



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04596/2019 (P)

THE IMMIGRATION ACTS

Determined on the papers

Decision & Reasons Promulgated
On 23 September 2020

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

FM (ALBANIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. This appeal was listed before me on 17 September 2020. The day before the hearing, I received a reply from the appellant's representatives, pursuant to rule 25 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Having reviewed the case as a whole in light of that response, I decided that it was not necessary for there to be a hearing. I arranged for the hearing to be vacated. I gave the following reasons for that decision:

"At 0910 on 16 September 2020, the appellant filed and served a reply to the respondent's rule 24 response in this appeal. Helpfully, that reply draws together the directions and correspondence which followed UTJ Owens' decision to grant the appellant permission to appeal. It also records that there is agreement between the parties, not

only as to the existence of an error of law in the decision of the FtT but also as to the relief which should follow. It is agreed on both sides that the decision of Judge McTaggart cannot stand and that the proper course is for the appeal to be remitted to be heard afresh before a judge other than Judge McTaggart. For reasons which will be more fully explained in my written decision, I agree with the parties. It is in those circumstances that I consider the application at [11] of counsel's reply to be well-made. It is therein suggested that no useful purpose would be served by a hearing and that the proper and expedient course is for the hearing on 17 September to be vacated. Given the wholesale agreement between the parties, I agree. The hearing is therefore vacated and a short decision will be issued in due course, recording the outcome above."

Background

2. The appellant is an Albanian national who was born on 10 June 2001. He appeals against a decision which was issued by First-tier Tribunal Judge McTaggart on 27 June 2019, dismissing his appeal against the respondent's refusal of his claim for international protection.
3. The appellant claimed asylum in November 2016. It was not until 30 April 2019 that his claim was refused. The gap was due, in part, to delays in the consideration of his claim to be a victim of trafficking, which was not conclusively resolved, adversely to the appellant, until 9 August 2018.
4. The protection claim was based on the appellant's fear of gangs in his local area. These gangs were said to be involved in the drug trade and various other aspects of criminality in the appellant's local area. He said that he had suffered a number of violent incidents at the hands of these individuals and that he had decided to leave the country in 2016 so as to avoid further problems.
5. The respondent refused the appellant's claim for asylum on credibility grounds. He appealed to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

6. The appellant was absent and unrepresented before the FtT. The judge was satisfied that he had been given proper notice of the hearing and she 'resolved to proceed onwards in his absence'. She accepted the core of his account but concluded that he could turn to the Albanian authorities for a sufficiency of protection and that he could internally relocate to avoid the gangs in his local area. She therefore dismissed the appeal.

The Appeal to the Upper Tribunal

7. More than seven months later, permission to appeal was sought. It was initially refused by the FtT but time was extended, and permission

granted, by Upper Tribunal Judge Owens. The reasons she gave for that decision were materially as follows:

“The application for permission to appeal to the First-tier Tribunal is 7 months out of time. The written reasons were sent on 27 June 2019 and the application for permission was received by the First-tier Tribunal on 28 February 2020. When considering whether to extend time I have had regard to those principles in R (Onowu) v FtT [2016] UKUT 185 (IAC).

The breach is significant and serious. The explanation for the delay is that the appellant is a vulnerable individual who has previously been the victim of violence. He arrived in the UK as an unaccompanied minor and is currently being supported by Kingston and Richmond social services under the Children Leaving Care Act 2000. Social services have accepted that they failed to ensure that the appellant attended his substantive asylum appeal hearing, believing that the appeal would be adjourned because they had found the appellant a new representative very late in the day. The appellant then fled his supported accommodation on 28 June 2019 out of fear of being removed. It is said at that stage that he had no representation, was frightened and vulnerable. He was subsequently detained in January 2020 and obtained a copy of the FTT decision in the course of judicial review proceedings. His representative sought the advice of counsel who drafted the out of time grounds of appeal. I accept that social services have provided supporting evidence of the appellant’s vulnerability and the reason why he failed to attend his original appeal hearing and I accept, having regard to all of the circumstances of the appellant, taking into account his age and vulnerability, that there is a good reason for the delay.

I turn to the merits of the grounds. It is asserted that the judge having found the appellant to be the target of criminal violence and exploitation, then failed to have regard to the country guidance cases on sufficiency of protection and internal relocation. I am in agreement that the grounds have merit and on this basis I extend time to admit the application because it is fair and in the interests of justice. I give weight to the fact that this is a claim for protection involving a vulnerable young person who through no fault of his own was not able to put forward his claim before the FTT.”

8. Following Judge Owens’ decision, the Upper Tribunal sent directions to the parties. Upper Tribunal Judge Canavan indicated that she was minded to find that the FtT had erred in law and to set aside the decision so that it could be remade *de novo*. The appellant’s solicitors did not respond to those directions. The respondent, for her part, filed a reply to the notice of appeal, contending (amongst other things) that the judge’s credibility findings were unsafe and that the proper course, in all the circumstances, was for the decision to be set aside as a whole and the appeal remitted to the FtT for rehearing *de novo*. Given that new

submission, Judge Canavan ordered that the appeal should be set down for a hearing, so that the appellant had the opportunity to make submissions.

9. In the response to the respondent's reply, it was accepted on the appellant's behalf that the judge's credibility findings could not stand and that the relief suggested by the respondent was appropriate on the facts of this case. As I stated in my directions of 16 September, it was clear in light of this complete agreement that no purpose was to be served by holding a hearing at public expense. I therefore directed under rule 34 that there would be no hearing in order to resolve the question of whether the judge erred in law and, if so, the relief which should follow.

Discussion

10. It is to be recalled that Judge McTaggart was presented with silence on the appellant's side. That is not a criticism of the appellant or those who currently represent him; it is simply the reality of the situation. The conclusions the judge reached on the appeal were unsurprisingly brief in the circumstances. It is nevertheless clear that the judge erred in law in failing to give adequate reasons for finding the appellant's account to be credible at its core and in failing to apply the country guidance on Albania in concluding that the appellant could relocate or that he could avail himself of a sufficiency of protection from the Albanian authorities. Whilst those conclusions may ultimately be reached in an appeal of this nature, there were plainly relevant observations in the country guidance (from AM & BM (Albania) CG [2010] UKUT 80 (IAC) to BF (Albania) CG [2019] UKUT (IAC) to be considered before the judge could properly so decide.
11. In the circumstances, I agree with the parties that the decision of the judge contains errors of law such that it cannot stand. I set aside that decision and order that the appeal shall be remitted to the FtT to be heard afresh by a judge other than Judge McTaggart.

Notice of Decision

The decision of the FtT involved the making of errors on points of law and is set aside in its entirety. The appeal is remitted to the FtT to be heard afresh.

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 his 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.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 September 2020