



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05317/2015

THE IMMIGRATION ACTS

Heard at Field House
On 06 January 2016

Decision and Reasons Promulgated
On 08 February 2016

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

E K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Collins, Counsel instructed by Sentinel Solicitors

For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. The appellant is an unaccompanied minor. For this reason I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The appellant is a 16 year old boy from Albania. He entered the UK clandestinely with the assistance of an agent and claimed asylum on 08 August 2014. The basis of his claim for asylum was that he had been exploited and trafficked by a criminal gang and feared that he would be at risk of further serious harm if returned to Albania.
2. The respondent refused the asylum application in a decision dated 12 February 2015 but granted him Discretionary Leave to Remain until 12 August 2017 as an unaccompanied minor. The policy on unaccompanied asylum seeking children has now been incorporated into the immigration rules at paragraph 352ZC:

“352ZC The requirements to be met in order for a grant of limited leave to remain to be made in relation to an unaccompanied asylum seeking child under paragraph 352ZE are:

 - a) the applicant is an unaccompanied asylum seeking child under the age of 17 ½ years throughout the duration of leave to be granted in this capacity;
 - b) the applicant must have applied for asylum and been granted neither refugee status nor Humanitarian Protection;
 - c) there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted;
 - d) the applicant must not be excluded from being a refugee under Regulation 7 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or excluded from a grant of Humanitarian Protection under paragraph 339D or both;
 - e) there are no reasonable grounds for regarding the applicant as a danger to the security of the United Kingdom;
 - f) the applicant has not been convicted by a final judgment of a particularly serious crime, and the applicant does not constitute a danger to the community of the United Kingdom; and
 - g) the applicant is not, at the date of their application, the subject of a deportation order or a decision to make a deportation order.”
3. The appellant appealed to the First-tier Tribunal under section 83 of the Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”) (an ‘upgrade appeal’). First-tier Tribunal Judge S. Taylor (“the judge”) dismissed the appeal in a decision promulgated on 25 September 2015.

4. The judge heard evidence from the appellant and accepted that his account was credible. The judge accepted that the appellant was forced to work for a criminal gang in Albania and was then trafficked to Italy [16]. The judge's assessment of risk on return is contained in one paragraph of the decision [17]:

"To successfully claim that he would be at risk on return to Albania, the appellant would have to demonstrate that there was no effective protection of victims of trafficking available, or that in his particular circumstances he would be unable to avail himself of the facilities which were provided. The case of *AM and BM* refers to trafficked women for sexual purposes, which does not apply to the appellant. The country information guidance, which was made available to the Tribunal concludes that [the] government in Albania had made significant strides in dealing with victims of trafficking and now provided effective protection for victims on return. It was submitted on behalf of the appellant that there were inadequate shelter facilities available in Albania, but I find that that is not supported by the submitted background information. Paragraph 2.6.12 of the submitted guidance refers to three shelters set up by NGOs which provide comprehensive services, including medical care and re-integration services to victims of trafficking. Although there were no specific shelters for children, male victims of trafficking were provided with accommodation in apartments. I find no independent evidence from the documents available to the tribunal to support the submission that there was inadequate protection available for returning victims of trafficking. The refusal letter also quotes country guidance of wider assistance available from the government and NGOs. On the evidence before this Tribunal and available protection, I am not satisfied that the appellant has a well founded fear of a gang on return to Albania."

5. The appellant seeks to challenge the First-tier Tribunal decision on the following grounds:
- (i) The First-tier Tribunal made inadequate findings relating to risk on return in the context of the individual circumstances of this case.
 - (ii) The First-tier Tribunal made inconsistent findings in relation to the availability of shelters. The judge noted that there were no specialist shelters for children, but in light of that comment, did not go on to provide an adequate explanation for concluding that sufficient protection would be available.

Decision and reasons

Error of law

6. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.
7. The judge accepted the appellant's account of past events but made no clear findings as to whether the exploitation and trafficking that he accepted the appellant had suffered in the past was sufficient to amount to persecution within the meaning of the Refugee Convention.
8. In assessing whether the appellant would be at risk on return it is trite law that the fact that a person has already been subject to persecution or serious harm will be

regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated (paragraph 339K of the immigration rules).

9. The judge failed to carry out this assessment in light of the particular factual circumstances of this case. In this case the appellant's own father turned him over to exploitation by a criminal gang who ran a local casino, in return for debts that he had run up. The particular circumstances of the appellant's escape from the gang in Italy indicate that he may be of continued interest to them because he dumped a package of drugs that he was told to sell before running away. The appellant's home area is Tirana. The judge made no clear findings as to whether he would continue to be at risk from further exploitation if returned to his father or from the criminal gang in his home area. The sole emphasis on whether a place might be available in a shelter for victims of trafficking didn't deal adequately with the issue of risk on return given that Tirana would not be a place of internal relocation for this particular appellant.
10. I find that there is also force to the appellant's argument that the judge's findings are unclear as to whether effective protection would be available on return. The judge clearly noted that there were "no specific shelters for children" [17] yet his conclusion that the appellant had failed to show that the shelters or "protection facilities" (undefined) were not suitable for him seems to contradict his own earlier observation [19]. An asylum claim must be given anxious scrutiny, and the claim of an unaccompanied child, must be assessed with the utmost care. The issue was not simply whether some form of accommodation might be available but whether, given the appellant's young age, adequate child protection services were likely to be available to the appellant in Albania. The evidence relating to shelters for victims of trafficking outlined by the Tribunal in *AM & BM (Trafficked Women) Albania* [2010] UKUT 080 concentrated on facilities that were available for adult women who were victims of trafficking. I conclude that the judge's findings on this issue are somewhat unclear and contradictory and amount to an error of law.
11. The First-tier Tribunal decision involved the making of an error on a point of law and I set aside the decision.

Re-making

12. I go on to remake the decision on the basis that the First-tier Tribunal's factual findings relating to the appellant's past experiences are preserved. Given the appellant's young age at the time, and the serious nature of the exploitation, which included physical violence, I find that he suffered past ill-treatment that was sufficiently serious to amount to persecution. It is quite clearly the case that he would not be safeguarded if returned to the care of his father, who was complicit in his exploitation. The criminal gang that he fears is based in his home area of Tirana. Given the rural nature of Albania, and the importance of kinship ties in such areas, it would not be reasonable to expect him to relocate to another area. The central

question is whether the authorities would be able to provide him with effective protection.


13. There is no evidence before me to suggest that the respondent has carried out her duty to endeavour to trace family members in Albania: see *EU (Afghanistan) & Ors v SSHD* [2013] EWCA Civ 32. For the reasons given above it would not be in the child's best interest to be returned to his father. In order to grant the appellant Discretionary Leave to Remain as an unaccompanied asylum seeking child the respondent was satisfied that the appellant met the requirements of paragraph 352ZE(c) i.e. that there were no adequate reception arrangement in the country to which he would be returned.
14. The US State Department Trafficking in Persons report for 2014 cited at paragraph 2.6.12 of the respondent's Country Information and Guidance (Albania: trafficking) dated 09 July 2015 [pg.36 AB] states that male victims of trafficking were provided with accommodation in apartments but there were no specialised shelters for child victims of trafficking. While the background evidence deals with provision of services for women with children there is nothing to explain what provisions would be available for unaccompanied children, who would need a higher level of care from social services. The Tribunal in *AM & BM* didn't consider the specific circumstances for unaccompanied trafficked children. The background evidence before me does not disclose any specific services that are likely to be in place to safeguard unaccompanied children such as the appellant.
15. In the absence of evidence to show that he would be afforded effective protection, and would be safeguarded, the appellant is likely to be vulnerable to further exploitation of a similar nature. As such I conclude that there is no good reason to consider that such serious harm would not be repeated.
16. For these reasons I am satisfied that there is at least a reasonable degree of likelihood that the appellant would be at risk of serious harm amounting to persecution as a result of his membership of a particular social group (child victim of trafficking).

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

I set aside the decision

I re-make the decision and ALLOW the appeal

Signed 
Upper Tribunal Judge Canavan

Date 02 February 2016