



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08453/2014

**THE IMMIGRATION ACTS**

Heard at: Field House

**Decision and Reasons  
Promulgated**

On: 9 April 2015

On: 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR F K

(ANONYMITY DIRECTION MADE)

**Appellant**

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Representation**

For the Appellant: Mr J Collins, counsel (instructed by Sentinel Solicitors)

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Albania, born on 6 December 1996. He appeals with permission against the decision of the First-tier Tribunal Judge who dismissed his asylum and human rights claims in a determination promulgated on 16 January 2015.
2. The background to the appeal was that the appellant arrived in the UK on 12 March 2014 when still a minor. He claimed asylum the following day on the basis that he feared his traffickers, alleging he had been trafficked from Albania to Italy. He was forced to sell drugs and was later also used as a prostitute.
3. The only issues on appeal related to the asylum claim and a real risk of ill treatment contrary to Article 3 of the Human Rights Convention. Humanitarian Protection was not pursued, nor was any Article 8 claim.

4. Mr Collins referred to the basis of the claim before the First-tier Tribunal as set out in the witness statement of the appellant before the Tribunal at B22. His father drank and abused him physically. While in Albania he was working and begging on the streets. He came into contact with a gang of criminals in November 2013.
5. The appellant also asserted that his father threatened him that he would kick him out of the house if he failed to bring in enough money and would stay without food. He thus thought he would have a better life in the company of gang members. They told him that they would get him a decent job in Italy and then took him to Milan. He used his own passport to travel to Bari. From there he travelled with members of the gang to Milan and stayed with them from 29 January 2014 until he escaped from them on 9 March 2014. His passport was retained by the members of the gang.
6. He referred to his having been kept in the house and locked in a room. He was abused and raped. He was forced to engage in this behaviour with different men. He was used by the gang as a male prostitute and was abused sexually by Italian men of all ages.
7. He was treated like this for a period of six days. Whilst being transported from one house to another, he had a chance to leave the car, and ran towards a group of flats. He had some money with him which he used to get to the airport, and purchased a ticket from Milan. He then went to Brussels in order to escape the gang.
8. There was a group of students at the airport and he travelled with them to Brussels. The following day he met a group of Albanians who were coming to the UK. He came with them to France by car and then from France they boarded a lorry and came to the UK on 12 March 2014.
9. In the UK he was supported by Greenwich Social Services.
10. He fears that if returned to Albania he will be persecuted or harmed by his father and those men who sexually abused and threatened him. He fears danger to his life from the members of the gang in Albania. He cannot seek police protection because the gang members have close ties with them.
11. Mr Collins stated that he had produced a skeleton argument before the First-tier Tribunal. It was contended that the appellant was a member of a particular social group, a young Albanian who has been trafficked. He relied on the country guidance case of AM and BM (Trafficked women) Albania CG [2010] UKUT 80. He informed the Tribunal that there was no decision relating to trafficked male children from Albania. He submitted that there was a reasonable degree of likelihood that the appellant was at risk of being found and ill treated by those who had trafficked him, or alternatively of being re-trafficked by them.
12. Mr Collins submitted that there had been a series of material errors rendering the determination unsustainable.

13. The first ground related to what he referred to as an essential contradiction in the determination.
14. At paragraph 19 the Judge gave 'the benefit of the doubt' to the appellant, having regard to his age. He referred to some of the inconsistencies and incoherencies of his evidence. These could be excused by reference to his age. He then stated that for the same reason, ".....I give the appellant the benefit of the doubt as to whether he was truly held in forced captivity by the gang for the approximate six week period claimed by him... despite the appellant's failure in evidence to account for more than, approximately, two to two and a half weeks of that period." The Judge further noted in the same paragraph that the appellant's evidence as to his drug work was inconsistent as to whether, on a daily basis, he had to deliver a single parcel of drugs to a single person, or up to 30 bags of drugs to a number of different persons.
15. The Judge also noted that there were other "implausible and untenable elements" of the appellant's evidence relating to his escape. It was implausible that only a single gang member would accompany him, in the capacity of a driver, to the clients' houses [21].
16. Mr Collins submitted that having given the appellant the benefit of the doubt as to whether he was truly held in forced captivity by a gang, the Judge made an inconsistent finding at paragraph 24, namely, that his asylum claim lacked credibility and integrity, and that he was far from satisfied that the appellant had been taken into captive labour and the sex trade by traffickers, a fate which he allegedly was able to escape.
17. Mr Collins submitted that there was only one period of forced activity and not different periods. In real terms, the adverse findings related to his ability to escape and other issues such as what happened at the airport and thereafter.
18. In his second ground, Mr Collins contended that the Judge indulged in speculation and conjecture rather than an objective analysis of the evidence. What was also "startling" about the determination is that there was no analysis of the extensive background material placed before the Immigration Judge which he only referred to in passing at paragraph 11.
19. Given the extensive background material produced, "it cannot be enough" to consider the issues of credibility without having regard to or being informed by the background material. That material is probative of the appellant's assertions.
20. He submitted that the appellant made his claims in a detailed witness statement. A number of reports were also produced in section 2, part 2, of the appellant's bundle before the First-tier Tribunal. This included a report from "Save the Children" where it is noted at page 2 that violence against children in Albania is an issue of concern. The overwhelming majority of adults maintained that physical and psychological violence has positive effects on a child's education.

21. Albania is a source country for men, women and children being subjected to trafficking, specifically forced prostitution and forced labour, including the forced begging of children. Evidence shows that during the period 1999 to 2002, about 4,000 Albanian children were trafficked in different countries, the majority of whom were from Roma families. These victims are subjected to conditions of forced labour and sex trafficking within Albania and Greece, Italy, Macedonia, Kosovo and Western Europe. The government of Albania does not fully comply with the minimum standards for the elimination of trafficking.
22. There was also a reference to child labour and the exploitation of children remaining a serious issue there. In 2006 the Children's Rights Centre in Albania declared that there were about 50,000 children involved in child labour and working on the streets. 32% of children aged 6-17 work and many of them perform the worst forms of child labour such as begging, building, recycling and so on.
23. There was a further report from a Mr Daniel Renton – Child Trafficking in Albania (a Save the Children report). The statistics relating to trafficking of women and children are again set out. It is estimated that there are 30,000 Albanian prostitutes abroad. The study in the Save the Children report concluded that trafficking has been, and still is, widespread in the country and the majority of victims are children. Trafficking is usually conducted through offers of false marriages and jobs, or abduction and selling in some parts of Albania.
24. In Italy and Greece, there were an estimated 15,000 and 6,000 Albanian prostitutes respectively. Their passports are taken and threats and intimidation to them and their families prevents them from escaping and testifying against their pimps.
25. Those who do return to Albania, many after deportation from Italy daily, are given very little help. The report refers to the trafficking of children to Greece for begging and forced labour. The trafficking of women and children, drugs and weapons is a multi-million dollar industry, directly and indirectly employing many people in Albania. Albania is now a major transit country for the trafficking of thousands of foreign women every year.
26. There was also a report “Child Abuse in the Albanian Family” dated August 2005, page 8-42. There are a number of case studies referred to.
27. At page 42, various measures taken to improve the performance of the government's labour and social policies are identified. Child rights and protection issues remain a serious concern in Albania. The number and quality of child protection and welfare services in Albania continues to remain low in terms of financial and human resources, preventative focus and sustained impact. There are 155 child protection units in municipalities and communities. The number of CPUs needs to be substantially increased to meet child protection needs and the country's vulnerable children in a meaningful way.

28. Mr Collins submitted that having regard to the background evidence, an assessment of an individual claim, including that of the appellant, must be informed with regard to the background material, especially where, as in this case, there is no country guidance case regarding trafficked male children.
29. On behalf of the respondent, Mr Clarke submitted that it is clear from paragraphs 19 onwards that the First-tier Tribunal did look at the issues that arose. The Judge considered whether it had in fact been claimed to be two and a half weeks and not six weeks. There were other inconsistencies relating to drugs that were identified. There were also valid criticisms relating to the escape as well as airport problems.
30. It is only after considering this that he stated at paragraph 24 that he was not satisfied that the appellant had been taken into captive labour and the sex trade by traffickers.
31. With regard to the background evidence, the Judge did refer at paragraph 11 to the appellant's submissions, supported by objective information. Accordingly, it cannot be said that the Judge had no regard to the relevant background material.
32. Given the credibility findings therefore, it is difficult to see how much the Judge would have been assisted by this background material. The report did not identify people, including children, having the profile of the appellant. The background information is thus "not on all fours."
33. Mr Collins replied that the core of the appellant's case is that of being trafficked from Albania and subjected for the period to be a prostitute and to supply drugs on behalf of the traffickers. It is difficult to separate the Judge's findings at paragraph 19 when the appellant is earlier given the "benefit of the doubt" with regard to enforced captivity. Even though the background material may not have a specific reference to the appellant himself, it does disclose that a large proportion of those trafficked are children.

### **Assessment**

34. Paragraph 19 of the determination is problematic. I have attempted to construe it fairly in its context. The words used by the Judge were that he gave the appellant the benefit of the doubt as to whether he was truly held in forced captivity by the gang for the approximate six week period claimed by him. That appears to be an acceptance of the appellant's core account that he was being trafficked from Albania to Italy.
35. It is accordingly difficult to square that with what the Judge later went on to find that he was far from satisfied that the appellant had been taken into captive labour and sex trade by traffickers [24].
36. First-tier Tribunal Judge Osborne, in granting the appellant permission to appeal, noted that the Judge had given him the benefit of the doubt at paragraph 19 as to

whether he was truly held in forced captivity by the gang; he then stated at paragraph 24 that he was not satisfied that he had been taken into captive labour. He stated that these positions are so diametrically opposed that he must conclude that an arguable error of law is demonstrated. He also found that although the Judge identified and listed some of the background evidence available to him, he made no further assessment of that evidence within the body of the decision itself.

37. I note the Rule 24 submissions made by another presenting officer who sought to explain the asserted inconsistencies: the Judge was considering the plausibility of the claim that the appellant was held in two different properties for a six week period. The Judge has considered the inconsistencies in his evidence relating to two houses and the six weeks detention can be explained by reference to his age.
38. It was also asserted that the Judge made no findings of fact at paragraph 19 but merely a consideration of the account being plausible, considering the discrepancies or missing evidence of two and a half weeks.
39. It cannot be appropriate that different persons reach fundamentally different conclusions in construing the same paragraphs. The appellant is entitled to know the exact basis upon which his claim has been refused. Having been given the benefit of the doubt with regard to that claim earlier, it remains difficult to reconcile those diametrically opposed positions.
40. Further, I also find that there is substance in Mr Collins' submission that there was an element of speculation and conjecture rather than an objective analysis of the evidence. He allowed the issues relating to the appellant's account of being able to escape and what occurred at the airport to adversely affect his assessment of the remainder of the appellant's account.
41. Moreover, even though the background material did not necessarily relate pertinently to the position of a male child being trafficked, nevertheless, it was relevant to the issues of credibility of the appellant's core claim that children in Albania do in fact suffer forced labour and that Albania is a substantial source of trafficked children abroad, including Italy.
42. In the circumstances, I find that the decision of the First-tier Tribunal did involve the making of errors on a point of law. In the circumstances, the parties agreed that the determination should be set aside and would have to be re-made.
43. Mr Collins submitted, without any opposition from Mr Clarke, that this was an appropriate case to be remitted to the First-tier Tribunal (Taylor House) for the re-making of the decision. Mr Collins stated that Taylor house was more convenient for the appellant and any potential witnesses.
44. In considering the application for remitting the case I have had regard to the Senior President's guidelines. It is evident that there will not only have to be a substantial

amount of fact finding, with no findings preserved, but that the appellant has not had a proper opportunity of having his claim considered on the evidence as a whole.

**Decision**

Having set aside the decision of the First-tier Tribunal, I direct that the case be remitted to the First-tier Tribunal (Taylor House) for the decision to be re-made. The necessary administrative arrangements should accordingly be put in place.

**Anonymity 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 their 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

Date: 16/4/2015

Deputy Upper Tribunal Judge Mailer