



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00536/2019 (R)**

THE IMMIGRATION ACTS

**Remote Hearing by Skype for Decision & Reasons Promulgated
Business
On 27th October 2020** **On 30th October 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

ER
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, instructed by Wimbledon Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DIRECTIONS AND REASONS (R)

IT IS DIRECTED THAT:

- i) The directions of Upper Tribunal Judge Coker set out in her 'error of law' decision promulgated on 13th February 2020 that the appeal will be re-heard in the Upper Tribunal, on submissions only, are set aside.

- ii) The appeal is remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved.
- iii) The parties shall be notified of a hearing date before the First-tier Tribunal in due course. The Tribunal shall arrange an Albanian interpreter.

REASONS

1. The hearing before me on 27th October 2020 took the form of a remote hearing using Skype for Business. Neither party objected. The appellant joined the hearing remotely from the offices of his solicitors. I sat at the Birmingham Civil Justice Centre. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together.
2. The appellant is a national of Albania. He claimed asylum on 8th September 2015. The claim was refused by the respondent for reasons set out in a decision dated 9th January 2019. The respondent accepted the appellant is an Albanian national but rejected his account of events. The respondent concluded, *inter alia*, there are inconsistencies in the appellant's account of events and his account is undermined by other records obtained from the Albanian authorities. The appellant's appeal against that decision was dismissed for reasons set out in a decision of First-tier Tribunal Judge Moffatt promulgated on 24th October 2019.
3. The appellant was granted permission to appeal by First-tier Tribunal Judge O'Brien on 4th December 2019. Upper Tribunal Judge Coker concluded that Judge Moffatt erred in law in reaching her findings on the credibility of the appellant's account for reasons set out in her decision promulgated on 13th February 2020. The decision of Judge Moffatt was therefore set aside with no findings preserved. As to the future conduct of the appeal she stated:

“18. The evidence given in this appeal before the First-tier Tribunal was not disputed and the First-tier Tribunal Judge’s record of the evidence, insofar as it was in the decision, is not disputed save for some assertions that there was a misunderstanding by the Judge. This is not a case that merits a re-hearing before a First-tier Tribunal judge. The appellant has given his evidence and the appeal can proceed on the basis of submissions. It does not appear that an application to file further evidence has been made by either party.”

4. In readiness for the hearing before me, the parties have both filed written submissions. The respondent maintains that the appellant is not credible and the Tribunal should reject his attempts to distance himself from the serious discrepancies in his account, by relying upon medical evidence. The appellant maintains that any inconsistencies in the appellant’s account do not go to the heart of the claim and the account relied upon by the appellant is a plausible one. In any event, the account is supported by medical evidence. The appellant has also made an application to adduce further evidence in the form of a report from Dr Pranveer Singh, a Consultant Psychiatrist. The report confirms the appellant is suffering from a Depressive Episode of moderate severity and the current position is that he has residual symptoms of PTSD rather than the acute presentation.
5. Mr Lams confirmed that this is not an appeal in which the medical evidence establishes that the appellant is unable to give evidence. The appellant gave evidence before the First-tier Tribunal previously and is quite prepared to give evidence now. The parties both acknowledge that the re-hearing of this appeal is to take place without any findings preserved. They acknowledge it will be difficult for the Tribunal to reach an informed view as to the credibility of the appellant without having any opportunity to hear the evidence of the appellant and the opportunity to observe his evidence challenged in cross examination, as it would in the conventional way.
6. Having had the opportunity of considering the written submissions helpfully made by the parties, it would in my judgement be inappropriate, and potentially procedurally unfair, for me to determine the appeal without providing the appellant an opportunity to give evidence, and,

without giving the respondent an opportunity to challenge the appellant's evidence in the usual way, before reaching a decision as to the appellant's credibility, and make findings against which the assessment of the risk upon return is to be considered. The assessment of a claim for asylum such as this is always a highly fact sensitive task. It is not in the interests of justice for me to simply make my findings on the basis of a reading of the First-tier Tribunal Judge's record of the evidence insofar as it is recorded in the decision of the First-tier Tribunal, and upon hearing submissions made by the parties representatives. Furthermore, there is now further medical evidence relied upon by the appellant.

7. The decision of First-tier Tribunal Judge Moffatt is tainted by a material error of law and has been set aside by Upper Tribunal Judge Coker. The appeal is to be re-heard with no findings preserved. Having now had the opportunity of considering the submissions made by the parties and the further evidence relied upon by the appellant, I accept the submission made by both Mr Lams and Mrs Aboni that the most appropriate course is for the appeal to be remitted to the First-tier Tribunal for hearing afresh, and for the direction made by Upper Tribunal Judge Coker that no oral evidence will be called, to be set aside. I have decided that it is appropriate to remit this appeal back to the FtT for hearing afresh, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Signed **V. Mandalia**
2020

Date: 27th October

Upper Tribunal Judge Mandalia