



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01401/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 9th October 2017

Decision & Reasons Promulgated
On 17th October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

EE

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Imamovic of Counsel, instructed by Qualified Legal Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Abebrese of the First-tier Tribunal (the FtT) promulgated on 7th April 2017.
2. The Appellant is a male Albanian citizen who arrived in the UK illegally on 20th May 2016. He claimed asylum on 3rd August 2016 after having been found working illegally and being served with removal directions.

3. The asylum claim was based upon his fear of a police officer in Albania. The Appellant's claim was that he had been in a relationship with the police officer's sister and as a result had been attacked and threatened.
4. The application was refused on 31st January 2017. The Respondent did not accept the Appellant had given a credible account. It was not accepted that he had problems with his girlfriend's stepbrother who was a police officer. The Appellant had claimed that he had been arrested and detained by the police when seeking to make a complaint against his girlfriend's stepbrother and this was not accepted.
5. The appeal was heard and dismissed on 10th March 2017.
6. The Appellant applied for permission to appeal. The grounds are summarised below. It was contended that the FtT at paragraph 12 had recorded that the Appellant was not credible but had failed to give sufficient reasons for that finding.
7. At paragraph 15 the FtT had found documents submitted by the Appellant to be self-serving but had failed to properly assess these documents and it was contended that the finding that they are self-serving is irrational.
8. The FtT at paragraphs 13-15 had found that the authorities in Albania could provide effective protection, but had failed to take into account EH (blood feuds) Albania CG [2012] UKUT 348.
9. The FtT had erred in finding that a reasonable relocation option was available to the Appellant, as the FtT had failed to take into account the persecutor was a police officer and the FtT had failed to consider the Respondent's own guidance which indicated that the Appellant would have to register if he relocated to a new area. Permission to appeal was granted by Judge Brunnen of the FtT in the following terms;
 - "2. The grounds on which permission to appeal is sought submit that the judge erred in law by failing to give adequate reasons for finding that the Appellant was not credible. This is arguable. The judge's reasoning relates almost entirely to whether the Appellant could obtain sufficient state protection or could relocate, rather than to whether he would be at risk. The judge characterised the police evidence that the Appellant had been assaulted and the medical evidence of his injuries as self-serving but arguably failed to give any reason for rejecting the Appellant's claim to have been assaulted. The fact that this evidence has been obtained to bolster the Appellant's claim is arguably not a valid reason for rejecting it – the same could be said of all the evidence in every asylum claim.
 3. The grounds submit that in finding that the Appellant could obtain sufficient state protection or could relocate to a place where he would not be found, the judge failed to take account of the Appellant's evidence that the aggressor he fears is a police officer. This is also arguable."

10. Following the grant of permission directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

11. Ms Imamovic relied upon the grounds contained within the application for permission to appeal and submitted that the FtT had given no adequate reasoning for the conclusions reached.
12. Mrs Aboni submitted that the FtT had given adequate reasons, and directed itself appropriately. Even if adequate reasoning had not been given, the FtT had considered the Appellant's claim at its highest, and found that a sufficiency of protection and a reasonable internal relocation option existed.
13. By way of response Ms Imamovic submitted that the FtT had failed to look at the evidence in the round. In considering sufficiency of protection and internal relocation the FtT had failed to consider that the persecutor was a police officer.
14. Ms Imamovic submitted that because the FtT assessment of credibility was flawed, no findings should be preserved, and the decision of the FtT should be set aside and remitted back to the FtT to be made afresh.

My Conclusions and Reasons

15. The first challenge to the FtT decision is that insufficient reasons were given for finding the Appellant not to be credible. The guidance on the duty to give reasons is set out in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), the head note of which is set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportioned approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

16. The FtT at paragraph 12 records that the Appellant has not been found to be credible but does not give adequate reasons for such a finding. No reasons are given in that paragraph or in the following paragraphs, for finding the Appellant's account to be incredible. It is therefore unclear from reading the FtT decision, why the Appellant is found to be incredible. Credibility is a central issue. There may be many reasons for finding the Appellant incredible. The Respondent pointed in the refusal to a failure to claim asylum in Italy or France, a failure to claim asylum having arrived in the UK, and thereafter the Appellant only claiming asylum after being arrested and detained for working illegally and after being served with removal directions. However the FtT does not make any reference to those issues.
17. There are therefore no satisfactory reasons given for finding the Appellant's account to be incredible and that is an error of law.

18. The FtT makes reference to documentation supplied by the Appellant, which relates to attendances at hospital and a police station in Albania. If a document is produced by an Appellant, it is for the Appellant to prove that the document can be relied upon, unless the Respondent makes a specific allegation of forgery, in which case the Respondent would bear the burden of proof. In this case the documentation was not placed before the Respondent, but was produced after the Respondent's decision to refuse the Appellant's asylum and human rights claim. Therefore it was for the Appellant to prove to the FtT that the documents could be relied upon, and the FtT must consider the evidence in the round.
19. The FtT finds the documentation to be self-serving and produced primarily to bolster the asylum claim. No adequate reasons are given for concluding that the documentation cannot be relied upon.
20. The FtT has not made a finding upon the Appellant's claim that his persecutor in Albania is a police officer. Making a finding upon this issue is central to the appeal. The FtT must then go on to explain why the alleged persecutor would not have the power or influence to locate the Appellant if he moved elsewhere in Albania. Failure to make a finding as to whether the alleged persecutor is a police officer, is relevant to consideration of sufficiency of protection and internal relocation.
21. I am persuaded the grounds seeking permission to appeal, read together with the grant of permission, do show the FtT materially erred in law, and the decision is unsafe and must be set aside.
22. The decision therefore must be remade. I have taken into account paragraph 7.2 of the Senior President's Practice statements, and have decided that it is appropriate to remit this appeal back to the FtT to be decided afresh with no findings preserved. Credibility is a central issue, and substantial judicial fact finding is required, which makes it more appropriate for this appeal to be heard again in the FtT, rather than the Upper Tribunal.
23. I should mention that I have been unable to locate on the file, the Appellant's witness statement which was before the FtT, and the Respondent's bundle. It would be advisable for the Appellant's representatives to serve again, the bundle of documents relied upon before the FtT, together with the witness statement, and for the Respondent to serve again the Respondent's bundle of documents that were before the FtT as the documents on file appear to be incomplete.
24. The parties will be advised of the time and date of hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Abebrese.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

The FtT did not make an anonymity direction, but in the circumstances, as this is a claim for international protection, I considered it appropriate to make such a direction. 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. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 9th October 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The Upper Tribunal makes no fee award. The issue of any fee award will need to be considered by the FtT.

Signed

Date 9th October 2017

Deputy Upper Tribunal Judge M A Hall