



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001455
First-tier Tribunal No: PA/00506/2018

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 27 February 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MARSEL HOXHA
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 27 April 1999, of Roma ethnicity. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his protection and human rights claim.
2. The appellant entered the UK by lorry on 8 September 2015 and claimed asylum. The basis of his claim was that he feared persecution by his mother's new partner with whom he and his mother were living after his parents separated in 2012. He claimed that his mother's partner used him to deliver drugs to his customers and that he was threatened by him when he refused to continue doing that and subsequently fled the country. The appellant also claimed to be at risk as a Roma.
3. The appellant's claim was refused by the respondent on 27 December 2017 on the basis that his account was inconsistent and lacking in credibility and it was not accepted that he was at risk as a Roma.
4. The appellant appealed against the decision and his appeal came before First-tier Tribunal Judge Davey on 13 May 2021. In addition to the matters relied upon

previously in relation to his claim, the appellant also claimed to have overheard his mother's partner discussing trafficking him for his human organs, which was an additional reason for him fleeing Albania. Judge Davey did not find the appellant's account credible and he found in any event that the treatment the appellant described did not amount to persecution. He concluded that the appellant was at no risk in his home area, but could relocate to another part of Albania in any event and would be able to access state protection. He accordingly dismissed the appeal on all grounds.

5. The appellant sought permission to appeal to the Upper Tribunal against Judge Davey's decision on three grounds: firstly, that the judge had made an erroneous finding that the ill-treatment of the appellant by his mother's partner was not persecution; secondly, that the judge had failed to give reasons for his findings on the availability of sufficiency of protection and internal relocation; and thirdly, that the judge had failed to give reasons for rejecting part of the appellant's account.

6. Permission to appeal was granted in the First-tier Tribunal.

7. In a Rule 24 response dated 25 February 2022, the respondent stated as follows:

"The respondent does not oppose the appellant's application for permission to appeal - the respondent accepts the FTT gave no reasons for why it did not find the appellant's account credible that he would have his organs taken from him; the FTT merely stated a conclusion without explaining it. Similarly, there was no engagement with the background evidence the appellant relied on to say neither internal relocation nor state protection would avail the appellant."

8. As a result of that concession, the appellant's solicitors were invited to confirm whether they agreed to the error of law matter being determined on the papers rather than by way of an oral hearing. In an email of 15 February 2023 they agreed that the matter could be dealt with on the papers, provided the outcome was that the appeal be remitted to the First-tier Tribunal for a fresh hearing. The respondent's rule 24 response indicated that the respondent remained neutral on the matter, although observing that the case had been heard and dismissed by the First-tier Tribunal previously. In the absence of any further information about the earlier decisions made by the First-tier Tribunal and the reasons for the appeal being re-heard I agree that, given the nature and extent of the fact finding necessary for the decision to be re-made, it is appropriate to remit the case to the First-tier Tribunal for the appeal to be heard again before a different judge.

Notice of Decision

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, with no findings preserved, pursuant to section 12(2) (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Davey.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 February 2023