Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00867/2020

THE IMMIGRATION ACTS

Considered on the papers (P)	**Decision & Reasons Promulgated**
On: 17 February 2021	**On 03 March 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

EM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Meah, promulgated on 6 October 2020. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 30 October 2020.

Anonymity

2. No direction was made previously, however out of an abundance of caution, given that this is a protection matter, I have made such a direction below.

Background

3. The appellant applied for asylum in the United Kingdom on 6 March 2015, aged 15. That claim was based on the appellant's fear that he would face mistreatment and a lack of support following the death of his primary carer. That application was refused but the appellant was granted leave to remain as an unaccompanied asylum-seeking child until 4 January 2018. The appellant

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withdrew his appeal against that decision. On 11 December 2017, the appellant applied for further leave to remain on the same basis as before and also made reference to a risk of trafficking. That claim was refused in a decision dated 15 January 2020.

4. The detailed reasons for refusal ran to some 13 pages. In refusing the claim, the respondent came to the view that the appellant had provided a false identity and account of events. The respondent decided that the appellant could obtain effective assistance from the Albanian authorities should he be at risk of trafficking.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge heard oral evidence from the appellant and submissions from both parties. The judge found the appellant was an unreliable witness and dismissed his appeal on all bases.

The grounds of appeal

6. The grounds of appeal were fourfold. Firstly, it was argued that the judge took an erroneous approach to the appellant's credibility and the export report. Secondly, the judge had erred in rejecting the appellant's account on the basis that it was inherently implausible. Thirdly, it was submitted that the judge's aforementioned errors infected his assessment of the Humanitarian Protection/Article 3 claim. Lastly, there was said to be a failure to provide adequate reasons under Article 8.

7. Permission to appeal was granted on the following basis:

> *"2. The crux of the grounds is that the judge erred in first making adverse credibility findings and then considering a country expert report.*
>
> *3. It is true that the judge concluded first, that the appellant's account was not credible, and then went onto consider the country expert report. Having made adverse credibility findings, the judge stated that the country expert report could not take matters further. Procedurally, that does appear to be the wrong approach. Whether the judge would have arrived at a different conclusion had the correct procedure been followed is debateable, but must be explored further."*

8. Permission was not refused on any ground.

9. The respondent's Rule 24 response was received on 6 November 2020. In short, the respondent did not oppose the appellant's application for permission to appeal and invited the Tribunal to remit the appeal to the First-tier Tribunal for a fresh hearing on all issues.

Procedural matters

10. Directions were emailed to the parties on 4 December 2020. The said directions communicated that a provisional view had been taken that the matter could be decided without a hearing and invited written submissions regarding whether the First-tier Tribunal made an error of law and whether that decision should be set aside. The parties were further invited to submit reasons if it was considered that a hearing was necessary.

11. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may make any decision with or without a hearing but must have regard to any view expressed by a party when deciding whether to do.

12. The appellant's response was sent by email on 5 December 2020. In essence, counsel for the appellant was of the view that a hearing was not necessary provided the Tribunal agreed with the respondent's concession, allowed the appellant's appeal and remitted the matter to the First-tier Tribunal for a de novo hearing.

13. On 8 December 2020, the Upper Tribunal received the respondent's reply which said the following. "*Further to the attached Rule 24 response, the respondent does not see the need for a hearing to determine the error of law in this case*."

14. I have considered the judgment in *JCWI v The President of the Upper Tribunal* [2020] EWHC 3103 (Admin) and conclude that the appellant will not be disadvantaged by the error of law issue being decided without a hearing in this instance for the following reasons. The appellant's representatives raised no objections to the proposed paper consideration in certain circumstances which have been met. The respondent conceded the grounds of appeal as a whole, a concession which I have accepted below. In addition, the matter is to be remitted to the First-tier Tribunal for a de novo hearing before a different judge.

Decision on error of law

15. A fundamental issue to be determined by the First-tier Tribunal was whether the appellant had been dishonest as to his identity. In the decision letter at paragraph 11, the Secretary of State relied on a letter from the British Embassy in Tirana which stated that there were no Albanian nationals registered on the National Civil Register of Albania with the details given by the appellant for himself, his parents or siblings. The appellant relied upon expert evidence which put forward an explanation as to why this might be the case.

16. The grounds argue that the judge appeared to have completed his assessment of the credibility of the appellant's claim prior to considering the expert evidence. It is worth noting that the judge appeared to have directly himself appropriately, in that at [16] he stated that he had taken into account all the evidence and submissions and at [33] he said of the expert evidence, "*even taking the report at its highest, and when viewing it independently, and distinct from the incredibility finding I have made against the appellant, I do not find that its contents are capable of persuading me that the appellant is speaking the truth …"*

17. Nonetheless, the way in which the decision and reasons is set out demonstrates that the judge rejected the credibility of the appellant's account between [20-28] before assessing the expert evidence from [29] onwards.

18. The judge's use of the phrase "*Turning now to the expert reports,*" at [29] onwards, gives the distinct impression that the report in question was not taken into account in the assessment of the appellant's claim, applying *Mibanga* [2005] EWCA Civ 36 at [24]

> *"Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on*

credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come. "

19. There was also an absence of engagement with the conclusion of the expert given that the judge was satisfied with the expert's credentials [30]. The explanation provided by the expert for the appellant and his family not appearing on the National Civil Register was that the Registry was digitalised in 2008, whereas the appellant's family had disappeared in 2004. In addition the expert opinion was that the said Register was not infallible. While the judge commented on these issues at [20-22], he mischaracterised it as being a "*line of argument*" rather than expert evidence. The judge did not return to the issue when he turned to look at the expert report at [29] onwards.

20. The judge's error in not considering the expert evidence in the round, was material as it formed one of the two principal reasons for rejecting the credibility of the appellant's account. The other reason was the judge's conclusion that the appellant's arrangements for travelling to the United Kingdom were inherently implausible which is a problematic finding given the consistent account provided by the appellant as well as that this is a somewhat peripheral issue.

21. In view of my comments above, I do not propose to address grounds 3 and 4. I find that the First-tier Tribunal judge made material errors of law, as set out in grounds 1 and 2, which renders the decision unsafe.

22. The parties are both of the view that remittal to the First-tier Tribunal is the appropriate course. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his protection appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Meah.

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 their 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.

Signed: Date 17 February 2021

Upper Tribunal Judge Kamara