Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04174/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 January 2018	**On 18 January 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

RI
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Mellon, Counsel, instructed by Sutovic & Hartigan
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Issacs (the judge), promulgated on 17 June 2017, dismissing the appellant's appeal against the respondent's decision dated 4 April 2017 refusing his protection and human rights claims.

Factual Background

2. The appellant is a national of Albania, date of birth 30 April 1997. His claim for asylum stems from a large loan taken by his father to start a business which he did not pay back. His father died in May 2011 from cancer. In summary, the appellant asserts that the lender(s), targeted him and his family in an attempt to obtain repayment of the loan. Threatening phone calls were made and the appellant's brother was attacked in his presence on the street in July 2013. In August 2013 their mother was assaulted in their home. After residing with a cousin for a short time the appellant was followed by a black car. Following this he fled Albania in September 2013. After travelling through a number of European countries the appellant claims to have arrived in the UK in the back of a lorry on 13 October 2013, and claimed asylum on 30 October 2013. His asylum application was refused on 16 October 2014 but he was granted leave to remain as an unaccompanied asylum-seeking child until 29 December 2014. An application for further leave to remain, made on the same protection grounds, was ultimately refused on 4th of April 2017, which led to the appeal before the First-tier Tribunal, heard on 1 June 2017.

The decision of the First-tier Tribunal

3. An application was made to adjourn the hearing to obtain a medical report to determine whether the appellant was suffering from PTSD. The judge refused to adjourn the hearing. She did not believe that a diagnosis of PTSD would assist her because she had a letter from the appellant's CBT (Cognitive Behavioural Therapy) therapist dated from January 2017 describing his mental state and treatment, and the benefit of a statement and letters and oral evidence from Mr Beige, a social worker formally engaged with the appellant who had experience in psychiatric services. The judge concluded that the interests of justice would not be served by delaying the case to obtain further medical evidence.

4. The judge heard oral evidence from the appellant, supported by a bundle of documents that included, *inter alia*, 2 statements from him dated 25 November 2014 and 24 May 2017, documents relating to his private life, the CBT therapists letter, and an expert country report provided by Dr Antonia Young, and a letter from Sachin Dev, a Support Services Manager. The judge additionally heard oral evidence from Mr Beige, whose statement was also contained in the appellant's bundle.

5. The judge did not find the appellant to be a credible witness. She gave 7 reasons, contained in paragraph 73 to 81 of the decision, in support of her decision. The judge did not find it credible that the appellant was able to provide a lot of detailed about the loan but did not know the identity of the lender. There were said to be inconsistencies in his evidence as to whether his mother and brother knew the identity of the lender, and it was not clear how the appellant knew certain details of the loan when his evidence was that his father

did not tell the family about the loan. The judge did not find it plausible that the lender would request repayment of the loan if the people he was threatening did not know his identity. The judge found the oral evidence "somewhat evasive" in this regard. Nor was it credible that the lender would wait over 2 years to seek to recover his money by threatening and hurting the appellant's brother. The judge found the evidence relating to the loan itself was vague and observed that even an unofficial loan might be recorded on some kind of paperwork. It was not credible that the appellant's family would not notice the receipt by his father of a very large sum of money. In this regard, the judge noted the appellant's claim in his 2017 witness statement that his father was a drinker, gambler and drug taker, but there had been no mention of drugs or gambling before the 2017 statement. The judge concluded that this was an embellishment to explain what the loan was allegedly spent on.

6. The judge found it implausible that the appellant's father was able to take out a 2nd loan having paid off no money towards the initial loan, and found that the appellant gave inconsistent evidence regarding the identity of the lender (in his 'first' witness statement the appellant said the money was owed to a single businessman, in his second statement he claimed the money was owed to several brothers who were involved in drug dealing). The judge drew an adverse inference surrounding the appellant's account of the report made by his brother to the police in June 2013, both in respect of the delay in reporting the matter and in respect of an inconsistency relating to the reasons why the brother failed to make another report to the police. The judge also drew an adverse inference based on inconsistent evidence relating to the nature of the telephone conversation the appellant had with his family after he arrived in the UK. Having concluded that the appellant's account of his fear in Albania was not truthful, the judge dismissed the protection claim. The judge found that the appellant did not meet the requirements of paragraph 276ADE, and concluded that there were no exceptional circumstances outside the immigration rules sufficient to warrant a grant of leave to remain under article 8. The human rights appeal was also dismissed.

The grounds of appeal and the error of law hearing

7. The grounds of appeal content that the judge erred in law in refusing to grant the adjournment. A medical assessment of the appellant's psychological state and well-being was said to be material to a lawful assessment of the plausibility and credibility of his account, and to determine whether there were any barriers preventing him from giving clear and inconsistent evidence. It was relevant in determining whether the appellant would be able to access appropriate support in Albania on article 8 grounds. The letter from the CBT therapist was not adequate and did not even purport to provide a diagnosis or address any of the aforementioned issues. The adjournment application was made at the earliest opportunity, when replying to the

prehearing review form. It was not a speculative application as records before the tribunal indicated that the appellant had previously been very close to attempting suicide and his social worker considered he had symptoms of PTSD. A specific expert had been identified and timescales and funding confirmed. Given the timescales (the case was listed within a month of the appeal being lodged and just 2 months after the refusal letter), and the fact that the refusal letter expressly referred to the lack of medical evidence relating to the appellant's well-being, it was fundamental that the appellant be allowed time to produce a medical report.

8. The grounds further contend that the judge failed to apply the Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance, despite accepting that the appellant had been under stress that caused him anxiety and depression and in light of the oral evidence from the mental health social worker that he had PTSD and that, at one time, there was concern that he may have schizophrenia. The judge also recorded evidence from the appellant's support worker that spoke of episodes of significant mental health deterioration and his therapist recorded incidents where he wished to act on suicidal ideation. The failure to apply the Presidential Guidance note was said to be an error of law. The judge's failure to apply the Presidential Guidance Note, as well as her failure to adjourn the hearing to obtain a medical report, meant that her criticism of the appellant's presentation of evidence at the hearing (his evasiveness [75] and the generalisation of his answer [80]) were unsafe. There was no finding as to whether the appellant did suffer from PTSD, and the judge speculated without sufficient support that his anxiety/depression could be attributed to uncertainty relating to his immigration status. In so doing it was argued that the judge inaccurately cited the CBT therapists letter.

9. The grounds additionally contend that the judge failed to adequately apply relevant guidance relating to the evidence of children, details of which were included in the skeleton argument. Although the judge referred to the appellant's age she failed to refer to any specific principles or apply any of those relevant principles when assessing the evidence. Nor did the judge consider the possibility that, as a child, the appellant may not be aware of all relevant matters constituting his protection claim. The grounds finally content that the appellant was either not given sufficient opportunity to comment on adverse inferences held against him, and that the judge failed to take into account relevant evidence, particularly evidence contained in his very 1st witness statement dated 8 January 2014 where the appellant explains how he was aware of certain details of the loan and where he did previously mention his father's gambling.

10. Permission was granted on all grounds. Judge of the First-tier Tribunal Landes commented that the appellant was, on the face of it, a vulnerable witness but the judge did not explicitly treat him as such

and did not consider whether any inconsistencies could be explained by his mental health. Judge Landes also found it arguable that the judge should have adjourned to obtain a psychological report for the reasons set out the grounds, especially as the former social worker's oral evidence made clear that he was not qualified to give a formal diagnosis.

11. Ms Mellon, who appeared before the First-tier Tribunal and who drafted the grounds of appeal, adopted and expanded upon those grounds. She drew my attention to the documentary evidence indicating that the appellant's mental health had previously caused concern for those looking after him, and that the documents relied on by the judge to provide her with a full picture of the appellant's mental health were demonstrably inadequate. In the absence of a full assessment of the appellant's mental health the judge's conclusions relating to inconsistencies in the appellant's account were unsafe. Ms Mellon reiterated her written submission that the judge failed to consider the principles to be applied in assessing evidence from children, as detailed in *AA (unattended minors) Afghanistan* [2012] UKUT 00016, and that the judge appeared to be unaware that there were in total three witness statements from the appellant. The fact that the judge only referred to two witness statements strongly suggested that she had failed to take into account relevant evidence, especially given that the very first statement undermined her conclusion that certain aspects of the appellant's claim were a recent embellishment.

12. Mr Tufan submitted that the judge was fully entitled to her conclusion for the 7 reasons given. There was no evidence from the appellant's mother or brother, and no evidence from his cousin. The judge was entitled to find it implausible that the appellant would know a number of details of the alleged loan, but not know the identity of the lender. Mr Tufan went through each of the reasons provided by the judge and submitted that they were all sustainable.

Discussion

13. An application to adjourn the hearing to obtain a medical report was first made on 16 May 2017, shortly after the matter was listed for full hearing and before the pre-hearing review. The application referred to the Reasons For Refusal Letter which commented on the absence of any diagnosis of PTSD, and to the mental health problems encountered by the appellant. There does not appear to have been a response from the First-tier Tribunal prior to the listed hearing. The reason provided by the judge for refusing the adjournment application was that she already had sufficient evidence describing the appellant's mental state and treatment. This consisted of the CBT therapist letter dated 9 January 2017, and the statement, letters and oral evidence from Mr Beige, who knew the appellant and had experience in psychiatric services.

14. The letter from the CBT therapist recorded the appellant's reporting of symptoms of depression, including difficulty concentrating, and that on an assessment he scored in the severe range for depression and anxiety. The appellant reported that he had been very close to acting on thoughts of suicide when informed that he would be returned to Albania. The letter noted that, although things had improved, he continued to have thoughts of ending his life if something 'bad' happened. The therapist noted that the appellant's anxiety was very common and understandable given the current instability in his immigration status, and noted that he had been prescribed Citalopram.

15. Mr Beige's statement indicated that he was a Senior Mental Health Social Worker and had over 28 years' experience in the mental health field. He noted that the appellant had been on the verge of a mental breakdown a few months prior to his detention in 2016, and believed the appellant showed symptoms of PTSD. The statement did not indicate that Mr Beige was qualified to give a diagnosis of PTSD and no formal diagnosis was made. In his oral evidence Mr Beige believed at one point that the earlier deterioration in the appellant's mental state could have been attributed to PTSD or the onset of schizophrenia.

16. A letter from Sachin Dev, a Support Services Manager for Peepal Tree Support Services, which supported and accommodated the appellant at the date of his hearing, indicated that there had been a sharp decline in his emotional well-being around June 2015. This letter referred to the appellant having thoughts of self-harm.

17. It is apparent from the aforementioned evidence that there was a clear evidential basis for concerns relating to the appellant's mental health. It is also apparent that the documentary evidence before the judge did not contain a formal diagnosis of PTSD. There was no assessment of the appellant's mental health by a psychiatrist or suitably trained psychologist. The CBT therapists' report, the statement from Mr Beige and the letter from the Support Services Manager did not consider whether the appellant's account, or evidence given by him at a hearing or in his interview with the Home Office or statements, could be affected by his mental health. In particular, there was no assessment in any of the evidence before the judge as to whether any inconsistencies in the appellant's account, or perceived evasiveness, could be reasonably attributed to his mental health. I am consequently satisfied that the judge was not entitled to refuse the adjournment for the reasons advanced by her. A reliable analysis of the appellant's mental health was relevant both to the approach adopted by the judge when assessing the appellant's oral evidence, to her assessment of his earlier evidence, and in determining any possible causes for a diagnosis of PTSD.

18. The application for an adjournment was made as soon as the matter was listed for a prehearing review, and very shortly after the respondent's refusal of the protection claim. An expert had already been identified and timescales and funding confirmed. Given the relevance of a medicolegal report in assessing the evidence given by the appellant, and in light of the earlier decline in his mental health, and applying the principles enunciated in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC), I find that the refusal to grant the adjournment deprived the appellant of a fair hearing. In reaching this conclusion I note that the judge held against the appellant his perceived evasiveness in answering a question [75], and that another of his answers was a generalization [80], matters that may have been explicable in light of a medicolegal report.

19. I am additionally satisfied that the judge failed to take into account relevant evidence, namely, the very first witness statement written by the appellant which was dated 8 January 2014. In total, the appellant produced 3 statements. His 1st statement was written in support of his asylum application. It accompanied his Statement of Evidence Form. This statement was contained in the respondents bundle at D4 to D10. It was not repeated in the appellant's appeal bundle. The second statement was written on 25 November 2014 in response to the respondent's Reasons For Refusal Letter dated 16 October 2014. The third statement was dated 24 May 2017 and was written in response to the Reasons For Refusal Letter dated 4 April 2017. Both the second and third statements were contained in the appellant's appeal bundle.

20. The judge only makes reference to two statements. This is apparent at [18]. The judge does not appear to be aware that three statements were made. This is further confirmed at [75], where the judge quotes from paragraph 6 of the appellant's "first witness statement of 2014." The quote in fact appears in the witness statement dated 25 November 2014, not the witness statement dated 8 January 2014. The judge drew an adverse inference based on inconsistencies in the appellant's evidence relating to whether the lender was a single businessman or to a group of men, the appellant's failure to mention in 2014 that his father was a gambler, and how the appellant came to discover information relating to the loan. Much of this was covered by the appellant in his very 1st statement. In particular, the appellant indicated, at paragraph 32, that his father started to gamble and lost all the money. This undermines the judge's finding that this assertion was a recent embellishment, although I note the absence of any reference in the 1st statement to his father taking drugs. In the same paragraph the appellant also explains how he came to know of some details of the loan (his brother informed him on the telephone that their father had wanted to open a shop).

21. I am satisfied that the above errors are material, and that they render the judge's decision unsafe. It is not therefore necessary for me to consider the remaining grounds in any detail. I observe however that

there was evidence before the judge that the appellant was, at the very least, suffering from anxiety and depression, and that the judge failed to refer to or apply the Presidential Guidance Note on Vulnerable Adult Appellants, suggesting that the Guidance was not applied. Moreover, although the judge does remind herself at [71] and [83] of the appellant's age at the time of the events he described and of his original asylum claim, it is not apparent that she has considered or applied the principles relating to the assessment of evidence given by children, as outlined in the skeleton argument before her at paragraphs 12 to 15.

22. There remain a number of credibility issues surrounding the appellant's account. These were properly identified by the judge. I cannot however be satisfied that the judge would inevitably have reached the same ultimate conclusion even if there was a medicolegal report before her and even if she explicitly considered the 1st witness statement. I consequently find that the errors committed were material.

23. In line with the representations from both representatives, and given that the error of law relates to core credibility findings, it is appropriate for the matter to be remitted back to the First-tier Tribunal.

Notice of Decision

The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Isaacs.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

16 January 2018

Signed
Upper Tribunal Judge Blum

Date