



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/01703/2019

THE IMMIGRATION ACTS

Heard at: Field House
On: 12 August 2019

Decision and Reasons Promulgated
On: 02 September 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

S M

ANONYMITY DIRECTION MADE

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Burrett, counsel, instructed by JD Spicer ZEB (Solicitors)

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity Direction

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their 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.

1. The appellant appeals with permission against the decision of the First-tier tribunal, promulgated on 10 April 2019, dismissing his appeal against the respondent's decision, refusing his humanitarian protection and human rights claims.

2. The appellant was referred to the National Referral Mechanism (NRM). A positive reasonable grounds decision was made on 24 February 2016. That was followed by a positive conclusive grounds decision made on 17 March 2017.
3. The First-tier Tribunal Judge found that the appellant was “now considerably older” with the ability to relocate in Albania. She was not persuaded that all the police in Albania are corrupt. Nor was she persuaded that the appellant ‘... would be at risk of serious harm due to his involvement of serious criminal activity on return if he were to relocate to an area outside of Tirana’ [43].
4. Permission to appeal was granted by the Upper Tribunal on all grounds: The First-tier Tribunal Judge arguably erred in her analysis of the appellant's ability to internally relocate outside Tirana ‘with the reasoning at [43] and [44] being brief’. It was also arguable that she failed to engage with the issue of how the appellant's siblings could assist in his internal relocation in circumstances where it is unclear whether they were able or willing to assist him before.
5. Ms Jones on behalf of the respondent conceded at the outset of the hearing that there were material errors of law. She submitted that there was an inconsistency and lack of clarity between the findings at [38] that the evidence of the appellant was consistent and credible, albeit there were aspects found to be less persuasive. She stated at [42] that she accepted that the appellant genuinely feared the trafficker, and found that there is a real risk that he would be subjected to inhumane and degrading treatment on return to Albania as he had faced prior to his leaving in September 2015. She found that he was effectively used as child labour with a criminal association with no means of protection from his mother or the police in the surrounding area.
6. However, Ms Jones noted that at [45], the Judge went on to state that she did not find all aspects of his evidence to be credible. There appeared to be no credible reason why the appellant could not remain with his father who frequently travelled between Greece and Albania if he feared for his safety rather than risk travelling through France for a period of two months.
7. Mr Burrett, who represented the appellant before the First-tier Tribunal, referred to the evidence that was before the Tribunal: The appellant had been forced to work for a man, [B], who had formed a relationship with his mother. He was forced to deliver packages and was threatened with violence when he refused, after becoming aware that he was delivering cocaine. He was regularly abused and threatened by [B]. He saw how [B] exerted influence over others including officials whom he believed had been bribed by him. The system he witnessed was corrupt.
8. On three occasions the appellant was caught by the police whilst he held parcels for delivery. On each occasion when stopped, he mentioned he was working for [B]. Once he said this, the officers telephoned [B] to verify this. He was then allowed to go free.

9. The respondent acknowledged that the appellant was a victim of human trafficking and did not seek to go behind that decision at the appeal hearing.
10. Mr Burrett submitted that the Judge accepted that the appellant was at risk in his home area as he genuinely feared [B] and that this risk included his being subjected to inhumane and degrading treatment on return. In nonetheless concluding that he could safely relocate outside his home area, there was no consideration of the legal threshold as to whether he could relocate. Nor did she assess whether it was reasonably open for him to relocate.
11. Moreover, he submitted that the Judge's finding that the appellant was older and had family members for emotional support did not take account of the fact that the appellant had been trafficked and abused and had received no family support in Albania previously. She did not consider how this might impact on the assessment of reasonableness. There is no explanation or reasoning as to why the family would be in the position to support him now when there had not been effective protection provided in the past.
12. Nor did the Judge consider why it would be reasonable to expect that the appellant would have protection from the police in circumstances where such protection had not been provided before. In particular, no regard was had to the fact that he had complained to three separate police officers in the past about [B] but was not given protection.
13. The Judge's reliance on the fact that not all police officers in Albania may be corrupt, fails to consider the accepted evidence of the appellant's own dealings with the police. The issue was not whether all police officers are corrupt but rather the level of corruption and in particular the levels of corruption outside Tirana.
14. Moreover, the finding that he could safely relocate is contradicted by the finding that he could not safely relocate to Tirana, a place where the respondent relied upon for safe relocation. In respect of support for male victims of trafficking, the background evidence does not provide any other suitable areas in Albania, other than Tirana.
15. Nor did the Judge adequately consider and apply the background material in the light of the accepted findings of fact. That material establishes that male victims of trafficking are arguably treated differently in Albania. The latest CPIN shows a lack of any governmental shelters in comparison to support for women who do receive such shelter. Whilst the NGOs offer some limited support, this is for a very small number of men that do not encompass anything like the trafficking that the appellant has been subjected to. The evidence establishes that no steps have been taken to improve the issues for male victims of trafficking.
16. Mr Burrett also submitted that there has been an inadequate assessment of the appellant's claims under Articles 3 and 8 of the Human Rights Convention. There has been no reasoned basis as to how he would be protected from [B] or other criminal

gangs, given that it was accepted that it would not be safe for him to relocate to Tirana and that there may be some adverse attention to him on return.

Assessment

17. I am satisfied that Ms Jones has properly conceded that the decision of the First-tier Tribunal contains material errors of law.
18. Apart from the lack of clarity with regard to the credibility findings, there has not been adequate reasoning in respect of the appellant's ability to internally relocate outside Tirana. In particular, she failed to engage with the issue as to how his siblings could assist him when he had no family support in Albania previously when he had been trafficked and abused.
19. Moreover, the background evidence does not provide any other suitable areas in Albania other than Tirana for safe relocation. Nor has the Judge provided satisfactory reasons as to why it would be reasonable for the appellant to expect protection from the police in the light of his three unsuccessful complaints against [B] where no protection resulted.
20. The parties agreed that in the circumstances, the decision of the First-tier Tribunal should be set aside and re-made. Both agreed that this is an appropriate case to be remitted to the First-tier Tribunal for a fresh decision.
21. I accept that the extent of judicial fact finding which is necessary for the decision to be re-made is extensive, and turns on the appellant's credibility.
22. The parties agreed that the findings by the Judge at [42] that the appellant genuinely feared [B] and that there is a real risk that he would be subjected to inhumane and degrading treatment on return to Albania as he had faced prior to his leaving in September 2015, are to be preserved. In addition, her finding that the appellant was effectively used as child labour with a criminal association with no means of protection by his mother and no protection from the police in the surrounding area, is also to be preserved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made. The findings set out in paragraph 22 above shall be preserved.

Anonymity direction continued.

Signed Deputy Upper Tribunal Judge Mailer

23 August 2019