



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/14222/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 April 2017**

**Decision & Reasons  
Promulgated  
On 9 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**EM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms F. Clarke of Counsel instructed by Fadiga and Co.  
For the Respondent: Mr. P. Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Oliver, promulgated on 3 February 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. I make an anonymity direction continuing that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“In respect of the report prepared by the Competent Authority, that was prepared on behalf of the Home Office. The Competent Authority’s conclusions are not binding on the judge and it is a matter for the judge as to what weight is attached to it. However, in respect of the expert report, it does seem that the judge has given little or no consideration to it. The judge simply makes a short reference to the expert report at paragraph 27 of the decision and nothing more. I further note that at paragraph 21 of the decision, the judge states that the expert had not explained why she was qualified to write an expert country report. The judge makes no reference to section 5 of the expert’s report where the expertise and qualifications are set out.”

4. The Appellant attended the hearing. I heard brief submissions from Ms Clarke following which Mr. Nath stated that he agreed that the decision involved the making of a material error of law and should be set aside. I stated that I was in agreement with the representatives. I set aside the decision, and stated that my full reasons would follow.

### **Decision and Reasons on the Error of Law**

5. The findings and reasons are very brief, consisting of just five paragraphs, [27] to [31]. The judge refers to the expert report at [21]. This paragraph states:

“The appellant subsequently submitted a part-prepared country report from Sonia Landesmann and sought more time for the completion of the report. When this was refused the completed report was submitted. Miss Landesmann clearly produced a very detailed report, largely drawing on third party sources but, although she gave substantial citations to support her qualification as a psychotherapist, did not explain why she was qualified to write an expert country report.”

6. There is no further reference to this report apart from in paragraph [27] where the judge states that he is “not persuaded that the findings of the psychotherapist are reliable since she had not seen the contradictory evidence of the proxy permission”. This is the full extent of the consideration given to the expert report in the findings.

7. I have carefully considered the expert report. I find that in section 5, in addition to setting out her qualifications as a psychotherapist, Miss. Landesmann sets out her experience of preparing expert reports for Tribunal hearings. She sets out her experience and qualifications relating to Albania. In particular, the report states:

“Since 2003 I have written over a hundred reports for asylum cases many of which have been for Albanian issues such as trafficking, domestic violence and blood feuds.” [vii]

“I have worked extensively with asylum seekers and refugees since the 1980s abroad and subsequently in the UK as a teacher, a psychotherapist and as an expert assessing mental-health and writing a variety of country

and psycho-social reports... [...] This includes different levels of Tribunal.” [viii]

“I have written several country expert reports, and conducted several mental-health assessments for psycho-social reports, numbering over a hundred since 2003. [...] Many have been on Albania and have included blood feuds, trafficking, homosexuality and the position of women and children.” [xxii]

“Please note that although I have not been able to spend time in Albania it is the case that I have worked on a number of cases from Albania both for cultural comment and psycho-social reports. I have therefore had the opportunity to meet and interview a number of clients from Albania. It is the case that I have had the opportunity to ask questions in much more detail of situations specific to matters relating to honour, family, culture, blood feuds, trafficking and other matters often occurring in Asylum claims. I will have had the chance to meet people affected by these issues in a manner and with the opportunity for more intimate conversations than I would most probably have done had I attempted to do so in situ in Albania.” [xxiii]

8. The judge has stated that Miss. Landesmann did not explain why she was qualified to write an expert country report. However, I find that in section 5 of her report she set out exactly that. She set out her qualifications and experience of preparing reports for Tribunal hearings, as well as her experience in relation to Albania. The judge has not considered this, or made any reference to it, and has therefore placed no weight on Miss. Landesmann’s report.
9. The issues covered in the expert report go to the core of the Appellant’s claim. To fail to give any attention to this expert report, discounting it because of the alleged lack of expertise of Miss. Landesmann, is a material error of law.
10. In relation to the report of the Competent Authority, the judge refers to this under the title “Development of the appellant’s case” [14]. He states:

“On 16 August 2016 the appellant was referred to the Competent Authority to consider his claim to be the victim of slavery. Although a reasonable grounds finding was made the conclusive grounds assessment on 28 October 2016 found that he was not a victim. The reasons were summarised:

x.”
11. The judge did not set out the reasons why the Appellant was found not to be a victim of slavery. All that appears is an “x”.
12. Whilst it is a matter for the judge to decide what weight is to be given to the Competent Authority’s report, he has not even set out the reasons why the Appellant was found not to be a victim in this report. Further, he has

not stated in his findings ([27] to [31]) what weight he has given to the report of the Competent Authority, nor given any reasons for attaching weight to the report. It is not clear whether he has accepted the Competent Authority's findings. There is no finding to this effect. I find that the judge has failed to explain why he has given weight to the report of the Competent Authority, if indeed he has done so.

13. Although not pleaded in the grounds of appeal, I note that the judge has made no reference at all to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. The Appellant is 16 years old. There was evidence before the judge that he suffers from PTSD. He is therefore both a vulnerable witness in relation to his age and in relation to his mental health problems, yet there is no reference at all to the protocol to be followed in such circumstances, and the subsequent treatment of the evidence as a result. I find that this is a material error of law.
14. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

15. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
16. The appeal is remitted to the First-tier Tribunal to be re-heard.
17. The appeal is not to be heard by Judge Oliver.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.

Signed  
Deputy Upper Tribunal Judge Chamberlain

Date 5 May 2017