IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004067

First-tier Tribunal Nos: HU/55648/2023
LH/04028/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

27th November 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE BARTLETT

Between

EA
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr N Ahmed, Evolent Law
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 18 November 2024

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This decision is given orally, following a hearing at Field House where the appellant was represented by Mr Ahmed and the respondent by Ms McKenzie.

2. The appellant is a citizen of Albania born in 1998 who came to the UK in 2014. He claimed asylum on arrival on the basis of facing a risk from the family of a young woman with whom he had a relationship. He claims that the family beat him and threatened to kill him.

3. The appellant's claim was rejected by the respondent and subsequent appeal to the First-tier Tribunal in 2015 ("the 2015 decision") was dismissed. In the 2015 decision, it was not accepted that the appellant had given a credible account.

4. In 2021 the appellant made further submissions that were rejected by the respondent. He appealed to the First-tier Tribunal and his appeal came before Judge of the First-tier Tribunal Thorne ("the judge"). In a decision dated 20 July 2024 the judge dismissed the appeal.

5. The judge rejected the appellant's protection claim on the basis that there was no reason to depart from the 2015 decision. The key findings in respect of the appellant's protection claim are set out in paragraphs 23 to 26 of the judge's decision, where the following is stated:

> "23. In considering this matter I have followed the case of **Devaseelan [2002] UKIAT 00702** and consider that the starting point for my determination of the issue of the appellant's new claim is the determination of the last Immigration Judge in relation to Appellant's previous claim.
>
> 24. The previous Judge determined that Appellant was not a credible witness and his account of why he left Albania was not credible. In addition findings were made that he did not have a genuine and well-founded fear of persecution in Albania.
>
> 25. For reasons given below, after reviewing all of the evidence in the round I conclude that the new material identified above (not before the previous Judge) does not cause me to depart from the previous findings of the last Immigration Judge."
>
> 26. The new psychiatric evidence does not provide independent reliable evidence of the existence of a threat of persecution in Albania. Moreover the Appellant himself is unable to provide clear evidence of why or how his ex-girlfriend's family would do him harm now or why he could not obtain a sufficiency of protection form the state."

6. The judge did not accept the appellant's claim that removing him to Albania would breach Article 3 (for medical reasons) and Article 8 ECHR. As the grounds do not challenge these aspects of the decision, they are not considered further.

7. The grounds argue that the judge erred by failing to consider two psychiatric reports adduced by the appellant when assessing his credibility and whether to depart from the 2015 decision. The grounds also submit that the judge erred by only considering the reports after deciding, for other reasons, that the appellant's account was not credible. This is said to be contrary to *Mibanga* [2005] EWCA Civ 367.

8. The appellant adduced two psychiatric reports. The first was by Dr Agnone, written in May 2021. Dr Agnone concluded that the appellant suffers from adjustment disorder with depressed mood and recurrent depressive disorder. Dr Agnone stated in the report that the appellant had a difficult childhood, including child abuse, bullying, personal threats, violence and social isolation. It is stated

that he saw no other option but to leave Albania to safeguard his personal integrity and his exposure to violent revenge from his girlfriend's relatives.

9. The second psychiatric report, prepared in September 2023, is by Dr Balsubramaniam. The report states that the appellant suffers from a depressive episode of a moderate degree and that "*the causes of this condition are the traumatic incidents that occurred to him in Albania, separation from his family, and his difficulties with the Home Office in relation to his asylum claim".*

10. The premise of Mr Ahmed's submission is that the judge needed to consider the psychiatric reports when assessing the credibility of the appellant's claim about what occurred in 2014 in Albania. We have no hesitation in rejecting that premise. The irrelevance of the reports by Dr Agnone and Dr Balsubramaniam to the question of whether the appellant has given a credible account of what occurred in Albania is highlighted by comparing this case to the case relied on by Mr Ahmed: *Mibanga*.

11. Mr Mibanga was a citizen of the DRC who claimed to have been tortured. He produced a medical report where the expert concluded that some of the scarring on his body was consistent with his claim to have been thrown into a barrel of leeches and to have had electrodes applied to his genitals. Plainly, this expert report, where the expert analysed whether, and the extent to which, Mr Mibanga's scarring was consistent with his account of being tortured, was relevant to the question of whether or not he was tortured.

12. In stark contrast, the reports in this case are not written to assess whether the appellant's current mental health was caused by particular events in Albania; rather, they are reports assessing the appellant's mental health. Even if the reports can be said to be "consistent" with the appellant suffering trauma in Albania, they are of no assistance in ascertaining whether or not that trauma was as a result of being beaten up and threatened by his girlfriend's family, or another traumatic experience (such as his journey to the UK or abuse within his family).

13. Accordingly, we are not satisfied that the evidence of either Dr Agnone or Dr Balsubramaniam is relevant to the question of whether or not the appellant has given a truthful account about events in Albania. It follows, therefore, that a failure to consider the reports in the context of considering the credibility of the appellant's account would not be legally erroneous.

14. However, even though the reports did not need to be considered when assessing credibility, the judge did in fact consider them, stating (in paragraph 26) that they do not provide "*independent reliable evidence of the existence of a threat of persecution in Albania*". Mr Ahmed did not argue that the judge was wrong to conclude that the reports were not independent reliable evidence of persecution; rather, he argued that the judge erred because this finding was made **after** already deciding credibility.

15. We are not persuaded that this is the case, for the following reasons. First, there is no requirement to address expert evidence before other considerations. This is explained in *QC (verification of documents; Mibanga duty) China* [2021] UKUT 00033 (IAC), the headnote to which states "*the actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere*".

16. Second, although the finding in respect of the reports (in paragraph 26) is sequentially after the conclusion on credibility (in paragraph 25), paragraph 25 starts by stating "*for the reasons given below*", which indicates that the finding in paragraph 26 is part of the assessment in the round giving rise to the conclusion on credibility in paragraph 25. Accordingly, even if the expert reports are relevant to credibility, the judge has not fallen into the error described in the grounds because, consistently with the approach required by *Mibanga*, he did not reach a conclusion on credibility before having regard to the expert evidence.

Notice of Decision

17. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26.11.2024