Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02793/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 July 2019	**On 15 August 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

D. J.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Jaffar, Counsel instructed by Norton Folgate Solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Sweet ('the Judge') issued on 2 May 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed. Judge of the First-tier Tribunal Bristow granted permission to appeal on all grounds.

2. The Judge did not issue an anonymity order. This is a matter in which the appellant has sought asylum. I am mindful of Guidance Note 2013 No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this chamber of the Upper Tribunal,

as in all courts and Tribunals, is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the protection claim.

Background

3. The appellant is an Albanian national. He was granted entry clearance to visit family members in this country and arrived with his wife and child in 2017. His second child was born in this country. He claimed asylum soon after his arrival and asserted that as a member of the Albanian armed services, he had been a member of NATO forces in Afghanistan and that now both he and his family were at risk from Muslim extremists. He details by way of his claim several threats made to him whilst he was in Albania ranging from threats over the telephone to a bunch of flowers and a letter being placed on his car.

4. The hearing came before the Judge at Hatton Cross on 25 April 2019. The appellant attended the hearing and gave evidence, as did his wife and another family member. The Judge found the appellant and his witnesses to be incredible and dismissed both the international protection and human rights (article 8) appeals.

Grounds

5. Several purported errors on points of law are identified within the grounds drafted by Counsel including a failure by the judge to give adequate, if any, findings upon core issues of the appellant's evidence or to adequately consider documents issued by the police. In granting permission to appeal Judge Bristow observed that it is arguable that it is difficult to identify the Judge's reasons for determining that the appellant's account was fabricated and also that it is arguable that the Judge failed to adequately consider the background evidence filed with the Tribunal.

6. No Rule 24 response was filed by the respondent.

The Hearing

7. Both representatives at the hearing informed me that they considered the Judge's decision to be flawed by legal error, such that it should be set aside. In the circumstances, this was the appropriate approach to adopt.

Decision on Error of Law

8. The Judge's findings and decision are identified at paragraphs 32 to 40 of his Decision and Reasons. Paragraphs 32 to 36 simply detail the appellant's history and no assessment as to credibility is made. I note at this juncture that the appellant's asylum interview ran to 114 questions, his witness statement ran to 11 pages, his wife's witness statement ran to 3 pages and his relative's statement to a further 3 pages. There were 53 pages of personal documents including translations and 28 pages of objective documentary evidence was filed with the First-tier Tribunal and relied upon. In seeking to address this wealth of information the Judge's assessment of the evidence was substantively conducted within only two paragraphs:-

> "37. The appellant claims that he will face continuing threats of violence to himself and his family if he returns to Albania. I wholly reject his claim. I consider his account of these threats are fanciful and have been fabricated in order to enhance an asylum claim. The documents on which he relies include two statements from friends, Grised Shimaj and Ermir Dedeli, who give an account of the motor incident on 26 January 2017. It appears that these statements were not provided to the police authorities but had been obtained by the appellant at his request in case they were later required. There was a further statement from Enis Bajraktari, who stated on 15 September 2017 that while he was having a coffee with the appellant, the appellant was approached by two unknown individuals who threatened him with his life and the life of members of his family. There is some written evidence that a complaint was made on 31 January 2017 by the appellant to the police authorities about an incident on 26 January 2017.
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> 38. The appellant was wholly unable to explain, either in his own evidence or through his Counsel, why he would be at risk in respect of activities which he may have carried out in Afghanistan in the first half of 2012 as late as January 2017. There was also inconsistent evidence between what he and his father gave in respect of the number of complaints that were made and whether reports were made to the police or not. I wholly reject his account and consider it to be fanciful and fabricated in order to enhance a claim for asylum. I also note that his parents have been able over many years (most recently on two occasions in 2019) to live freely in Albania and travel between Albania and the UK."

9. Having stated in bold terms that the claim had been fabricated at paragraph 37 the judge reverted back to the approach adopted in previous paragraphs of simply restating the appellant's case. No actual findings of fact were made. The only findings of fact made in the entirety of this Decision and Reasons are to be found at paragraph 38, and whilst there may or may not be inconsistencies in the evidence, no express consideration is given to the several documents which were issued by the Ministry of the Interior, Directorate of State Police, and also by the local

prosecution office in Albania which are said to corroborate the making of reports by the appellant to the police.

10. It is a long established principle that proper adequate reasons must be given that deal with the substantial points that have been raised in an appeal, and whilst it is unnecessary for a Tribunal to set out the evidence and arguments before it, or the facts found by it, in detail, the reasons must be proper, adequate and intelligible and enable the person affected to know why they have been successful or unsuccessful. The failure to consider the documentary evidence relied upon, in particular the evidence from the local police and prosecution office, can only mean that the judge failed to engage with the appellant's case as put forward in any significant respect. In this matter the appellant has satisfied the Tribunal that he has genuinely been substantially prejudiced by the Judge's failure to provide an adequately reasoned decision because the Judge has failed to identify and record the matters that were critical to his decision on material issues in such a way that this Tribunal is unable to understand the true basis as to how and why he reached that decision.

11. For those reasons I am satisfied that the errors identified in the grounds are made out. As those errors go to findings of fact and analysis of evidence, I set aside the decision and do not preserve any of the findings.

12. As to remaking the decision, given the nature of the errors, I accept the submission made by both Miss Cunha and Mr Jaffar that clear findings have to be made on the evidence presented. Both advocates submit that the appeal should be remitted to the First-tier Tribunal. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows at 7.2:-

> "7.2 The Upper Tribunal is likely on each such occasion to proceed to remake the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
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> (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 and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal".

13. I have reached the conclusion that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. The appellant has enjoyed no adequate consideration of his asylum claim to date and has not yet had a fair hearing.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error on a point of law and is therefore set aside.

15. It is remitted to the First-tier Tribunal for a fresh hearing before any judge other than JFtT Sweet.

16. No findings of fact are preserved.

Signed: D. O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 17 July 2019