Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08113/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 3 January 2020	**on 30 January 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SM
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Sood instructed by Goodfellows Solicitors.
For the Respondent: Ms Bassi Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge C J Woolley ('the Judge') promulgated on 7 October 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a male citizen of Albania born on 13 September 2001 who claimed international protection in the United Kingdom.
3. Having considered the documentary evidence and having had the benefit of seeing and hearing oral evidence being given by both the

appellant and his witness the Judge sets out findings of fact from [26] of the decision under challenge.

4. The Judge accepts the appellant should be classed as a vulnerable person and treated him accordingly in accordance with the Joint Presidential Guidance Note No 2 of 2010.
5. The appellants nationality was not in dispute [38] and the appellant has been found to be a victim of modern slavery in the Conclusive Grounds decision. The credibility of the appellants account was not challenged before the Judge which was that the appellant was forced to beg by his father from the age of 5 or 6, was able to go to school for 8 years although only for one day a week, that his father forced his mother and sister to beg, his father was then pressurised for repayment of his debts by his creditors in March 2017, and that the appellant was taken to Belgium to beg by his father. The appellant claimed they slept on the streets or with other refugees, but that he managed to escape and came to the UK as he knew his father could not follow him here. The appellant claimed to have no contact with his family, except a sister in the UK, since leaving Albania and Belgium.
6. The Judge took proper note of the report into the appellant's mental health [40].
7. At [43] the Judge notes that as the appellant's account has been accepted in its essential points and so the question to be asked is whether he will face a real risk on return to Albania. The appellant claimed to face such a risk from his father and that he would not be able to access support from the Albanian authorities. The Judge notes there was no evidence the appellant would be at risk from anyone else in Albania, such as a gang [43].
8. The Judge notes the non-exclusive factors identified in TD and AD (Albania) [2016] UKUT 92 which may assist in determining whether a victim of modern slavery will be at risk of persecution and whether they will be able to access sufficiency of protection from the authorities in Albania [44]. The Judge sets out findings upon these matters between [45 – 50].
9. Having assessed the evidence the Judge concludes the appellant last saw his father in Belgium and cannot give evidence as to where his father now is. The Judge specifically finds the appellant had not established that his father is back in Albania and as such the appellant will not face any risk of persecution from this nonstate actor especially since he had not described any other risk apart from his father if in Albania [51]. Although that is the Judge's primary finding the Judge considers the matter in the alternative is if the appellant's father is back in Albania concluding, for the reasons set out in [52], that the Albanian police will be able to offer protection against any attempts by his father to re-traffic the appellant.
10. In relation to the appellant's medical condition the Judge finds there will be sufficient mental health treatment available in Albania [53].
11. The Judge also finds the appellant does not meet many of the risk factors identified in TD and AD.

12. The Judge also considered the issue of internal relocation at [55 – 58] noting that whether internal relocation is reasonable depends upon the particular characteristics of the victim in relation to a person who has been found to be a former victim of trafficking, such characteristics to include the fact they may be suffering trauma. The Judge concludes that having considered the appellant's characteristics it will be possible for him to reintegrate into any part of Albania, that his father has not been shown to have particular influence within Albanian society and there was no evidence he could use any contacts to trace the appellant. The Judge finds the appellant will be able to access mental health treatment wherever he goes in Albania and to support himself and make a life of his own independent from his family such as to make internal relocation reasonable if he was at risk in his home area.
13. The Judge dismisses the appeal on protection grounds pursuant to Articles 2 and 3 ECHR, in line, at [60], the Article 3 health claim between [61 – 67], the claim for Humanitarian Protection between [68 – 69], the human rights claim pursuant to paragraph 276ADE [71 – 73], and Article 8 ECHR outside the Rules between [74 – 86], resulting in the conclusion the respondent's decision is proportionate.
14. The appellant sought permission to appeal alleging a number of concerns as set out in the grounds seeking permission to appeal.
15. Permission to appeal was granted by another judge of the First-Tier Tribunal the operative part of the grant being in the following terms:

> "The appellant had been accepted as a victim of trafficking as he had been made to beg by his father in Albania and Belgium. The Judge found at [50] that there will be an adequate support network available to the appellant on return but arguably failed to give adequate reasoning for this finding, especially as the appellant had been diagnosed with PTSD and associated conditions as accepted by the Judge at [47] and which had been found to be severe. Arguably within the body of the determination there is a failure to engage with the totality of the evidence in consideration of the issue of return and arguably insufficient weight was given to the evidence that the appellant had only turned 18.

Error of law

The submissions

16. Mrs Sood, in her skeleton argument, submitted there was no consideration by the Judge of the fact the appellant was an unaccompanied minor on arrival or of the fact that such individuals are more susceptible to mental health problems. It is also argued the Judge in rejecting prospective risk in Albania and the impact on the appellant's mental health fails to analyse the level to which the appellant's current stability is dependent upon the support of the family and other bonded networks. The Judge is also criticised for focusing upon generic country information and case law with no reference to KA (Afghanistan) v Secretary of State for the Home

Department [2012] EWCA Civ 1014 or KA (Afghanistan) [2019] EWCA Civ 914.

17. It is further submitted there is no reference to the relevant age that an adolescent ceases to be a state's responsibility by reference to KA decided in 2012. The central issue to be determined in that appeal was whether on the evidence it could properly be concluded that the children had family in Afghanistan who are willing and able to receive and protect them. There is also said the failure to discharge an obligation to trace family or investigate support was relevant.
18. The Judge is also criticised for although he accepts there was evidence of mutual familial relationship between the appellant and his foster family the Judge failed to analyse its seminal significance. The appellant asserts he has family life recognised by article 8 with the foster family which should have been properly factored into the proportionality balancing exercise. Mrs Sood asserts there was clear evidence of a continuing relationship between the appellant and the host family and that the host family had asked for a 'Staying Put' program to be put in place to enable the appellant to remain in their home past the age of 18. It is also argued the appellant has local connections with the local gym and youth groups and is viewed as a valid member of that community to the extent that he is settled in the wider community with ties and friends which are relevant to his article 8 claim.
19. Mrs Sood submitted the current case is based upon the appellant's mental health, his stability and his strong sense of family life, which deserves significant weight when set against the legitimate public interest.
20. It was submitted it was not clear whether extended family will go to assist the appellant and that the fact the appellant's father is either inside or out of Albania is not relevant. The father is the head of the family in Albania and the decision broke the appellant up from his family network. It is argued in that respect Judge did not do enough.
21. It was submitted the appellant requires further treatment to assist with his mental health issues.
22. It was submitted the Judge failed to undertake a proper analysis of the claim pursuant to paragraph 276 ADE and that the Judge needed to do more by reference to KA. Mrs Sood submitted there is no certainty in the availability of treatment in Albania.
23. When asked on what basis it was suggested the decision falls outside the range of those available to the Judge on the evidence, Mrs Sood submitted this was as a result of the decision being irrational.
24. On behalf of the Secretary of State Ms Bassi submitted the Judge had assessed availability of return, found the appellant would receive treatment, and made findings regarding the status of the family. It was submitted the key issues in the appeal were properly considered by the Judge and that it was open to him to find there are proper facilities and treatment available to the appellant on return to Albania.
25. Ms Bassi submitted clear findings were made concerning the Article 8 aspects and that it was necessary to read the decision as a whole

which demonstrates the friendships were taken into account. It is submitted the Judge properly considered availability of treatment and the appellant's health issues.

26. Ms Bassi submitted the Judge properly approached the decision making in accordance with Razgar and deals with 276ADE at [71 – 72] and that the decision should stand.
27. In response Mrs Sood submitted the Judge needed to look at matters more closely especially regarding the nature and concentration of family life and integration of the appellant in the United Kingdom.
28. Ms Sood confirmed availability of treatment was not challenged by asserted the nature of the treatment was not properly considered by the Judge. It was not clear from the findings whether extended family can assist which should have been taken into account.
29. Mrs Sood submitted the fact the appellant's father may be in or out of Albania was not relevant as he is head of the family in Albania which raises much deeper questions. It was again submitted the Judge did not do enough.

Discussion

30. I agree it is important in this case to read the determination as a whole. It is a very detailed document in which the Judge makes clear findings in relation to the facts having recorded both the nature of the appellant's claim, submissions, and findings of fact from [26]. Those findings are broken down into subparagraphs dealing with relevant issues.
31. The Judge clearly considered the evidence with the required degree of anxious scrutiny and adopted a fair and balanced approach to assessing the merits of the case. The appellant's claim was found to be credible meaning the challenge can only be the Judge's assessment of any risk the appellant will face on return or in relation to whether the decision to remove him from the United Kingdom is proportionate.
32. The Judge specifically considers whether any support network will be available to the appellant on return at [50] finding that there would be an adequate support network available on return and at any time thereafter. This has not been shown to be a finding outside the range of those available to the Judge on the evidence.
33. The Judge gives adequate reasons in support of the finding the appellant is not entitled to succeed under the Immigration Rules. The rejection of the claim pursuant to paragraph 276 ADE is also adequately reasoned [71 – 73].
34. The Judge adopts a structured approach to assessing the human rights aspects of the appeal.
35. Contrary to submissions made the Judge clearly considered the relationship between the appellant, his sister in the United Kingdom, and his foster carers. At [77], in which the Judge was considering whether the proposed removal will be an interference by a public

authority with the exercise of the appellant's right to respect for his private and family life, the Judge writes:

> "the appellant has been in the UK since 2017. He has been cared for by his foster parent find that they have built up a very strong bonds. He has a sister in the UK who is close to him, even though they live a distance apart and there are no current plans for them to live together (she lives in South London and the appellant in Bristol). Both his foster carer and his sister attended court to give evidence about the family ties they have with him, and I was also referred to correspondence from other people to that effect. The appellant has been studying in the UK. I accept that the appellant does have a private and family life in the UK.
>
> I find that the proposed removal of the appellant will interfere with the family and private life he enjoys in the UK as this will remove him from his foster carer and sister, and also from his studies in the UK."

36. It is not made Judge was required to do more. The Judge was not required to set out findings in relation to each and every aspect of the evidence provided the same has been taken into account which, I find, it clearly was in this appeal. The conclusion of that analysis is that article 8 is engaged making the issue in the appeal that of the proportionality of the respondent's decision.

37. The Judge sets out his conclusions on the proportionality exercise at [84 – 85] in the following terms:

> Overall conclusion on the proportionality exercise
>
> 84. Answering the questions put in **Agyarko** and **Hesham Ali** I find that the objective of the measure (namely the refusal of further leave to the appellant in the interests of legitimate immigration control), is sufficiently important to justify the limitation of any private and family life rights of the appellant, and that the measure of refusing his application is rationally connected to the objective of legitimate immigration control in the economic interests of the UK. I find that a lesser measure could not have been employed. I find that the importance of legitimate immigration control outweighs the rights of the appellant which I have summarised above. Applying the balance sheet approach it is clear that the countervailing factors do not outweigh the importance attached to the principle of legitimate immigration control. The appellant may face some difficulties on return to Albania after having been in the UK for two years, but the fact that this is so does not mean that his article 8 rights are thereby being breached. The appellant has not produced a "a very strong or compelling" case (as per **Agyarko**) so as to outweigh the public interest in removal.
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> Overall conclusion on article 8
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> 85. Putting all the factors into the balance, I find that the interests of the appellant in the UK do not outweigh the interests of immigration control. I find that the balance does not come down in favour of those rights as against the principle of legitimate immigration control. I find that the hardship consequent on refusal of leave to remain does not go far enough beyond the baseline to make removal a disproportionate use of lawful immigration controls. The appellant can reasonably be expected to return to Albania where he could continue his life. The appellant can be expected to reintegrate into that country. Any obstacles or difficulties

> in removal do not go beyond matters of choice or inconvenience. I find that the interference with the appellant's right to a private and family life is not of such a level as to breach those rights and that the decision to refuse leave to remain is therefore proportionate under article 8 of the European Convention. It follows from this that the appellant cannot meet the test in GEN 3.2 either, namely that unjustifiably harsh consequences would result to the applicant from the refusal.

38. It is settled that with a properly conducted proportionality exercise such as this a challenger and needs to establish public law error in the Judge's decision. Although Mrs Sood submitted the Judge's decision is irrational such claim is not made out on the facts of this appeal. No legal error is established in the Judges findings or conclusions.
39. Article 3 health issues have been adequately considered as have the rights of others in the UK.
40. The appellant has made friends in the UK and benefitted from a loving and supportive foster placement and he and others clearly do not want him to have to return to Albania. Whilst understandable that is not the legal test.
41. It is only if the Judge was found to have made an error of law and his decision set aside that the Upper Tribunal could substitute a decision of its own to either allow or dismiss the appeal. As no such error has been found in this carefully considered decision the Upper Tribunal cannot interfere any further.

Decision

42. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

43. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated the 23 January 2020