



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01161/2018

THE IMMIGRATION ACTS

Heard at Field House UT
On 13th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

R.M.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sellwood of Counsel
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

Anonymity

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

An anonymity direction is made. As this a protection claim made by a minor, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant, a citizen of Albania (date of birth 20th January 2002), appeals with permission against the decision of the First-tier Tribunal (Judge Geraint Jones QC) promulgated on 14th March 2018, dismissing his appeal against the Respondent's refusal of his protection claim.

Background

2. In summary the core of the Appellant's protection claim is that he is a minor who comes from a village in the northeast part of Albania. His mother, and the Appellant himself, are victims of domestic violence perpetrated by his alcoholic father. His father has now left the home and his whereabouts is unknown.
3. The Appellant's claim is that the fields around his village are used by organised criminal gangs and networks for the illegal cultivation of cannabis. The Appellant's fear is that if he remained in his home village, he would be kidnapped and forced to work for the criminal gangs. There is no protection available to the Appellant as the police and local dignitaries are complicit in the criminal activity.
4. His mother managed to obtain money to facilitate the Appellant's escape. He travelled through various countries on his way to the UK, including Spain where he was encountered by the authorities there. He was taken to a social assistance centre in Spain, but left the same day, and travelled on to the UK where he claimed asylum. The authorities in the UK accepted that the Appellant's date of birth is as claimed and therefore he is a minor.
5. The Respondent, after interviewing the Appellant and considering the country background information, rejected his claim to asylum. The Respondent's decision was confirmed by the First-tier Tribunal Judge who dismissed the appeal following a hearing on 23rd February 2018.

Onward Appeal

6. The Appellant seeks to challenge the FtT's decision. The grounds seeking permission, deal with a number of issues, where it is asserted that the judge has erred in law. The grant of permission succinctly sets out the issues and therefore the relevant part of the grant is reproduced below.

"The grounds state that the Tribunal erred in law by (i) failing to assess the plausibility of the appellant's narrative within the context of background country information and the expert report of Dr Antonia Young (grounds 1 and 3), (ii) failing to demonstrate that it had given greater precedence to objective evidence and indicators of risk rather than personal credibility and/or subjective fear given the appellant's age and vulnerability (ground 2), (iii) assessing the risk on return/reasonableness of internal relocation and the application of section 55 of the 2009 Act by reference to the age of the appellant when his current leave to remain expires rather than his age at the date of the hearing (grounds 4 and 5). The grounds are all arguable and permission to appeal is accordingly granted."

7. Thus, the matter comes before me to determine in the first instance whether or not there was an error of law in the decision made by the First-tier Tribunal Judge.

Error of Law Hearing

8. Before me Mr Sellwood appeared for the Appellant and Mr Duffy for the Respondent. Mr Sellwood's submissions kept to the lines of the grounds seeking permission. He emphasised that the FtTJ's decision showed a failure to meaningfully engage with the expert's report (grounds 1 and 3). The expert's report had dealt fully with the prevalence of organised crime networks and the ineffectiveness and complicity of the police and Albanian judiciary when dealing with those networks. Instead of approaching the report in a manner which took into account the background documents, the judge focused purely on the Appellant's credibility. This was the wrong approach, in that it was acknowledged and accepted that the Appellant was a minor, aged 15 years at the date of the appeal hearing. The judge failed to give precedence and greater weight to the objective evidence, this being the correct approach when dealing with a vulnerable witness.
9. Following on from that, the judge misdirected himself when dealing with risk on return. The Appellant's date of birth was accepted as 20th January 2002. Therefore, at the date of hearing, he was aged 15 years. That was the relevant date for assessing any risk on return. Instead of so doing, the judge projected his assessment of risk on return into the future, by saying that the Appellant would face little or no difficulties on return aged 18 years. That was a material misdirection.
10. Those matters together were sufficient to merit the decision being set aside in its entirety. Mr Sellwood said in the event of the decision being set aside, the appropriate course would then be for the matter to be remitted to the First-tier Tribunal for a fresh hearing.
11. Mr Duffy did not serve a Rule 24 response. He did not formally concede the error of law issue. Instead he restricted his submissions to saying that, if I were satisfied that the decision disclosed material error, then he would agree with Mr Sellwood's submission that the appropriate course would be to remit the appeal to the First-tier Tribunal for a fresh hearing, with no findings preserved.

Consideration

12. I find force in Mr Sellwood's submissions. I find that I am satisfied that the FtTJ's decision contains material error on the following basis. I am satisfied that the decision fails to show that the FtTJ has properly taken into account the expert's report. The judge appears to be dismissive of the expert. When referring to her report at [22] he uses the words, "I should mention that the appellant's bundle contains a report, *said to be an expert's report*, (my italics) from Miss Antonia Young, dated 6th February 2018". He fails to mention that the expert report outlined her qualifications. It may well be that the phraseology used by the judge was no more than unfortunate language, but it gives an impression of impugning the expert's status. That of itself would not be sufficient to render the decision unsustainable. However when this is added to the judge's rejection of the majority of the report's content on the grounds that it does not refer specifically to the Appellant, then there is material error in his approach.

13. Bearing in mind that the Appellant is a minor it is incumbent upon the judge to give precedence and greater weight to objective evidence and indicators of risk. This I find he has not done; instead he has focused his attention on the Appellant's credibility. The FtTJ of course is at liberty to discount the expert's report but only after demonstrating that he has meaningfully engaged with all of the evidence contained in it. This includes evidence which is supportive of the Appellant's case.
14. I find likewise that the FtTJ has made a material misdirection in his approach to the assessment of risk on return. Having reminded himself in [1] that the Appellant before him is a minor, the judge has gone on to assess whether or not the Appellant could internally relocate when he turns 18 years of age. The relevant date for assessment of the Appellant's asylum claim is of course the date of hearing. At the date of hearing the Appellant was 15 years of age and any assessment of risk on return must be on this basis, even though the Respondent will not seek to return the Appellant until such time as he approaches adulthood. I find that the judge materially erred by projecting his assessment of risk on return/internal relocation into the future.
15. I find that these errors are sufficient to render the decision unsustainable and accordingly I have no hesitation in setting it aside in its entirety. I find nothing can be preserved. A fresh hearing is now required. Because of the amount of judicial fact finding involved the hearing should take place in the First-tier Tribunal.

Notice of Decision

The appeal of the Appellant against the decision of the First-tier Tribunal dated 14th March 2018 is allowed to the extent that the decision is set aside. The appeal will now be remitted to the First-tier Tribunal (not Judge Geraint Jones QC) for that Tribunal to remake the decision.

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

C E Roberts

Date

20 June 2018

Deputy Upper Tribunal Judge Roberts