Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03184/2020 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 19th November 2021	**On 20th December 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

L S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Islam, Fountain Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The appellant is a national of Albania born in 1981. He claimed asylum on 7 December 2018 and his application was refused by the respondent on 17 March 2020. He appeals against the decision of First-tier Tribunal Judge M R Oliver, dated 16 March 2021, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Parkes on the ground that the judge arguably erred in law in failing to consider the Joint Presidential Guidance note number 2 of 2010 or the case law on vulnerable witness. There was no discussion of the appellant's mental health issues. Permission was granted on all grounds.

3. The grounds argue that the judge failed to adequately explain why the blood feud would not pass to the appellant after his father's death; the judge failed to follow country guidance; the judge failed to consider the psychologist report and the guidance on vulnerable witnesses; the judge wrongly required corroborative evidence of the attack in 2008; and the judge failed to properly assess proportionality in relation to Article 8.

Submissions

4. Mr Islam submitted the judge should have considered the guidance on vulnerable witnesses even if the matter was not raised by the appellant's representative. There were two specific reports which the judge failed to consider: the report of Michael Smyth (psychologist) and the report of Dr Pavlidou (consultant psychiatrist). There was no mention of the risk of self-harm/suicide or protective factors in the decision. The judge should have considered family support and these risks when assessing Article 8.

5. Mr Islam submitted the judge failed to give sufficient reasons for why he found the attack in 2008 did not take place. The judge failed to consider the appellant's account given in his statement and did not engage with why the appellant's father was not attacked.

6. Mr Islam submitted the judge erred in his assessment of family life in failing to appreciate the children were qualifying children. The appellant lives in London and his wife and children live in Birmingham. The appellant was reconciled with his wife and spent time with his children. The judge failed to consider the photographic evidence and letters from the school. Paragraph EX. 1 applied and the judge's assessment of Article 8 was inadequate.

7. Ms Everett submitted there was no material error of law. The judge referred to both reports which were prepared when the appellant was in detention and addressed that issue. There was no application to treat the appellant as a vulnerable witness and there were no mental health issues disclosed in the appellant's asylum interview. The judge did not make

findings which were tainted by a misunderstanding of the medical evidence.

8. Ms Everett submitted the appellant's evidence was not confused and no reasonable adjustments were required. The appellant was not unfit to give evidence and there was nothing in the evidence to show that the judge had misunderstood the appellant's claim such that the judge could have interpreted it differently if not for the appellant's mental health issues.

Conclusion and reasons

9. The medical evidence relied on by the appellant was not in the court file. Mr Islam sent copies of the relevant evidence by email on 19 November 2021 at 3.45pm.

10. The medical report of Michael Smyth is dated 20 January 2019 and was prepared when the appellant was detained in Harmondsworth IRC. Mr Smyth was of the opinion the appellant was suffering from major depressive disorder with psychotic features at that time. There was also a serious risk of self-harm and suicide. In Mr Smyth's opinion the appellant was at risk if his detention continued and he was unfit to fly.

11. The appellant was released from detention on 23 January 2019. The report of Dr Pavlidou is dated 28 January 2019. The appellant described his detention as highly traumatic especially when he found out that his father had died in December 2018 and he was not allowed to meet with his family to grieve. This led to an exacerbation of his anxiety symptoms. On examination, Dr Pavlidou concluded the appellant felt hopeless but had no intention to harm himself at that time. The appellant's wife and four children (aged 10, 7, 6, and 2) were protective factors notwithstanding they were separated. The appellant was prescribed anti-depressant medication and referred to primary care psychology by his GP.

12. The GP record dated 18 February 2019 stated the appellant was taking sertraline and was not fit to work. He had no thoughts of suicide or self-harm. The appellant was unsure about his referral to psychology and was given the telephone number of talking therapies if he wished to self-refer. The appellant was aware of the crisis team.

13. I was not referred to any medical evidence after this date and it was not submitted that any further medical evidence was before the First-tier Tribunal at the hearing on 2 March 2021.

14. Contrary to the appellant's grounds and submissions, the judge considered the report of Mr Smyth in some detail at [25] of his decision. He noted the appellant was detained on 4 December 2018 at [22] and released on 23 January 2019 at [26]. The judge also specifically referred to the report of Dr Pavlidou at [27].

15. In addition, there was discussion about the appellant's mental health. At [30], the judge noted the appellant's response in interview on 27 January 2020 that his mental health was 'ok' and he was taking anti-depressants and a sleeping pill. At [31], the judge stated:

> "Asked about his mental health, he related the onset of any problems to the time when he had been drinking heavily and said he now felt better and had decided not to engage with counselling."

16. I am of the view, given the lack of up to date medical evidence and absent an application by the appellant's representative to treat the appellant as a vulnerable witness, there was insufficient evidence before the judge to demonstrate the appellant was currently suffering from mental issues which would affect his ability to give evidence or participate in the proceedings. The grounds and submissions fail to identify any confusion or misunderstanding which could have been avoided had reasonable adjustments been made. I find that any failure to consider the guidance on vulnerable witnesses was not material to the decision to dismiss the appeal.

17. The judge's findings were not inconsistent with the medical evidence. There was insufficient evidence before the judge to show that the appellant was at risk of suicide or self-harm at the date of hearing. The medical evidence did not assist the appellant in establishing very significant obstacles to reintegration on return. In any event, the judge took into account the medical evidence in assessing the appellant's claim as a whole.

18. The judge considered all relevant matters in his assessment of Article 8 and he gave adequate reasons for his conclusions at [56] and [57]. The judge considered the ages of the children and their length of residence. His conclusion that family life was limited was open to him on the evidence before him. On the facts asserted, the best interests of the children could not outweigh the public interest in removal. There was no error of law in the judge's assessment of Article 8.

19. In relation to the remaining grounds, the judge gave adequate reasons for why he did not accept the appellant was attacked in 2008 at [53]. Notwithstanding the alleged blood feud, the appellant's father remained in Durres, Albania until he died of natural causes in 2018. The judge's finding that the appellant could internally relocate was open to him on the evidence before him. There was no misapplication of country guidance and no requirement for corroboration.

20. I find the judge considered all the evidence in the round and gave adequate reasons for his findings which were open to him on the evidence before him. There was no material error of law in the decision dated 16 March 2021. The appellant's appeal is dismissed.

Notice of decision

Appeal dismissed

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.

J Frances

Signed Date: 10 December 2021
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal I make no fee award.

J Frances

Signed Date: 10 December 2021
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. **A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is “sent’ is that appearing on the covering letter or covering email**