



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07838/2014

THE IMMIGRATION ACTS

Heard at Field House

On 17 June 2015

**Decision & Reasons
Promulgated
On 26 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR S M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Chapman (Counsel instructed by Croydon & Sutton Law Centre)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of the First-tier Tribunal (Judge Traynor) ("FtT") promulgated on 26 February 2015 in which the FtT dismissed the appellant's appeal on asylum grounds and human rights grounds under Article 3.
2. The appellant, whose date of birth is 28 September 1998, is a citizen of Albania.

The Appellant's Claim

3. The appellant aged 15 years arrived in the UK on 28 May 2014 and claimed asylum the next day. He feared kidnapping by his father's creditors who had approached and issued a threat to the family. In addition the appellant feared return because his father was an alcoholic and gambler. He had been forced to work to make money for the family. The details of his claim were set out in a screening interview, SEF interview, witness statement and representatives' letter dated 15 July 2014 and grounds of appeal.

Reasons for Refusal

4. The respondent in reasons for refusal dated 18 September 2014 concluded that he did not meet the criteria for a grant of asylum but discretion was exercised in his favour and he was granted a period of discretionary leave for eighteen months ending on 28 March 2016. The respondent specifically considered Section 55 of the Borders, Citizenship and Immigration Act 2009 (S. 55 2009 Act) together with its policy on unaccompanied minors. Whilst taking the view that it would be in the appellant's best interests to return to his family (mother, father and two sisters) in Albania the respondent invoked its policy that no unaccompanied child would be returned unless safe and adequate reception arrangements were in place. The appellant was granted limited leave to remain; the respondent would not seek to remove him to Albania until contact was made with his family or until he reached the age of 18 years. The respondent confirmed that details of the appellant's family had been taken and passed on to the British Embassy in Tirana. He was advised to contact the Red Cross direct.

Determination by FtT

5. In a lengthy and detailed Decision and Reasons the FtT concluded that the appellant's account and claim was lacking in credibility. The Decision set out comprehensively the details of the appellant's claim, his evidence and the issues raised in the respondent's reasons for refusal. The findings of fact are set out from [68] onwards. At [70] the FtT found the appellant's claim to be vague and premised on speculation and supposition. The FtT acknowledged that neither the respondent's decision letter nor the representative at the hearing sought to make adverse comments about the details of the appellant's claim, nevertheless the FtT found that in all respects it was vague and implausible.
6. At [69] the FtT took the point that no reference had been made by the appellant to membership of a particular social group in his asylum claim. At [71] the FtT found no evidence that the appellant was a member of a particular social group in Albania and rejected the submission to follow the guidance in **AA Afghanistan**. At [72] the FtT found no evidence that he

was an unaccompanied child at risk in Albania. It found that the appellant had family living in Albania.

7. The FtT held:

“Having considered what has been said, I find that there is no evidence which would show that if the appellant was to be returned to Albania, even at the age of 16, that arrangements would not be made for his care. The fact is that the respondent does not seek to propose his removal at least until after his 18th birthday and, then again, in highly controlled circumstances where the appellant will be given the means to secure accommodation and employment. Whilst I accept that I am assessing the appellant’s circumstances as he describes them, realistically he will not return to Albania until he is an adult and with the means that the authorities of the United Kingdom would provide him with.”

8. At [73] and [74] the FtT concluded that the appellant failed to establish his asylum claim and that internal relocation was an option open to him:

“As I have already indicated, he will not be returning before he is 18 years of age and, again, he will not be arriving without some considerable support from the UK authorities. I do not accept Counsel’s argument that I have to assess what would happen if he is to return now because the simple fact is he will not be returning now.”

9. At [76] the FtT found no merit in the claim that the appellant would face the risk of trafficking in Albania. It found that he had family members for support and he would not be alone or vulnerable and/or at risk. The FtT covered sufficiency of protection at [76] - [77] of the decision.

Grounds of Application

10. The grounds contend that the FtT erred by:

- (1) finding that the appellant was not a member of a particular social group as wholly unsupported by the evidence;
- (2) misdirecting itself cf. **Ravichandran [1996] Imm AR 97** by failing to consider the evidence as at the date of hearing as opposed to when the appellant reaches the age of 18 years old.
- (3) finding at [71] and [72] that the appellant was not a member of a particular social group with reference to **AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC)** and **LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005**. The FtT failed to take into account that the appellant had been granted limited

leave to remain in the UK in accordance with the published policy on discretionary leave as an unaccompanied minor in respect of whom the Secretary of State was not satisfied adequate reception arrangements were available in Albania.

Permission to Appeal

11. Permission was granted on 15 April 2015 by First-tier Tribunal Judge Cheales. It was arguable that the FtT should have found that the appellant is part of a social group as an unaccompanied Albanian child and that it should have considered the appellant's risk on return at the date of hearing.

Rule 24 Response

12. The respondent opposed the appeal. The respondent acknowledged that the FtT may have erred in law in assessing the appeal on asylum grounds on the basis that the appellant would not be returning to Albania until he was 18 years of age. However, such error was not material in light of the findings at paragraphs [72] and [76] that the appellant has family members in Albania. The appellant would not therefore be at risk on return to Albania for a Convention reason.

Error of Law Hearing

13. At the start of the hearing I indicated my preliminary view that the FtT erred in law by treating the appellant as if he was 18 years of age and having no regard to the fact that he was granted discretionary leave by the respondent and disregarding the relevant date, the date of hearing, at which time the appellant was 16 years old. I requested the representatives to focus on the issue of materiality and the extent to which the FtT's error had infected the findings and conclusions made in its decision.

Submissions

14. Ms Chapman submitted that there was a clear error of law accepted by the respondent that the FtT dealt with the appellant's case as if he were an 18 year old rather than a 16 year old.
15. Furthermore the FtT had failed to engage with the detail of the appellant's claim, in particular in the further representations made in a letter dated 25.7.2014(page 67 appellant's bundle) which included his fear of ill-treatment and protection issues in relation to his father together with a fear of trafficking. The FtT's observations at [69 & 76] in this regard were simply wrong.

16. The FtT adopted a position contrary to the respondent's decision to grant him temporary protection. It was difficult to reconcile that with the position taken in the Rule 24 response and as indicated by Mr Bramble.
17. The FtT raised the issue of credibility which had neither been raised in the Reasons for Refusal Letter nor by the representative at the hearing.
18. The finding as to sufficiency of protection was not sustainable and was contrary to background material U.S. State Department Report as referred to in the Reasons for Refusal Letter at paragraphs [38] to [40] .
19. As to materiality Ms Chapman submitted that the error with regard to the appellant's age infected the Tribunal's perception of the claim as a whole including credibility, risk of trafficking , membership of a particular social group, which taken together with the unsustainable conclusion as to sufficiency of protection, the decision could not stand.
20. Mr Bramble accepted that the appellant fell within the category of a particular social group. He accepted that the FtT erred by looking at the appellant's circumstances at the age of 18 years. However, he argued that such errors were not material as there were sufficient references in the determination to be satisfied that the FtT had in fact considered the appellant's circumstances as at the date of hearing, not only in respect to risks on return but with regard to family living in Albania. It was clear that the FtT identified family members, namely parents and the appellant's sisters, who he would be able to contact on return and he would not therefore be returning to Albania as an orphan.
21. Mr Bramble specified parts of the decision where the FtT set out the appellant's detailed claim, with regard to his alcoholic father and the factors that put him in danger. He submitted that the FtT had taken into account that evidence in reaching his findings. Mr Bramble submitted that the finding that the appellant could return to his family in Albania was not undermined by the apparent errors.
22. Ms Chapman responded that the finding that the appellant could return safely at the age of 16 years, was not open to the FtT to make given that it contradicted the respondent's grant of discretionary leave. The FtT failed to engage with the detailed evidence given by the appellant concerning his contact and relationship with his sisters. No reference was made to Section 55 - best interests of the child. The FtT looked at the appellant's claim from the prism of an adult in the belief that he would be returned as an adult. It was thus fundamentally flawed.

Discussion and Decision

23. At the end of the hearing I found that there was a material error of law in the Decision and Reasons of the First-tier Tribunal. I set aside the decision. I remit the matter for fresh hearing to the First-tier Tribunal at Taylor House. My reasons are as follows.

24. The FtT made two clear errors of law that are material. It assessed the appellant's claim on the basis that he would not be returned to Albania until he was the age of 18 years. It failed to consider the appellant's claim at the time of the hearing when he was aged 16 years. The FtT made clear in its decision that it rejected this approach at [74] by stating: "*I do not accept Counsel's argument that I have to assess what would happen if he is to return now because the simple fact is he will not be returning now.*" There are other references in the decision, in particular at [71] and [72], which indicate that the FtT has adopted what it considers to be a realistic approach to the issues under appeal rather than the correct approach in law as held in **Ravichandran** to consider the circumstances as at the date of hearing.
25. I am satisfied that there was no legally sound consideration of the appellant's claim in light of his age and/ or of the evidence to show that he is a member of a particular social group as an unaccompanied minor. Further, the FtT failed to engage with any of the detailed evidence relied on by the appellant as regards his family life in Albania and his fears on return of homelessness, destitution and being trafficked, which formed part of his claim from the outset.
26. I am satisfied that the FtT's approach to the appellant's age and its disregard for the decision taken by the respondent to grant the appellant discretionary leave as an unaccompanied minor whose return cannot be established, is in my view flawed. I find that the error made is material to the outcome of the decision and it has permeated the whole of the decision such that none of the findings may be preserved. I have taken into account the Presidential guidance on remitting cases to the FTT.
27. Finally, Ms Chapman raised 2 issues which did not form part of her grounds of appeal. There was no formal application to amend the grounds of appeal. Those issues related to the unsustainability of the FtT's finding that there was a sufficiency of protection available in Albania and the failure to make any reference and/or consideration of where the best interests of a child lie pursuant to Section 55 of the 2009 Act. As these matters formed no part of the grounds of the application or permission, I make no further reference to them save to observe that such arguments are identifiable as arguable errors of law.

Notice of Decision

I find material errors of law in the decision and reasons which shall be set aside.

I remit the matter to Taylor House (excluding Judge Traynor) for rehearing on the 27th day of July 2015. The appellant will be called as a witness and an Albanian interpreter will be required.

An anonymity direction is made as the appellant is a minor.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed
GA Black

Date 25.6.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed
GA Black

Date 25.6.2015

Deputy Upper Tribunal Judge G A Black