



IAC-FH-NL-VI

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/07578/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 February 2016**

**Decision & Reasons Promulgated  
On 24 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**MASTER FLORIAN STRAKA  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Masih of Counsel instructed by Turpin & Miller Solicitors

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Anthony promulgated on 14 September 2015, brought with the permission of Upper Tribunal Judge Rintoul granted on 6 November 2015.
2. The Appellant is a citizen of Albania born on 13 September 1997. His immigration history is a matter of record in the documents on file and I do not propose to go into any great detail in that regard save to note that he arrived in the United Kingdom on 7 January 2013. It is said that he claimed asylum on 15 May 2013, but in fact this appears to be the date of the screening interview. An age assessment was

commenced in February 2013 which is suggestive of an asylum claim having been made sometime prior to the date of the screening interview. Be that as it may, in due course the Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 17 April 2015 and a decision was taken that the Appellant should be removed from the United Kingdom in consequence.

3. The essential bases of the Appellant's asylum claim are helpfully summarised at paragraph 3 of the decision of the First-tier Tribunal Judge in the following terms:

*"His protection claim is based on his fear of persecution in Albania because he is a victim of domestic violence who suffered mistreatment at the hands of his mother and her partner Tahir. It is his claim that he fears retribution by Tahir and/or his brother whom the appellant claims is well-connected and have influence including amongst state agents namely corrupt police. The appellant claims that on return, he will have no support as he will be destitute. He fears that if he were to relocate to another part of Albania, he will be under scrutiny and will be located by Tahir."*

4. The Appellant appealed to the First-tier Tribunal. His appeal was dismissed for reasons set out in the decision of First-tier Tribunal Judge Anthony. The Appellant thereupon sought application for permission to appeal to the Upper Tribunal which, as indicated above, was in due course granted by Upper Tribunal Judge Rintoul, following an initial refusal by First-tier Tribunal Judge Fisher on 8 October 2015.
5. The First-tier Tribunal Judge did not find the Appellant to be credible in respect of the account that he had given in support of his asylum claim. At paragraphs 33-36 of her decision the First-tier Tribunal Judge identifies matters of discrepancy in the Appellant's account as between its various re-tellings across the screening interview, the substantive asylum interview, and his evidence to the Tribunal.
6. In this regard I note that at paragraph 34 the Judge considered a discrepancy that had been identified in the RFRL, but reached the conclusion that in her judgment such a discrepancy did not provide a reliable or appropriate signifier of a lack of credibility; accordingly the Judge rejected that aspect of the Respondent's decision-making, and did not herself place any adverse reliance on the particular discrepancy. The Judge nonetheless considered that other discrepancies were such that it was appropriate to place adverse reliance on them. In my respectful observation these circumstances demonstrate a nuanced and balanced approach to the matters and issues that were before the First-tier Tribunal Judge, and a diligence in approaching those matters carefully in forming an overall conclusion of the Appellant's credibility.

7. The Judge stated her conclusions in respect of the credibility of the Appellant's refugee claim at paragraphs 37-40 in the following terms:

*"37. Having considered all the evidence provided, which includes the oral testimony of the appellant, I reach the conclusion that the appellant should not be regarded as having given a truthful account about what happened to him in Albania. Taking each point of paragraph 339L of the immigration rules in turn, I am not satisfied that the appellant has not given a coherent and plausible account and that his account run counter to the available general or specific information relevant to his case.*

*38. I have found that the core of the appellant's account contains inconsistencies and as such his account is unreliable. I do not accept that Tahir has any links to the police or agents of the state. I do not accept that the Appellant was homeless and that he went to the passport office without his mother.*

*39. I find that the appellant on return to Albania would not suffer serious harm because he has not established to the lower standard of proof that he would suffer ill-treatment from Tahir or any agents of the state.*

*40. Because I do not accept that the appellant has given a wholly truthful account about what he fears in Albania, I do not find that he would return other than as a failed asylum seeker. Of itself that would not put him in any risk category and I conclude that he would not face a risk of serious harm in Albania."*

8. The Appellant's challenge to the decision of the First-tier Tribunal inevitably seeks to impugn the Judge's assessment of his credibility and her findings in respect of the core elements of his claim. In granting permission to appeal Judge Rintoul made the following observation:

*"It is arguable that, having found that the appellant was not wholly truthful, it was incumbent on First-tier Tribunal Judge Anthony to set out what facts she did accept, and in that context the failure to make findings on the matters identified in the grounds at [1] is arguably material."*

Judge Rintoul continued,

*"While there is less merit in the other grounds, I grant permission on all grounds".*

9. In her submissions before me Ms Masih has recognised the cautious note sounded by Judge Rintoul in respect of the 'other grounds', and accordingly placed primary emphasis on the first ground in the grounds in support of the application for permission to appeal. That ground identifies a number of features of the Appellant's core account and argues that the Judge failed to make any relevant findings in respect of such matters. The 'features' are set out in these terms in the Grounds:

*“These include: whether Tahir attacked the appellant’s sisters; whether the appellant was pursued by Tahir’s brother and others in the market following news of Tahir’s arrest; Tahir’s release; the proximity/nexus between these events and the incident when the appellant says he is picked up [by] policemen who he states are linked to Tahir/Tahir’s brother..., and the Appellant’s subsequent escape from the police.”*

10. For my own part I fail to see how the Judge’s conclusion at paragraph 37 that the Appellant should not be regarded as having given a truthful account about what happened to him in Albania does not encompass each and every one of those elements that were core to his asylum claim. It seems to me wholly clear that the First-tier Tribunal Judge was rejecting the Appellant’s core account in its entirety. In my judgment it was not necessary for the First-tier Tribunal Judge thereafter to descend to, as it were, a line-by-line or element-by-element analysis or finding in respect of each of those elements.
11. It seems to me in fact that the basis upon which permission has been granted is because of the focus on the use of the word “*wholly*” at paragraph 40 - “*I do not accept that the Appellant has given a wholly truthful account about what he fears in Albania*”. I accept that taken in isolation the word ‘wholly’ there might have given an indication that the Judge in fact thought that some elements of the account were true; indeed it seems likely that I was such a possibility that Judge Rintoul had in mind in granting permission to appeal, particularly given that he expressly refers to Judge Anthony having found the Appellant to be “*not wholly truthful*”.
12. The use of the word “*wholly*” at paragraph 40 is unfortunate and casual in circumstances where, in my judgment, it is absolutely clear at paragraph 37 that the Judge finds the Appellant to be not offering a truthful account about anything that had happened to him in Albania that was relevant to his asylum claim. This is echoed by the Judge’s finding at paragraph 38 that the Appellant’s account was “*unreliable*”. In all of those circumstances, in my judgment there is no substance to the ground of challenge that the Judge failed to set out adequate reasons for her decision on credibility, and more particularly that she failed to make findings in respect of core elements of the Appellant’s account. The Judge’s reasons were adequate: her key and core finding was that she did not believe the Appellant in any material respect as to the elements of his claim for asylum.
13. Ms Masih did not particularly seek to develop any other aspects of the grounds of appeal until I prompted some assistance in respect of clarification as to the references in the grounds to the ‘tracing duty’. This arises in circumstances where the Secretary of State had contacted the Albanian Ministry of the Interior pursuant to a UK/Albania Memorandum of Understanding signed on 13 March 2013. Certain

information was obtained as set out in a letter from the British Embassy in Tirana dated 8 April 2015 (to be found at Annex D of the Respondent's bundle before the First-tier Tribunal). It is clear that the Respondent through the British Embassy, and in turn through the Albanian Ministry of the Interior, was able to run certain checks on the Appellant's background. These checks for the most part confirmed what the Appellant had told the Respondent in respect of his age and his family background, and the date of his departure from Albania. The Respondent however, having made that enquiry as to the Appellant's background, did not make any specific further attempt as it were to 'trace' the Appellant by way of direct contact with his mother. The RFRL in this context at paragraph 83 states:

*"It is noted that you fear individuals connected to your mother in Albania. As such, it was considered not to be appropriate to make contact with your family in Albania. However it is noted that records indicated that your father, whom you claim left your family many years ago is still registered at your family address in Albania".*

It seems to me that the decision not to make direct contact with the Appellant's mother in Albania during the process of evaluating the Appellant's claim for protection was entirely understandable in circumstances where the Appellant's fear was essentially based upon domestic violence within his home.

14. In any event, so far as the notion of tracing is concerned, it was not the Appellant's case that he did not know the whereabouts of his mother or her address: indeed it was his election not to have any particular contact with his mother, and, on his case, to leave her behind by fleeing Albania to come to the United Kingdom. This is not a case where the duty to trace seems to be obviously in play. Be that as it may I can find nothing in the decision of the First-tier Tribunal Judge to suggest that any consideration of the issues surrounding the letter from the British Embassy in Tirana or otherwise surrounding the issue of tracing was relevant to her evaluation of the Appellant's credibility.
15. The 'tracing' issue is addressed at paragraph 42 in the decision of the First-tier Tribunal. I acknowledge that there appears to be a factual error: the Judge states, *"The tracing enquiry revealed that his father whom he said had left the family home years ago was still living with his mother and sisters"*; whereas the enquiry revealed no more in this regard than that his father was still *registered* at the family address - as is reflected at paragraph 83 of the RFRL. It is not asserted in terms that the father was still living with the mother and sisters. However, notwithstanding that factual error, it seems to me absolutely clear that the First-tier Tribunal Judge did not rely upon her misconception in this regard in considering the Appellant's credibility - which is addressed at the paragraphs I have already cited, and which come before paragraph 42 and are reasoned independently of the analysis in paragraph 42, such analysis itself being seemingly confined to the tracing issue.

16. In such circumstances I find nothing in the circumstances of the enquiries made of the British Embassy, the references made in the decision of the First-tier Tribunal Judge to the letter from the British Embassy or otherwise in relation to the so-called duty to trace, such as to impugn the overall conclusions of the First-tier Tribunal Judge.
17. For the avoidance of doubt in this regard I note that Ms Masih directed my attention to the following sentence that appears within the body of paragraph 42: "*The appellant has provided no evidence to contradict the results of the tracing enquiry*". It seems to me that that is essentially a statement of uncontroversial fact. It does not - as appears to be contended in the grounds of appeal and pursued, albeit with little vigour, before me today - constitute a sentence which demonstrates that the Judge had entirely reversed the usual burden and standard of proof which she had otherwise appropriately directed herself to at paragraph 18 of the decision.
18. The only other matter that the Appellant has sought to rely upon in argument today is in relation to Article 8 and the delay in determining the Appellant's application for asylum. As noted above it appears that the Appellant made his application for asylum in early 2013 and was subjected to a screening interview on 15 May 2013. Thereafter, a substantive asylum interview was conducted on 24 July 2013. There does indeed then seem to have been some delay between July 2013 and March 2015 (which on the face of the British Embassy letter at Annex D appears to be the time at which the Albanian Ministry of the Interior was contacted). It is unclear exactly what the train of events were between the interview and the British Embassy being instructed to make contact with the Albanian Ministry of the Interior and to that end it is unclear as to what, if anything, may have occasioned the delay.
19. Ms Masih makes the submission that the decision made in the Appellant's case in April 2015 came approximately two years after the date of his application and in those circumstances she argues that delay should have featured as an element of the consideration of Article 8, both in the context of its relevance to the private life established in the United Kingdom during that period and also as an aspect of the effectiveness of immigration control, the element of delay undermining the weight to be attached to that aspect of the public interest.
20. Ms Fijiwala identifies in the determination in respect of Article 8 that the First-tier Tribunal Judge had due and proper regard to aspects of the Appellant's private life and in particular the central aspect of that private life that was advanced before her in respect of his relationship with his girlfriend. In my judgment it is unrealistic to assume, because of the absence of any express reference that the Judge did not have

well in mind the total period of time that the Appellant had been present in the United Kingdom when considering Article 8. I acknowledge that there is no express reference to delay under the consideration of Article 8. However, even if the adverse decision had been made at an earlier stage it would at best only have resulted in the Appellant being granted a short period of leave up until his 17½th birthday. It is difficult to see how this would have materially improved the substance of his Article 8 case which would have continued to be founded on the length of time spent in the UK and his relationship with his girlfriend. In any event in my judgment the delay in this case, whilst regrettable, cannot be said to be inordinate. Accordingly, in all the circumstances, ultimately it seems to me that the 'delay' feature is immaterial to the overall consideration of Article 8 which the Judge has soundly based on the particular facts of the Appellant's private life, and with reference to the appropriate considerations by reference to both the Immigration Rules, the requirements of **Razgar**, and sections 117B-D of the 2002 Act.

21. Accordingly, for all these reasons I find that there is no material error of law in the decision of the First-tier Tribunal Judge, and the decision stands.

#### **Notice of Decision**

22. The decision of the First-tier Tribunal contained no material errors and stands.
23. The appeal is dismissed.
24. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: **7 March 2016**

**Deputy Upper Tribunal Judge I A Lewis**