



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2024-001772

First-tier Tribunal Nos:
PA/01025/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MH
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H. Gilmour, Senior Home Office Presenting Officer
For the Respondent: In person

Heard at Field House on 26 June 2024

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court

1. The Respondent, to whom I shall refer as the Claimant, is a national of Albania, born on 21.2.05. He left Albania on 30 May 2022 and arrived in the United Kingdom in a small boat on 18 June 2022. He applied for asylum on the basis that he feared moneylenders if returned to Albania, but that application was refused in a decision dated 2 June 2023. He appealed against that decision and his appeal came before the First tier Tribunal for hearing on 8 January 2024. In a decision and reasons promulgated on 6 March 2024, the appeal was allowed.
2. The SSHD sought permission to appeal in time on 14 March 2024 on the basis of the following grounds of challenge:

“Ground One

It is respectfully submitted, that in allowing the appeal FTTJ Zahed errs in failing to adequately consider the evidence before him when reaching a conclusion. As raised in the Reasons for Refusal Letter, the appellants family all remain living in the same area, without issue or reprisal, despite the appellant indicating (WS p11) that threats from the money lenders were aimed at his family with them stating that they would be killed if he failed to pay back the money by May 2022. Given the fact that no actions have been taken against them, it is unclear why the appellant is found to still be at risk, and the FTTJ’s failure to consider this aspect of the appellants evidence has caused the conclusion to be flawed to the extent that it is unreliable.

Ground Two

It is additionally submitted, that in simply accepting the appellants evidence that his father was called to the local police station to sign a document [23-27], (which the FTTJ finds indicates the money lenders influence), the FTTJ fails to consider first of all, how the details of the appellants confidential asylum claim would have been known to the Albanian police, and secondly, whether the influence (if genuine) was in fact localised, associated with one rogue individual, or whether it was likely to extend across Albania, no reasons have been provided for why this might be the case, nor has the appellant provided evidence as to why the individuals would have such influence, as such to find a threat across Albania without more is materially misdirected. It is further submitted, that as the appellant has never complained about the threats, it is unclear how the FTTJ has reached the conclusion that he would be unable to seek protection upon return, either at a different Police Station local to

his home, or following internal relocation if necessary. It is asserted, that the FTTJ appears to have ignored the objective evidence indicated in the reasons for refusal letter, which clearly shows that in such instances, a sufficiency of protection is available, in doing so, it is respectfully submitted, that they err in law."

3. Permission to appeal to the Upper Tribunal was granted by FtTJ Murray on 9 April 2024 in the following terms:

"It is arguable that the FTTJ did not give adequate reasons for the finding that the Appellant's information contained in the Appellant's asylum interview, a confidential document was obtained by the Albanian police and also did not adequately reason the finding that the Appellant was at risk when his family had not experienced harm despite remaining in their home area. It is further arguable that the finding that there is no sufficiency of protection is not adequately reasoned and fails to take the objective evidence into account. Permission is granted on all grounds."

Hearing

4. At the hearing before the Upper Tribunal the Claimant appeared in person. I explained the process that would be followed and this was translated to the Claimant in Albanian through the court interpreter.
5. Ms Gilmour sought to rely upon the grounds of appeal dated 24.3.24 with a focus on ground 2. She submitted that inadequate reasons had been provided by the judge for his material findings. She pointed out that there was substantial background evidence contained in the Home Office bundle before the judge and that, whilst she accepted when making a decision the judge was not obligated to rely on all the evidence, it is trite law that the parties need to know why they have won or lost. She submitted that it is a very brief decision which is not, in itself, erroneous in law, but it is not clear how the judge reached the conclusion he did, which is as at odds with the background evidence. There is no reference in the findings to the background evidence. The judge appears to have accepted everything that the Claimant has said as fact and this was directly at odds with the Home Office CPINs and the contents of the refusal letter.
6. Ms Gilmour submitted that on a fair and holistic reading of the decision it is not clear why the judge had reached those conclusions and on what basis, given the dearth of evidence referred to and the focus on the Claimant's oral account. She

submitted that it was unclear why the decision goes on to refuse the asylum appeal but then allow on Humanitarian Protection grounds and there is no reasoning at [32] whatsoever.

7. Ms Gilmour submitted that this is a material error that infects the decision as a whole and thus she invited the Upper Tribunal to set aside the decision in its entirety since this goes to the core of the appeal.
8. In relation to ground 1 of the grounds of appeal, Ms Gilmour submitted that the grounds are interlinked in terms of adequacy of reasoning. Ground 2 specifically refers to the fact that the Claimant's family live in the same area without reprisal and there is an inconsistency between that and threats which is not addressed in the judge's decision and goes to the core of the claim. It remains unclear from the decision why the Claimant is found to still be at risk as there have been no reprisals against family members.
9. Ms Gilmour's submissions were interpreted to the Claimant who was then invited to make submissions. He stated that in relation to the threats towards his family the moneylenders are after him not his family. He stated that he would be unable to get protection from the state due to the high level of corruption in Albania. In relation to Humanitarian Protection the Claimant stated that he would like to be granted this as he is living in the UK and would like to continue living here and he has just started his life in this country. He stated that he had mentioned in the previous court hearing his fear and that he was unable to mention the money lenders names due to serious fear as once they find out he has given their names they will go after his family.
10. In response to questions from the Upper Tribunal the Claimant stated that so far he does not have any legal representative as he has been dealing with some health issues. Upon being informed that as a person who had claimed asylum he was entitled to legal aid, the Claimant stated that he had been hoping to get legal aid but unfortunately it was not offered. The Claimant stated that he was living in Dover and with Ms Gilmour's assistance it was suggested that the Claimant contact Migrant Help.
11. I found material errors of law for the reasons set out in the Home Office grounds of appeal and Ms Gilmour's submissions and the Claimant was informed that the appeal would be remitted for a hearing *de novo* before a different judge of the First tier Tribunal other than Judge Zahed.

Decision and reasons

12. Whilst the SSHD may have accepted the basis of the asylum claim, it is clear from the refusal decision that the SSHD did not accept that the Claimant would be at risk on return to Albania: *“Although your claim to have had problems in Albania with your fathers’ friends from whom you borrowed money has been accepted, it is considered that you can still return to Albania because sufficiency of protection and internal relocation are available to you.”*
13. I find that the judge materially erred in finding at [28] that the authorities are not willing to protect the Claimant given his (oral) evidence that there is no sufficiency of protection, both in failing to provide reasons for this conclusion and in failing to take into consideration and engage with the evidence submitted in the Home Office bundle asserting that there was sufficiency of protection in Albania.
14. Similarly at [29] the judge materially erred in finding that the Claimant could not avail himself of internal relocation because he would have to register with the local police and he found that the people to whom the Claimant owes money would be able to track him down given the influence they have over the police. There was no evidence in support of this contention other than what the Claimant stated in his oral evidence, recorded at [24] that, after his asylum interview, his father telephoned him and said he was called to the local police station and asked about everything the Claimant had said in his asylum interview and they had a letter with everything that had been said. The difficulty with this is not so much that the police in Albania are corrupt, but that in order for this to happen a UK Home Office official would have had to have been involved and to have provided a copy of the Claimant’s asylum interview to the Albanian police and/or moneylenders, who the Claimant claimed subsequently threatened him by telephone [25]. This is an extraordinary assertion that lacks any evidential or basis or corroboration and is simply unsustainable. It entirely undermines the judge’s acceptance of the Claimant’s credibility.

Notice of Decision

15. The decision of First tier Tribunal Zahed contains material errors of law and is set aside. The appeal is remitted for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman
Immigration & Asylum Chambers

15 July 2024