



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00506/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 March 2020
Extempore**

**Decision & Reasons Promulgated
On 20 March 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Henderson promulgated on 11 December 2019, dismissing his appeal against the decision of the Secretary of State made as long ago as 27 December 2017 to refuse his protection claim.
2. The appellant is a citizen of Albania whose case is that he was subject to trafficking within his own country, having been introduced to a man called Arif who compelled him to smuggle drugs by delivering packages for him. The details of the account are set out in the decision of Judge Henderson

and in the refusal letter. There is no need to go to them in any detail given the narrow thrust of the challenge made.

3. Broadly speaking, the appellant's account involved as a core issue his ability to leave Albania by picking up his passport and then crossing the border into the former Yugoslav Republic of Macedonia ("FYROM") at some point in 2015. It is not in dispute that for a child of that age in Albania to travel unaccompanied that there must be a proxy signed by the parents, permitting unaccompanied travel which is given to the authorities.
4. In reaching her decision the judge concluded that the appellant was not a credible witness. In doing so, she made it clear from paragraph 63 that credibility was the key and at paragraph 68 she said that whether or not he had the proxy document, when he left Albania was a key issue as to his credibility stating

"It is the fact that the appellant denies ever having seen the proxy travel document or having used it, which was the key issue as to his credibility. Acknowledgment of the proxy document would suggest the appellant's parents were complicit in his leaving the country, (as would the fact he travelled by car and not by bus) which, in turn significantly impacts the credibility of the appellant's account as regards his treatment and trafficking by Arif."
5. That this issue is key is repeated again at [70] and it is evident also that the judge had regard to the evidence put before her as to how the system operates. This is set out in some detail at [41] of the decision when she summarises, as she does at [47], the evidence. Put simply, the appellant's evidence is that he has never seen the proxy document.
6. The judge appears from what she says at both [41] and [47] to have assumed that when it was said that a proxy document was needed, was that it had to be in the appellant's possession to cross the border. This is based on her interpretation of the background evidence which had been put forward by the respondent. I consider that her assessment of the evidence was fundamentally flawed. There is no basis on which it could properly be inferred from the material that an individual child who is travelling has to be in possession of the proxy document. It is reasonable to assume that a proxy document is required for travel as an unaccompanied minor as that is implicit in what is said by the Albanian authorities. It is also implicit in the fact that they have a copy of it that this had to be supplied to the Albanian authorities in order to be activated. There is, as Mr Toal submits, no evidence to suggest that the proxy document has to be handed over to any official when crossing a border (as opposed to being submitted to the central office) or to be held with the passport. It may well be that the document is available online to border officials or there is a box ticked on the passport record viewed by officials when conducting a check on someone leaving the country as they did clearly did in this case somebody leaving the country.

7. On that basis alone, the credibility finding is in my view flawed. Given that the judge has said that this was a key issue and given the centrality of credibility in this case, the adverse finding is not properly founded in the evidence.
8. Mr Bramble however submits that this is not material because what he submits is relevant in this case is that there is a discrepancy in the appellant's evidence as to how he left the country. At [41] it is recorded that he left Albania by car and that what this is evidence of is that the appellant, or rather the proxy document is evidence that the appellant's account of having left the country spontaneously is fundamentally wrong because of the need to prepare the proxy document.
9. I reject that submission for two principal reasons. First, it is not that clear that is the reason the judge relied upon and second, it is of course entirely possible that a proxy document had been obtained in the past and it matters not how it was obtained. It may well have been obtained partly by the mother, partly under the influence of Arif, or it may have been entirely forged, but it does not matter, but given that a passport was obtained it is plausible that a smuggler wishing to use the appellant would also obtain a proxy document to allow the person to travel unaccompanied. It does not matter because the point does not appear to have been the subject of submissions or the details questioning, which would have supported that submission.
10. Turning to ground 2, I consider that this is made out too. The judge does, I accept, appear to have adopted in certain passages a higher test than is permissible in a protection claim, referring at paragraph [46] to her not accepting the newspaper articles show conclusively that the proxy travel document in question is a forgery.
11. In addition, further examples appear at [48] where it is said that it is "unlikely" that the agent would leave the appellant's passport and money within easy access to the appellant. At [49] where it is said it is "more likely" that he was assisted in his departure and also at paragraphs [68] and [69], although less so.
12. Whilst these are indicative of a failure properly to apply the correct test, had there been one single incidence of this, I might not have been persuaded that this is what had occurred in this case but I find, viewing the evidence as a whole, and given that there appeared to be five instances of this within the findings, I am satisfied that the judge did use an improperly high burden of proof in this case. Accordingly, and for the reasons I have given this is, already with regard to ground 1, this is material.
13. Turning to ground 3, I consider that the judge did not properly have regard to the report of the expert, in that she appears to have mischaracterised his evidence in certain passages, as is set out in the grounds of appeal. However, given that for the reasons already stated, the credibility findings

and indeed the findings as a whole are fundamentally flawed and have to be set aside, it is unnecessary to go into any detail in addressing ground 3, given that the consequences of findings that grounds 1 and 2 are made out, are that the decision must be set aside as a whole it is unnecessary to go into any detail on that ground. Accordingly, for these reasons I set aside the decision of the First-tier Tribunal. I conclude that none of the findings of fact can be sustained and that the decision will have to be remade in its entirety.

14. In the circumstances, and in line with the relevant practice direction, I consider that the appeal must be remitted to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues; none of the findings of fact are preserved.

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 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.

Signed

Date 13 March 2020



Upper Tribunal Judge Rintoul