



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

Appeal Number: PA/13741/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 10th February 2020**

**Decision & Reason Promulgated
On 5th March 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

AA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Laughran, instructed by Islington Law Centre
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as A A. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. AA, an Albanian citizen, arrived in the UK on 13th September 2016 aged 15. On 15th September 2016 the Competent Authority found there were reasonable grounds to believe the appellant was a victim of trafficking. On 7th June 2018, the Competent Authority made a negative conclusive grounds decision on the balance of probabilities.
2. The appellant's appeal against the decision of the respondent dated 21st November 2018 refusing his international protection/human rights claim was dismissed by First-tier Tribunal judge Andonian for reasons set out in a decision promulgated on 2nd September 2018.
3. Permission to appeal the First-tier Tribunal decision was given on 6th November 2019 and hence the appeal came before me.

Grounds of appeal

4. The appellant was granted permission to appeal on the following grounds:

Grounds 1 and 2

5. That the First-tier Tribunal judge had erred in law in failing to have had any regard to the report by country expert Dr Tairaj.
6. The First-tier Tribunal judge, in a decision running to 27 pages, refers in [4] to being required to consider reports prepared by "various experts" regarding the appellant's PTSD and

"...also the report by other experts such the expert on the issue of trafficking and re-trafficking in Albania who had provided the report on instructions from the appellant's current legal advisors and had based it on the documentation received from them which she had considered thoroughly but without interviewing the appellant, and other reports that had been provided by experts based on material received by the appellant's representatives."

7. There is a summary of part of a trafficking report from Christine Bedoe, but it is unclear to what extent he accepts that report or whether he places any weight upon it. The judge's lengthy reference to the appellant's credibility and the findings he has already made, are referenced to unspecified reports in a curious manner as possibly adding to his credibility if the appellant had been found credible but that in his view the appellant had lied. The judge makes no specific reference to the report by Dr Tairaj either in summary form or at all.
8. The findings by the judge on the appellant's credibility have not been taken in the context of the expert reports provided. The judge does not state why he has failed to consider the appellant's evidence in the context of the reports or why he has ignored the reports when reaching findings. The judge has erred in law.

Ground 3, 4 and 5

9. These grounds refer to the weight given by the judge to the evidence regarding the Red Cross and the appellant's journey through Belgium. It is quite difficult to discern from the First-tier Tribunal judge's decision exactly what he is stating but overall it appears that the findings he reached, such as they can be discerned, were findings open to him on the evidence he considered but that they are infected by the credibility findings made without taking account of the expert reports in reaching those findings. It may be that the findings in regard to the Red Cross are sustainable although it is unclear on what basis the judge placed such weight upon that evidence given the appellant's vulnerability and the appellant's overall account, given the expert reports.
10. Given the credibility findings are infected by error of law, I am satisfied these findings are unreliable irrespective of the fact that it is unclear why the judge placed such weight upon them.

Ground 6

11. In addition to making findings on credibility in isolation from the medical and other expert evidence, the judge has failed to provide reasons for his finding that the appellant's core account of being forced to look after cannabis plants and sexually abused was not credible. He has not related that finding to the earlier finding of the applicant's credibility regarding contact with his family and he fails to consider the account in the context of the evidence regarding Albania. The judge has erred in law in failing to give reasons for his decision.

Ground 7

12. The appellant relies upon a description of the respondent having rejected that there were reasonable grounds he was a victim of trafficking as indicative of a lack of anxious scrutiny by the judge. The judge has not expressed himself carefully or precisely, but the error is an error of description and not an indication of lack of anxious scrutiny.

Overall

13. The First-tier Tribunal judge, although purporting to reach a decision on the core of the appellant's claim, failed to make an adequately reasoned decision. The judge has failed to give reasons for rejecting the core of the appellant's claim, has made adverse credibility findings without considering the expert medical, country and trafficking experts and fails to take an holistic decision.
14. I set aside the decision of the First-tier Tribunal to be remade, no findings preserved.

Future progress of the appeal

15. Although the appellant had an appeal before the First-tier Tribunal, that appeal did not adequately deal with the core facts of his claim. There have been no sustainable findings of any kind. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
16. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states, when a First-tier Tribunal decision is set aside:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case, the extent of the judicial fact-finding is total, and I am therefore satisfied that it is appropriate for the appeal to be remitted to the First-tier Tribunal to be remade, no findings retained.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

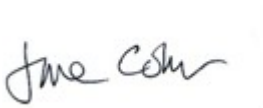
I set aside the decision and remit the hearing of the appeal *de novo* to the First-tier Tribunal.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

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

Date 24th February 2020



Upper Tribunal Judge Coker