IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001907
FtT No: HU/50195/2020
IA/00648/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

EP
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, Counsel, instructed by AG Law
For the Respondent: Ms V Young, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 28 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.
No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals against the decision of First-tier Tribunal Judge Atkinson (the judge), promulgated on 3 August 2021 following a hearing on 20 July 2021. By that decision, the judge dismissed the appellant's appeal against the respondent's refusals of her protection and human rights claims.

2. The appellant is a citizen of Albania. She is married to an Albanian citizen and the couple have a daughter, born in 2019, who is also Albanian. The husband and daughter have been and continue to be dependents on the appellant's claim.

3. The essence of the appellant's protection claim was predicated on her and her husband's political activities in Albania, specifically their involvement in a right-wing party called Fryma e Re Demokratike (FRD). It was said that as result of these activities, both the husband and the appellant would be at risk on return. In respect of the human rights claim, specifically Article 8, it was said that problems arising from the political activities, together with other factors, would render removal from the United Kingdom disproportionate.

The judge's decision

4. The judge found the appellant to have given a credible account of events and accepted the existence of a subjective fear: [35]-[39]. At [40], the judge summarised the essential aspects of the appellant's protection claim, stating that, "[t]he appellant claims that she and her husband are at risk of being imprisoned by the authorities in Albania on the basis that the authorities use the criminal justice system to bring. It is and in prison political opponents…"

5. The well-foundedness of the claim was then rejected for reasons set out at [42]-[49]. In brief summary, these were:

    (a) the evidence did not show that the husband's father had been prosecuted for political reasons: [42];

(b) the evidence did not show that the Albanian authorities used the criminal justice system to target political opponents: [43];

(c) the expert evidence did not specifically support the appellant's claim: [44]-[45];

(d) neither the appellant nor her husband had been the subject of harm whilst in Albania: [46]-[47];

(e) aspects of the appellant's claim were speculative and certain influences could not be drawn: [48]-[49].

6. The judge concluded that there was no risk of persecution.

7. In respect of Article 8, the judge noted the submissions made in the appellant's skeleton argument and that the issues contained therein had not been elaborated on at the hearing: [56]. The judge concluded that there were no very significant obstacles to the appellant been able to reintegrate into Albanian society: [57]. On a wider view of Article 8, the judge took account of the presence of the husband and child and the fact that they would return together. He made reference to the child's best interests. Ultimately, he concluded that removal would be proportionate: [58].

8. Accordingly, the appeal was dismissed on all grounds

The grounds of appeal

9. Two grounds of appeal were put forward. Firstly, it was asserted that the judge had failed to take material evidence into account, namely the threats made by the appellant's husband's uncles (one paternal, the other maternal) as result of the political activities in Albania. Further, the judge had failed to give proper reasons for placing little weight on CCTV evidence which appeared to show the authorities going to her mother-in-law's property on two occasions. Secondly, the grounds asserted that the judge had failed to take material matters into account when assessing Article 8, in particular the presence of a subjective fear, past

discrimination against the appellant's mother, the animosity of the uncles, and the husband's mental health.

10. Permission to appeal was granted in respect of both grounds.

11. Following the grant of permission, the respondent provided a rule 24 response. This opposed the appellant's appeal and submitted that the judge had been entitled to conclude as he did.

The hearing

12. Mr Eaton relied on the grounds of appeal and emphasised and elaborated on the points made therein. He helpfully referred me to specific passages in the witness statements of the appellant and husband which bore on the challenge against the judge's decision.

13. Ms Young relied on the rule 24 response. She submitted that there were no errors of law as regards the protection issues or Article 8. If the judge had erred by not specifically addressing the position of the two uncles, this was not material to the outcome.

14. In reply, Mr Eaton suggested that there may have been an issue in respect of the principles set out in HJ (Iran) [2010] UKSC 31; [2010] Imm AR 729; it might be that the judge was effectively requiring the appellant and/or her husband to conceal their political beliefs. However, Mr Eaton acknowledged that this point was not contained in the grounds of appeal, or in the skeleton argument before the judge.

15. At the conclusion of the hearing I reserved my decision.

Conclusions

16. It is not for me to simply substitute my own view of this case for that of the judge who considered a variety of evidential sources before reaching his decision. Appropriate (but not overly-deferential) restraint should be exercised.

17. Having considered the materials before me with care and taking full account of the helpful submissions from Mr Eaton, I conclude that the judge did not materially erred in law such that his decision should be set aside. My reasons for this are as follows.

18. It is sufficiently clear to me that the appellant's case before the judge was predicated firmly on a claimed risk from the Albanian authorities: [32]-[34], [40], and [50] of the judge's decision and paragraph 26 of the appellant's skeleton argument. The expert evidence was also focused on claimed corruption and failings of the Albanian authorities. On a fair reading of the appellant's and the husband's witness statements, the focus there too was on a risk from the authorities. The claimed political motivation relating to the prosecution of the husband's father was cited as an example of the authorities' ability to target political activists such as the appellant and her husband.

19. Seen in this context, I do not regard the failure of the judge to have specifically addressed the two uncles as constituting a material error of law. The judge made express reference to one of the uncles at [16] and it is sufficiently clear to me that the judge had in mind the contents of the appellant skeleton argument (which included reference to both uncles) and the witness statements of the appellant and a husband (which also made reference to the hostility of those individuals). The uncles were not part of the Albanian authorities. The judge found, and was entitled to have found, that neither the appellant nor her husband had suffered physical harm whilst in Albania at the hands of political opponents "or any other agent": [15] and [47]. The judge reached a clear conclusion that there was no risk from the Albanian authorities and in doing so confirmed that he had considered "the totality of the evidence": [50]. There is no proper basis to indicate that such consideration had not taken place. In all the circumstances, I conclude that the judge addressed the core aspects of the appellant's case as regards past events in future risk and that he was not obliged to *specifically* address the position of the two uncles when setting out his findings, although I am satisfied that he had this aspect of the appellant's claim in mind.

20. As regards the CCTV footage, the judge did have regard to it, albeit that he dealt with the evidence briefly: [49]. In the context of the evidence as a whole, the judge was entitled to conclude that it was insufficient to draw the inference claimed and that it in fact carried little weight.

21. In respect of Mr Eaton's suggestion that HJ (Iran) played a part in this appeal, I disagree. I am satisfied that it was never put forward as part of the appellant's case before the judge, nor was it raised in any way in the grounds of appeal (which stand unamended). It cannot be said to be an "obvious" issue of law in this particular case.

22. Turning to the second ground of appeal, it is right that the judge dealt with Article 8 briefly. I have no reason to find that the judge was wrong to have recorded that the issues set out in the appellant skeleton argument had not been elaborated on at the hearing and it is likely that his brevity was a consequence of that position.

23. The judge was not obliged to rehearse all of the matters dealt with under the protection claim when it came to the Article 8 issue: his previous findings were part of the context in which Article 8 was to be considered. He was entitled to take account of the appellant's significant lived experience in Albania and her strong educational background. The very significant obstacles threshold is high and, in my judgment, it was open to the judge to conclude that it had not been met on the facts of this case.

24. The judge had specific regard to the best interests of the couple's child, as he was bound to do. There is nothing wrong with the conclusion that those interests lay in the child remaining with both parents. In respect of the appellant's husband, the judge was clearly right to have found that the appellant would return to Albania with her husband and their child. There is no express reference to the husband's mental health, but, with respect, there appears to have been very little evidence about this (there is no mention of the relevance of any mental health problems in the skeleton argument) and there had been no suggestion that

relevant treatment would not have been available in Albania. As to the relevance of the subjective fear and any discrimination against the appellant's mother, I note that nothing was said about this in the skeleton argument. In any event, as mentioned previously, the judge was assessing Article 8 in the context of his findings on the protection claim. A subjective fear could not have demonstrated very significant obstacles under paragraph 276ADE(1)(vi), nor could it have rendered removal disproportionate in the circumstances of this case.

Anonymity

25. I have decided that an anonymity direction is appropriate in this case. Protection issues have been in play and, as matters stand, these outweigh the public interest in open justice.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. That decision stands.

The appellant's appeal to the Upper Tribunal is dismissed.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 3 July 2023