



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

Appeal Number: PA/14069/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2017**

**Decision & Reasons Promulgated
On 20 June 2017**

Before

UPPER TRIBUNAL JUDGE GILL

Between

**MN
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms T. Jaber, of Counsel, instructed by Sutovic & Hartigan Solicitors
For the Respondent: Mr P. Duffy, Senior Presenting Officer.

ANONYMITY

Given that the appellant is a child, I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify him. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order with reasons.

DECISION AND DIRECTIONS

1. The appellant is a national of Albania whose date of birth is 1 January 2000. He has been granted permission to appeal against a decision of the First-tier Tribunal (Designated Judge of the First-tier Tribunal Woodcraft and Judge of the First-tier Tribunal George, hereafter the "panel") dismissing his appeal on asylum grounds,

humanitarian protection grounds and human rights grounds against a decision of the respondent of 6 December 2016 to refuse to grant him asylum.

2. In her response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "UT Rules"), the respondent stated that she did not oppose the appellant's application for permission to appeal and invited the Upper Tribunal to determine the appeal with a fresh oral (continuance) hearing.
3. At the hearing before me, Mr Duffy accepted that the panel had materially erred in law for the reasons given in the grounds, that its decision should be set aside in its entirety and that the appeal should be remitted to the First-tier Tribunal for that Tribunal to re-make the decision on all issues on the merits.
4. The grounds are well summarised by Designated Judge of the First-tier Tribunal McCarthy at para 3 of his decision granting permission to appeal to the Upper Tribunal which reads:

"The grounds of application allege that the panel erred by: (i) speculating as to the ability of the appellant's maternal uncle to provide financial support in Tirana, (ii) ignoring the extensive background country information about the failure of the Albanian police to deal effectively with domestic violence, (iii) conflating the "very significant obstacles to integration" test in paragraph 276ADE(1)(vi) with the threshold for ill-treatment in article 3 ECHR, (iv) treating the appellant as a young adult rather than as a child, and (v) taking the wrong approach to the test for internal relocation."

5. Judge McCarthy considered that all of the grounds were arguable. In addition, Judge McCarthy considered that it was arguable that the panel may have erred at para 47 when it said that it found no reason why the appellant's maternal uncle could not assist the appellant in Tirana as this appeared to overlook the evidence recorded by the panel in the same paragraph the uncle did not want the appellant to live with him because of trouble the appellant's father might cause. I agree.
6. I am satisfied that the panel materially erred in law for the reasons given by Judge McCarthy. I therefore set aside the decision of the panel in its entirety.
7. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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."

8. In my judgement, this case falls within para 7.2(b). In addition, having regard to the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal for a re-hearing on the merits on all issues is the right course of action. Ms Jaber agreed.

Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that it is set aside in its entirety.

This case is remitted to the First-tier Tribunal for that Tribunal to re-make the decision on the appellant's appeal on the merits on all issues by a judge other than Designated Judge of the First-tier Tribunal Woodcraft and Judge of the First-tier Tribunal George.



Signed
Upper Tribunal Judge Gill

Date: 20 June 2017