



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002214

First-tier Tribunal Nos: PA/51187/2023
LP/01994/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 23 October 2024**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**RL
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Turner, Imperium Chambers
For the Respondent: Mr Melvin, Senior Presenting Officer

Heard at Field House on 9 September 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Ferguson (“the judge”) dated 13 January 2024 dismissing the appellant’s appeal against a decision dated 6 February 2023 to refuse his protection and human rights claim.

2. It is appropriate to make an anonymity order because the appellant has a conclusive positive grounds decision that he is a victim of trafficking.

The appellant's case

3. The appellant, a national of Albania, arrived in the United Kingdom on 24 November 2017 and claimed asylum on 3 January 2018 at the age of 16 as an unaccompanied minor. A positive conclusive grounds decision was made on 25 January 2023 that he is a victim of modern slavery. He claims that his father was a violent alcoholic who accrued debts in Albania. He left school at the age of 15 and worked in a car wash. He was introduced to two people who said they would train him to be a car mechanic but instead he was taken forcibly and forced to work in a cannabis factory. He was sexually assaulted by two men who worked there. He escaped and went to his grandfather's house. He was told that the traffickers were searching for him. He fears returning to Albania because he fears that the people who forced him to work in the cannabis factory would kill him or that he would be re-trafficked. He asserts that there is no sufficiency of protection for him in Albania because the traffickers have links with the police and that the option of internal relocation is not open to him because of his specific vulnerabilities.

Position of the respondent

4. The Secretary of State accepted that the appellant was the victim of modern slavery but does not accept that there is a risk of persecution to the appellant because in Albania there is sufficiency of protection available and/or he has the option of internal relocation.

The Decision

5. The judge heard oral evidence from the appellant. The judge found that the appellant had embellished his evidence which undermined his credibility in relation to whether his traffickers had any influence over the police. The judge found that the appellant had not established that the gang who forced him to work in the cannabis farm had any influence with the authorities in Albania. Alternatively, the judge found that the appellant could return to a different area of Albania without undue hardship. He is now qualified as an electrician and could find work in Albania. He would not be vulnerable to re-trafficking because he has a skilled trade which he can use to support himself. The judge did not accept that the appellant is not in touch with his family in Albania. The judge dismissed the appeal on asylum grounds, humanitarian protection grounds and human rights grounds.

The Grounds of Appeal

6. There is only one ground of appeal.
7. It is asserted that the judge fell into error by making negative credibility findings at [26] because no credibility findings by the respondent had

been raised in the refusal decision and his account was accepted by the single competent body. This renders the decision unlawful and irrational and impacts on the judge's findings on sufficiency of protection and internal relocation.

Permission to appeal

8. Permission to appeal was granted by Upper Tribunal Judge Saini on 17 June 2024 on the basis that the judge arguably erred in making a negative credibility finding on a matter which was not in issue.

Skeleton Argument

9. On 8 July 2024 this Tribunal received an email from the Home Office confirming that they do not propose to submit a Rule 24 response.
10. Contrary to this position, shortly prior to the hearing, the respondent provided a skeleton argument prepared by Mr Melvin and dated 6 September 2024. In summary, the respondent asserts that it was open to the judge to make the negative credibility finding following oral evidence and submissions. The judge was entitled to reach a conclusion that there would be a sufficiency of protection. The judge also made findings in the alternative that internal relocation is available to this appellant. It is submitted that the judge's findings are not unlawful or irrational and the decision as a whole is sustainable.

Oral Submissions

11. Mr Turner amplified and clarified his grounds in oral submissions. He submitted that the decision was unlawful because in addition to being irrational it was procedurally unfair because the credibility issue was not put to the appellant in oral evidence. Further, the appellant was a vulnerable witness, and his vulnerability was not taken into account by the judge when assessing his evidence.
12. Mr Melvin's submissions are recorded in the record of proceedings and will be addressed below.

Discussion and Analysis

13. In the appellant's asylum interview the appellant was asked a considerable number of questions about whether the traffickers were linked to the authorities in Albania, and he gave detailed responses to the questions he was asked. In summary, his evidence in the asylum interview was that he knew that the traffickers were linked to the police. He knew this because he witnessed police arriving at the cannabis farm in unmarked cars. He would be working on the farm watering the plants. He saw that there were police uniforms in the cars, and he overheard conversations in which the traffickers discussed the police being given a percentage of the profits. He knew the police were corrupt. He was very frightened.

14. He did not report that he had been trafficked to the police in another district because he was scared that they “would locate me because they were moving around quite often”. In the interview he was asked “who was moving around?”. He replied “Fatos Defrim and there were other friends. They were connected via phones, and I was scared the police wouldn’t do anything and I was scared. I was scared that even if the police were going to protect me, they would kill”. He was asked “Who is they?”. He responded, “Fatos Defrim these who are more powerful”. He was then asked, “How did you know that Fatos and Defrim were moving around quite often?”. He replied, “They were gangsters who were controlling the area, and I was scared”.
15. Later in his interview he said, “the gang phoned my father and said to him if they find me there, they are going to kill me”. He was asked “How would they know that you had returned”. He replied, “They are linked to people they have friends”. When asked “Who are they linked to?”, he replied, “With the state, with the people”.
16. In his witness statement and asylum interview, the appellant’s evidence was that his father was a violent alcoholic who regularly beat him and his mother; that his father also forced him to work in a car wash seven days a week and would take all the money that he earned; and that it was his father who arranged for him to meet two people who forcibly took him to the cannabis factory to pay off his father’s debts. The appellant’s evidence was that he blamed his father for what had happened to him and that he did not want to be in contact with him. His evidence was also that whilst he was in the cannabis factory, he saw the main gang members come and go. The gang members threatened to kill him. At one point a gang member poured hot water over him. He was also raped by two men who worked at the factory. He then escaped and his grandfather assisted him to leave Albania.
17. In the decision letter, it is explicitly accepted by the respondent, that the appellant has given a consistent account of what happened to him in the cannabis factory and that his account is credible. This is also consistent with the fact that he has a positive conclusive grounds decision. The decision letter did not deal explicitly with the sexual assault, but it is clear from the asylum interview that the questioner did not want to put pressure on the appellant to talk more about this traumatic incident. The respondent also decided that Section 8 Asylum and Immigration (Treatment of Claimant’s etc) Act 2004 does not apply in respect of the appellant and that there was no presumption of negative credibility because it was accepted that the appellant did not claim asylum en route to the United Kingdom because he was a child under the control of the traffickers.
18. In the respondent’s review, it was accepted by the respondent that the appellant was a victim of trafficking. The review focused on the issues of risk to appellant on return and whether there was in general sufficiency of protection or the option of internal relocation available to him.

19. In the appellant's appeal statement, he said:

"I would like to explain that my situation is unique and that the criminal gang that I am afraid of has connections with the police. I have seen and heard the police talking about taking percentages from the criminal gangs in return for them looking the other way. I am afraid to go to the police there as they are corrupt. They are not like the police in the UK, they do take bribes, and the criminal gang had police on their payroll helping them. These criminal gangs, who traffic drugs and people cannot do this by themselves. They have a network of people with them, including the authorities who get paid off. The corruption does exist".

20. During the hearing the appellant was cross examined in relation to how he knew the gang members were connected with the police. The judge records at [7]:

"The appellant was referred to question 161 of his interview, where he had said that he knew that it was police officers because he saw uniforms in a plain car. He said that he used to see people come to the farm, they would drive and get out of the car. The only way that he knew they were police was because he saw uniforms in the back seat. He was asked whether there could be another reasons for the uniforms being there and he said that he saw radios and sirens and that it was a police car but not a marked car. He was asked why he had not mentioned this before and said that he had but when question 161 was read to him, he said that by uniform he had meant the other things to be included".

21. At [26] and [27] the judge dealt with the appellant's evidence as follows:

"26 The appellant has embellished his evidence that the gang who forced him to work in the cannabis farm had any influence beyond the local area. For the first time at the hearing, he said that he had seen police equipment in a car at the cannabis factory which was provided as an explanation that the people who visited the farm were police officers associated with the people who ran the farm. This is an embellishment which he has fabricated. He did this because he understood that there was no significant evidence to show that he would not be protected from the gang by the police. This undermines the credibility of his claim to need international protection.

27. The evidence provided by the appellant has not established that the 'gang' who forced him to work in the cannabis farm has any influence with the authorities in Albania."

22. I am satisfied that the judge has erred in making this negative credibility finding. The appellant's credibility was not challenged in the refusal letter, nor was it raised as an issue at the review stage. His credibility was accepted by the single competent authority. The appellant clearly prepared the appeal on the basis that his credibility was accepted. The only difference between the appellant's comprehensive evidence about what he saw of the police and traffickers on the cannabis farm was that in addition to seeing uniforms in unmarked cars, he also saw equipment such as sirens and radios. In my view, in light of the entirety of the evidence

and the acceptance that the appellant had been telling the truth, it was irrational for the judge to pick on this one additional piece of evidence (which is nor inconsistent in any way with anything he previously said) to decide that this undermined the appellant's entire credibility which is what the judge has done. I am not in agreement with Mr Melvin that it was open to the judge to make this finding. It is trite that irrationality has a high threshold but, in this appeal, I am satisfied that the ground of irrationality is made out particularly when combined with the procedural unfairness undermining this finding.

23. I agree with Mr Turner that it was procedurally unfair of the judge to make this negative credibility finding without it being put to the appellant that he was not telling the truth during the appeal itself. Making submissions at the submission stage does not remedy this error.
24. There is also another more important and obvious error in the judge's approach to this finding which is that the judge failed to assess how the appellant's evidence was affected by the fact that he was a vulnerable witness.
25. I am satisfied that the grounds as pleaded and amplified cover this error and if not, I am satisfied that the failure to substantively follow the Presidential Guidance in respect of vulnerable witnesses is a Robinson obvious ground of appeal in an asylum appeal where credibility findings are all important.
26. This appellant had the following characteristics. He arrived in the United Kingdom as an unaccompanied minor at the age of 16. He had been the victim of long-term abuse at the hands of his father, who had also forced him to work and taken all his money. The family was poor. He was accepted to be the victim of modern slavery, having been handed over by his father to gang members who exploited him, working in difficult conditions for no pay. He was raped and he was also burnt. He received threats to kill, and the respondent does not dispute that he has a genuine fear of serious harm.
27. As such, the appellant clearly falls under that category of witness who is a vulnerable witness and to whom the Joint Presidential Guidance Note No. 2 of 2010, Child, vulnerable adult and sensitive appellant guidance, the Joint Presidential Note applies. The judge did state at [4] that he was treated as a vulnerable witness and special measures were put in place in the way that questions were asked as requested.
28. However, the purpose of the guidance is set out in the Presidential Panel of the Upper Tribunal in SB (vulnerable adult: credibility) (Ghana) [2019] UKUT 398 IAC, which held as follows:
 - “(1) The fact that a judicial factfinder decides to treat an appellant or witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal.

- (2) By applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial factfinder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence.
 - (3) The Guidance makes it plain that it is for the judicial factfinder to determine the relationship between the vulnerability and the evidence that is adduced.”
29. In my view, the judge’s negative findings on credibility are unsustainable in the light of this guidance. There is nothing to indicate in the decision of the judge that he took into account the appellant’s vulnerability when assessing the credibility of his evidence, not only in relation to his evidence that the gangs had links to the police but also in relation to his lack of contact with his family and the reasons he gave for not wanting to contact his father. The appellant was a minor aged 16 at the date of his asylum interview and additionally a young person who had been sexually abused and was fearful. There was no indication that, when finding that the appellant had “embellished his claim” by now mentioning that he saw police equipment in the unmarked police cars, the judge had considered this as an attempt to provide more detail rather than being a fabrication designed to enhance his claim. There was no attempt by the judge to make any allowance for the appellant’s age or his other vulnerabilities. I note that the Court of Appeal in AM (Afghanistan) v the Secretary of State for the Home Department [2017] EWCA Civ 1123 [2018] held that where there is a failure to follow the Joint Presidential Note and to make due allowance for an individual’s vulnerability it will most likely be a material error of law.
30. Mr Melvin’s submission was that even if there was an error by the judge in finding that the gang did not have any influence with the authorities in Albania, (and therefore by implication that the appellant had a reasonable excuse for failing to report the trafficking to the police and could access sufficiency of protection at least in his local area) this error was not material because at [28] the judge found in the alternative that the appellant could relocate within Albania without undue hardship and the grounds do not disclose why this finding is flawed.
31. I disagree with Mr Melvin’s submission that the error is immaterial. Firstly it is a trite principle that justice must not only be done but seen to be done and in a situation where the decision is fundamentally unfair, it must be reheard (see AM/Afghanistan above). Secondly, the judge’s failure to factor in the appellant’s vulnerability (and his erroneous negative view of the appellant’s credibility) clearly also impacted on the judge’s findings in respect of whether the appellant had contact with his family, his ability to support himself in Albania and his risk of being re-trafficked.
32. Having found that there is a material error of law, I set aside the decision in its entirety.

Disposal

33. Mr Turner submitted that the appeal should be remitted in its entirety whereas Mr Melvin submitted that the appeal was suitable for remaking. Having found that the error of law in this appeal includes procedural unfairness, I find that the proper course of action is to remit the appeal to the First-tier Tribunal to be heard de novo.

Notice of Decision

34. The decision of the First-tier Tribunal involved the making of an error of law.
35. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
36. The appeal is remitted to the First-tier Tribunal to be heard de novo before a judge other than Judge G J Ferguson.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024