



1.

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

Appeal Number: PA/03404/2017

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 26 September 2017**

**Decision & Reasons  
Promulgated  
On 2 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HOLMES**

**Between**

**A. D.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Ms Patyna, Counsel, instructed by Kilby Jones Solicitors  
LLP

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Albania who lodged a claim to protection on 13 August 2015 based upon an account of being trafficked into the UK for sexual exploitation. That claim was referred to the NRM, but their decision was not received until 23 March 2017. On 28 March 2017, in the light of their decision, the Respondent refused the protection application.
2. The Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 4 May 2017. It was dismissed on all grounds, in a

decision promulgated on 31 May 2017 by First Tier Tribunal Judge O'Garro. (It is common ground that the reference to the appeal being allowed on Article 3 grounds at the conclusion of the decision must be a typographical error, since the text of the decision makes plain the Judge's intention to dismiss the appeal.)

3. The Appellant was granted permission to appeal that decision on 23 June 2017 by First tier Tribunal Judge Saffer on the basis that it was arguable the Judge had made a number of errors. Arguably he had failed to deal with the appellant's evidence in response to the NRM decision at all, and had simply relied upon the NRM decision and looked to the Appellant to show why it was wrong, rather than to consider and weigh the Appellant's evidence for himself. Since the NRM decision had been to accept that the Appellant had been a victim of trafficking
4. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

#### Error of Law?

5. When the appeal was called on for hearing, Mr Duffy confirmed that notwithstanding the Rule 24 Notice that had been filed on 25 July 2017, the Respondent did not seek to defend the Judge's decision. The Respondent accepted that the Judge's approach was flawed, and that as a result none of the findings of fact could be preserved.
6. In the circumstances it is common ground that the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
7. Having reached that conclusion, with the agreement of the parties I make the following directions;
  - i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge O'Garro.
  - ii) An Albanian interpreter is required for the hearing of the appeal.
  - iii) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours.
  - iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that further psychiatric evidence may need to be filed. Further enquiries may need to be made in relation to the availability of corroborative evidence concerning the Appellant's

ability to travel within Europe, and into the UK. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 26 October 2017

- v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 27 October 2017.
- vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
- vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

### **Decision**

8. The decision promulgated on 31 May 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 26 September 2017