribunal N M Paul made extensive adverse credibility findings against the Appellant and dismissed his appeal on all grounds.
5. On 6 October 2015 Judge of the First-tier Tribunal Cruthers granted the Appellant permission to appeal on the ground that it was arguable the Judge had erred in law in failing sufficiently to deal with the assessment of the Appellant's best interests as a child with regard to the Respondent's duty under Section 55 of the Borders, Citizenship and Immigration Act 2009. Additionally, it was arguable the Judge's attention had not been drawn to the Respondent's policy on the grant of leave to and removal of Unaccompanied Asylum-Seeking Children and that the Judge should have considered whether the Respondent had complied with her obligation to trace the Appellant's family in Albania. Further it was arguable he had not given sufficient reasons for his summary disposal of the Appellant's claim under Article 8.

The Upper Tribunal Hearing

6. The Appellant attended accompanied by his foster carer Ms Sharon Anderson. She confirmed he had excellent English and I explained the purpose of the hearing and the procedure to be adopted.
7. I drew the attention of the representatives to the fact that on 28 December, just eight days before the hearing, the Appellant had celebrated his 17th birthday. I referred the parties to the Respondent's guidance of April 2013 "Processing an Asylum Application from a Child: Instruction". This is to be found in the Appellant's bundle and appears to be the current version. Paragraph 17.9(a) includes:-

Children who are refused outright because they are over 17½ but under 18 years of age should have their removal deferred until their 18th birthday, unless the safe and adequate reception arrangements test has been met. This undertaking should be made clear in the reasons for refusal letter.

Given the decision was made when the Appellant was under 16½ years of age, it appeared to me there were a number of issues and I intimated that in the circumstances I intended to find the First-tier Tribunal's decision contained errors of law and to deal with the matter substantively with a view to finding the Respondent's decision to have been made otherwise than in accordance with the law. Both representatives agreed that that was a sensible and pragmatic way to proceed.

8. The Respondent considered extensively her obligation to have regard to the best interests of the Appellant as a child in her letter of 3 March 2015 giving reasons for refusing the Appellant's application for further leave but the Judge having made an adverse credibility finding against the Appellant failed adequately to consider his best interests as a primary consideration and to make findings on them.
9. The Respondent's decision provided for removal of the Appellant to Albania. The reasons letter stated the British Embassy in Tirana had verified the Appellant's identity and his family details but there was no evidence in the Tribunal file to support this statement or otherwise to indicate what reception arrangements would be made for the Appellant. Further, the Judge made no reference to the judgment in *TN and M (Afghanistan) v SSHD [2015] UKSC 40* delivered on 24 June 2015 which dealt with the Respondent's obligations to trace an unaccompanied minor's family.
10. On account of these matters I find the First-tier Tribunal's decision contained errors of law such that it should be set aside.
11. With the agreement of the parties, I proceeded to a consideration of the substantive appeal and in the light of the Respondent's own guidance already mentioned, I find the decision was not in accordance with the law and the appeal is allowed to the extent that it remains for the Respondent to make a lawful decision. Both representatives indicated they agreed that was the best way to proceed.

Anonymity

12. There was no request for an anonymity direction or order and having considered the appeal I found none is warranted, notwithstanding the Appellant's age.

NOTICE OF DECISION

The First-tier Tribunal decision contained errors of law and is set aside in its entirety. The following decision is substituted:-

The Respondent's decision is not in accordance with the law and the matter is remitted to the Secretary of State to make a lawful decision.

To that limited extent, the appeal is allowed.

No anonymity direction is made.

Signed/Official Crest
Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

Date 08. i. 2016

TO THE RESPONDENT: FEE AWARD

No fee has been paid so no fee award may be made.

Signed/Official Crest

Date 08. i. 2016

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal