Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07766/2019 (R)

THE IMMIGRATION ACTS

Remote Hearing by Skype for Business	**Decision & Reasons Promulgated**
On 10th November 2020	**On 17th November 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASTRIT CAHANI
(aka ASTRIT MIJA)
(Anonymity Direction Not Made)

Respondent

Representation:
For the Appellant: Mrs H Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr M Uddin, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS (R)

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Cahani. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. I refer to Mr Astrit

Cahani (*also known as Mr Astrit Mija)* as the appellant, and the Secretary of State as the respondent.

2. The hearing before me on 10th November 2020 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The Background

3. The appellant's appeal against the respondent's decision of 22nd January 2019 to refuse a human rights claim was allowed by First-tier Tribunal Judge Landes on Article 3 grounds for reasons set out in a decision promulgated on 19th August 2020.

4. The background to the appeal is set out in paragraphs [2] to [7] of the decision of Judge Landes. For present purposes it is sufficient to note that the appellant arrived in the UK and claimed asylum in April 1999. He claimed to be Astrit Cahani, an ethnic Albanian who was born and lived in Kosovo prior to his arrival in the UK. On 5th June 2003 he was found guilty of the manslaughter of Arben Basha on the grounds of

diminished responsibility at Ipswich Crown Court. He was sentenced on 18th July 2003 to life imprisonment. The sentencing judge considered the appellant would continue to represent a serious danger to the public for an indefinite time. The sentencing judge concluded that the appropriate determinate sentence to be served for the period of punishment or retribution and deterrence was one of four years, with a minimum of two years.

5. On 30th May 2013 the respondent decided that the automatic deportation provisions applied. The appellant's appeal against that decision was dismissed for reasons set out in the decision of First-tier Tribunal Judge Law promulgated on 18th February 2015. As to events thereafter, at paragraph [7] of her decision Judge Landes stated:

> "In August 2018 the respondent decided that the appellant was in fact Astrit Mija, an Albanian national born on 30 January 1971, and, in December 2018 gave him notice that they would seek to deport him to Albania (CC1). In response the appellant repeated that he was Kosovan, that he feared his victim's family and that if he were returned to Kosovo he would not be able to receive medication (DD1). On 22 January 2019, the respondent made a decision refusing the appellant's human rights' claim. The appellant did not appeal within time and he was transferred from prison on 30 April 2019 in preparation for removal. His solicitors obtained an injunction preventing his removal to Albania and he was returned to prison."

6. Judge Landes summarised the respondent's decision of 22nd January 2019 at paragraph [9] of her decision. It was common ground at the hearing of the appeal that the issues in the appeal included the nationality of the appellant, the extent to which, if any, the Tribunal should depart from previous judicial findings, and whether the appellant's removal would be contrary to Article 3 in light of his mental health and the decision of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17.

7. The appellant's nationality is addressed by Judge Landes at paragraphs [23] to [33] of her decision. Having carefully analysed all the evidence before the Tribunal, Judge Landes was satisfied on the balance of probabilities, that the appellant is Astrit Mija, an Albanian national whose date of birth is 30th January 1971. For reasons set out at paragraphs [34]

to [36] of her decision, she was not satisfied that the appellant is at real risk upon return to Albania from a blood feud. Those findings are not challenged by the appellant.

8. The Article 3 claim advanced by the appellant is addressed at paragraphs [37] to [71] of the decision of Judge Landes. It is uncontroversial that the appellant has been diagnosed as suffering with paranoid schizophrenia. Judge Landes rejected the claim made by the appellant that he would be at high risk of attempting suicide even if he was able to access medication in Albania. Judge Landes noted, at [42], that the appellant does not present as obviously mentally unwell, he has insight into his illness, good compliance and a strong motivation to comply with taking his medication. She was nevertheless satisfied that if the appellant is unable to obtain his medication he is likely to relapse and whilst that relapse might not be absolutely immediate, it is likely to happen reasonably quickly. At paragraph [45] of her decision, Judge Landes referred to the decision of the Supreme Court in AM (Zimbabwe) and at paragraph [46], she said:

> "I consider that if the appellant could not access medical treatment then there is indeed a substantial risk of relapse which may not be immediate but would be reasonably quick. As I have already indicated there is a likelihood of the appellant then listening to and acting on the voices telling him to harm himself I consider there are substantial grounds for believing that the appellant would do himself serious harm or indeed kill himself, thereby coming within the test in Paposhvili as endorsed in AM (Zimbabwe)."

9. At paragraphs [47] to [52], Judge Landes considered the circumstances to which the appellant would return. Judge Landes noted that Judge Law had not been satisfied that upon return to Kosovo, the appellant would be completely without family support. Quite properly, Judge Landes referred to that finding as her starting point, albeit noting that the appellant would be returning to Albania and not Kosovo. On the evidence before her, Judge Landes was satisfied that the appellant is not in contact with family, and concluded that the appellant will be without family support on return to Albania. She concluded the appellant would

therefore have nowhere obvious to live on return to Albania. She noted that she had no information at all about what support would be available to an Albanian citizen who is unemployed and does not have housing, but she was not satisfied that there is no support available.

10. At paragraphs [53] to [60] of her decision, Judge Landes considered the material before the Tribunal regarding mental health in Albania and the facilities available. At paragraph [55], she noted there are clearly relevant facilities and drugs available, even if the facilities and treatment fall far below the standards of the rest of Europe. At paragraphs [56] to [58], Judge Landes referred to the opinions set out in the report of Mr Kosumi that was relied upon by the appellant.

11. Although she acknowledged that the conditions in some psychiatric hospitals in Albania are not only much worse than in the UK but very poor indeed, at paragraph [61] Judge Landes rejected the claim that treatment in a psychiatric hospital in Albania, however bad the conditions, would itself breach the appellant's Article 3 rights. However, she found the appellant would have real difficulty accessing treatment and the appeal was allowed on Article 3 grounds only for reasons set out at paragraphs [61] to [70] of the decision.

The appeal before me

12. The respondent advances three grounds of appeal. First, the respondent claims that in finding that the appellant would have real difficulty accessing treatment in Albania, Judge Landes relied upon material set out in the report of Mr Kosumi, a recognised expert on Albania/Kosovo, but with no expertise on the Albanian healthcare system. The respondent claims Judge Landes gives inadequate reasons to explain why the opinions of Mr Kosumi, regarding matters on which he does not claim to be an expert, are preferred to the CPIN of May 2020 regarding mental health in Albania. Second, the respondent claims Judge Landes' finding that the appellant will not be able to access services and the appropriate

medication, and without medication or treatment, there are substantial grounds for believing his mental health will critically deteriorate, is contrary to background material that such medication as is required by the appellant, is free in Albania. The respondent refers to the CPIN of May 2020 which confirms that treatment for psychiatric illnesses is completely free of charge and covered by the government. The respondent claims Judge Landes does not adequately explain why the appellant would not be able to obtain the support and medication he requires in Albania in light of the background material. Finally, the respondent claims the conclusion reached by Judge Landes that the appellant would not be able to access the required medication is perverse because the background material establishes the reverse. The respondent claims Judge Landes has failed to appreciate the high threshold still applicable to such an Article 3 claim.

13. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 4th September 2020.

14. Before me, Mrs Aboni relied upon the grounds of appeal. She submits Judge Landes failed to give adequate reasons for allowing the appeal on Article 3 grounds. She submits that at paragraph [55] of her decision Judge Landes acknowledged that the background material establishes that there are clearly relevant facilities and drugs available in Albania, even if the facilities and treatment fall far below the standard of the rest of Europe. She submits Judge Landes erroneously placed considerable weight on the evidence set out in the expert report of Mr Kosumi, and reached her decision without any proper consideration of whether the appellant could obtain an ID card to enable him to access his entitlement to medical treatment. She submits Judge Landes concluded that even if the appellant were able to obtain a health card, the appellant would have to pay a significant amount each week to access the medication he needs, but failed to consider whether the appellant could secure some work, to assist in meeting the costs of the medication. She submits the

appellant has worked in the past, and there is no reason to believe that he would be unable to work in the future.

15. I reject the claim that Judge Landes attached undue weight to the opinions set out in the expert report of Mr Kosumi regarding the provision of health care and social services in Albania, and failed to adequately explain why his opinions, on matters that the respondent submits he has no expertise, are preferred to the matters set out in the CPIN on mental health treatment in Albania. The expertise of Veb Kosumi as an independent expert on the Western Balkans specialising in Albania and Kosovo was not challenged by the respondent either prior to or during the hearing of the appeal. He set out in his report, the questions that he had been asked to consider. The primary focus was upon the appellant's ability to access specialist psychiatric counselling/therapy and the necessary medication in Albania. In setting out his opinions, Mr Kosumi refers to the Albanian health system and the source material that he considered and relied upon to support his opinions.

16. At paragraphs [53] and [54] of her decision, Judge Landes refers extensively to the matters set out in the CPIN of May 2020 regarding mental health in Albania, that was relied upon by the respondent. Judge Landes carefully weighed that evidence against the matters set out in the report of Mr Kosumi who had expressed the opinion that the appellant would be unable to access the mental health services required. He had explained that the appellant would need an ID card to access any individual rights and he had explained the procedure for obtaining an ID card.

17. It is in my judgement clear from what is said at paragraphs [53] to [59] of her decision that Judge Landes carried out a careful analysis of the background material and the evidence before the Tribunal regarding mental health provision in Albania, and the treatment available. It was in my judgement open to Judge Landes to conclude that the appellant

would have real difficulty accessing treatment for the reasons set out in her decision.

18. I also reject the claim made by the respondent that in reaching her decision Judge Landes fails to adequately explain why the appellant would not be able to obtain support and medication in Albania, when it is said at paragraph 2.6.2 of the CPIN that "*…Treatment for psychiatric illnesses is completely free of charge and covered by the government. Patients do not pay at the hospital. The government provides a lot of funds through the MOH and the Ministry of Social Welfare."*. It is clear in my judgement that Judge Landes had carefully considered the matters set out in the CPIN. At paragraph [54] of her decision, she makes express reference to paragraph 2.6.2 of the CPIN and the extract relied upon by the respondent in the grounds of appeal. At paragraph [62] of her decision, Judge Landes again referred to the relevant extracts from the CPIN and she noted that it is not clear whether the reference in the CPIN would cover the cost of drugs provided on prescription by a family doctor to someone who is not receiving treatment at a hospital. She said:

> "… I appreciate that the CPIN under the heading "cost of drugs" (see para 54 above) says as I have quoted above that treatment for psychiatric illnesses is completely free. Patients do not pay at the hospital. However it is not clear whether the reference in the CPIN would cover the cost of drugs provided on prescription by a family doctor to someone who is not receiving treatment at a hospital. The section in the CPIN is not just about the cost of drugs, despite its heading, as the earlier part (2.6.1) refers to free access to preventative services (which would not be medication). Unfortunately I cannot check the footnote because the source for the information is given as the BDA/MedCoI fact-finding mission of 2017; this report is not given a URL which I can access. When Dr Berman checked for his report the availability of olanzapine in Albania he found only the very old 2006 information which said that antipsychotic medication, once prescribed, was provided to people with mental disorders free of cost or with reimbursement equal or more than 80% of the retail price (para 58 report – which I observe would chime with the reimbursement of 80% in the figures found by Mr Kosumi)."

19. Having carefully considered the evidence before he, Judge Landes concluded the appellant would have real difficulty accessing treatment. At paragraphs [69] and [70] she said:

> "69. My finding is that the appellant's reports suggest, credibly, that the appellant, on his own, will struggle to access services and the appropriate medication and without medication or treatment there are substantial grounds for believing his mental health will critically deteriorate. Whilst being homeless and destitute would not of itself breach Article 3 (See for example Said [2016] EWCA Civ 442) there is a real risk that in such circumstances the appellant would not be able to access medication or facilities himself and would then relapse and act on the voices that ordered him to do himself harm/kill himself or indeed harm others. I cannot of course rule out the possibility that someone in authority/a good Samaritan would come across him and assist him but if the appellant were behaving normally there would be no reason for anyone to intervene. The appellant's past indicates that he went very quickly from behaving normally to killing his flatmate. There is a real risk that, similarly, the appellant would, in any relapse, do himself serious harm or end his life before anyone took him for treatment. Those would be conditions breaching Article 3 ECHR.
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> 70. I am satisfied for the reasons I have explained above in detail, and reached a conclusion on at [69] that the appellant raised such a prima facie case. The respondent has pointed to the general treatment available in the CPIN but I have explained above why I consider those general points do not answer the concerns on behalf of the appellant and despite treatment being available the appellant has brought forward substantial grounds for believing that he will not be able to access such treatment. Absent the respondent's engagement with what precisely would happen to a person in the appellant's position without any family support who is simply removed to Tirana I am satisfied that there are substantial grounds for believing (a test which of course although not an exacting is below the balance of probabilities) that Article 3 would be breached. That the healthcare available would be well below the standard of the UK is not sufficient; that there are substantial grounds for believing the appellant would be unable to access the medication he needs or the treatment he needs before he became so unwell he seriously harmed himself, is, I find, sufficient."

20. It is now well established that "adequacy of reasons" means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach. It is clear my judgement that the findings and conclusions reached by Judge Landes at paragraphs [61] to [71] of her decision regarding the Article 3 claim follow a careful consideration of the evidence that was before the

Tribunal and are findings and conclusions that are rooted in the evidence. Judge Landes was required to consider the evidence as a whole, giving adequate reasons for her decision, and she plainly did so. The findings and conclusions reached by the judge are neither irrational nor unreasonable.

21. It follows that in my judgement it was open to Judge Landes to allow the appeal on Article 3 grounds for the reasons set out in her decision and I dismiss the appeal before me.

Notice of Decision

22. The appeal is dismissed. The decision of FtT Judge Landes promulgated on 19th August 2020 stands.

Signed **V. Mandalia** Date: 10th November 2020

Upper Tribunal Judge Mandalia