



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05166/2019

THE IMMIGRATION ACTS

Heard at Field House by Way of Skype
On 23rd September 2020

Decision & Reasons Promulgated
On 5th October 2020

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR E A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, Counsel instructed by Virgo Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

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.

1. The appellant appeals against the decision of First-tier Tribunal Judge Richardson on 22nd January 2020 dismissing his appeal against the refusal by the Secretary of State of his asylum, humanitarian protection and human rights claims.
2. The appellant, a minor, claimed that he was approached and kidnapped by a gang outside his school and threatened at gunpoint and told to deliver drugs. He asserted he was a victim of forced criminality and thus he was a member of a particular social group who was at risk on return to Albania.
3. The grounds for permission to appeal asserted that the First-tier Tribunal Judge erred (a) by giving insufficient weight to the appellant's minority when assessing the evidence, (b) failing to give adequate reasons for not believing aspects of the appellant's account, (c) failing to consider the psychiatric evidence as part of the credibility assessment and (d) failing to consider the evidence in the round.
4. Prior to the hearing the appellant sought permission to amend the grounds of appeal by adding a further ground of challenge that the judge had misdirected himself on the evidence because there was no proper consideration of the appellant's evidence in the light of the country information found in ARC Foundation Asylos report Albania: Trafficked boys and young men, May 2019 ("the ARC report").
5. It was also argued in the further grounds that the First-tier Tribunal Judge found at paragraph 14 that "*the appellant was from a stable background, living at the time with both his parents, so was not a vulnerable child that the [ARC] report suggests are far more likely to be victims of trafficking*". That was not borne out by the evidence that was before him which the judge failed to properly consider. The judge had misdirected himself on the evidence because Dr Yahli had indicated that the appellant was from a relatively poor social and family support network with a history of emotional abuse and history of bullying and being a target of perceived adverse incident. The judge had not factored that into the findings and erred in his finding that the appellant was not a vulnerable child and was likely to be susceptible to trafficking.
6. I grant permission for the appellant to amend his grounds.
7. At the hearing Mr Jarvis conceded that the judge had failed to consider the medical report as part of the credibility assessment, but the key point was whether the judge was entitled to take a restricted interpretation of the background evidence.

Analysis

8. The judge at paragraph 14 confirmed that the appellant was from a stable background, living at the time with both his parents, "so is not a vulnerable child that the report suggests are far more likely to be victims of trafficking". He did not appear to consider the evidence of Dr Yahli when making this finding.
9. He also states at paragraph 15:

"The appellant's credibility needs to be considered. The appellant has been vague throughout as to when the incident with the criminal gang occurred in his first

interview he said in either 2015 or 2016. He has since clarified in his witness statement for these proceedings that it occurred when he was 14."

10. Prior to considering the medical report which identified mental health issues the judge stated at paragraph 19:

"I do not accept the appellant's account. He has been vague as to his account throughout his dealings with the Home Office, initially not knowing which year the alleged kidnapping had taken place even though that had directly led to him leaving his family and country."

The judge appeared to consider the vagueness only in terms of his minority and made no reference to the medical report in assessing credibility and only reached the medical report at paragraph 31 of his findings.

11. Further the judge at paragraph 21 stated:

"I do not accept it plausible that a criminal gang would abduct a 14 year old child from school, who they have had no dealings with prior to this point, and then order him to deliver a consignment of drugs and entrust the drugs to him and seek to ensure that this is carried out by threats alone. Although there is some support in the material supplied by the appellant to show that criminal gangs recruit and use children there is nothing to suggest that it is done in the way recounted by the appellant."

12. As Ms Yong pointed out, the ARC report at pages 307 and 308 states:

"I have seen a few examples of where people seemed to have fairly stable relationship with their parents but where we still see the classic grooming model at school, through older young people and adults offering them money and trainers. ... A very strong correlation between young British people being groomed into gangs and organised criminal exploitation and the trafficking of males in Albania - a very strong correlation between the kinds of background they come from and these kinds of networks which is why it's not surprising to me that Albanians criminal gangs operate in the UK",

and at paragraph 2.2 on page 308 of the report:

"Alongside what I've mentioned on the grooming process I have seen quite severe levels of violence to break down young men and make them as compliant as possible. I've had a few young men disclose quite extreme forms of physical violence and abuse, lots of threatening with weapons."

13. In essence, the background of the country evidence needed to be considered far more closely against the account of the appellant and detailed reasoning given for the rejection of the appellant's account together with a consideration of the medical report when assessing credibility. That is not to say that the medical report will not come under some scrutiny and the Rule 24 notice of the Secretary of State referred to **JL (medical reports-credibility) China [2013] UKUT 145 (IAC)** although Mr Jarvis placed no emphasis on that at this stage.

14. The Home Office Country Policy and Information Note Albania, July 2017 refers to the Gorani tribe as an Islamic ethnic group which inhabits the Gora region located in Albania which considers itself a separate ethnic group, see section 10. They are not officially recognised as a minority group. There were directions in the file indicating quite specifically that criminality was not to be relied upon and rather ethnicity, but the direction of the case changed once before the First-tier Tribunal and thus the position was rather confused. I note from the determination of the Judge that his Gorani ethnicity was not relied upon, but Ms Yong argued it was relevant to the overall consideration of the appellant being bullied and thus vulnerable at school. This may be an issue which is relevant to the overall determination and needs to be considered but I make no criticism of the judge in this respect.
15. I find there is a material error of law in the decision, not least that the judge failed to fully consider the ARC report against the evidence of the appellant or in this case follow the approach in Mibanga [2005] EWCA Civ 367 to consider the evidence holistically including the medical report rather than considering it as an add-on after he had made his findings on credibility.
16. With the agreement of the parties the matter will be remitted back to the First-tier Tribunal for a full hearing.
17. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed *Helen Rimmington*

Date 25th September 2020

Upper Tribunal Judge Rimmington