



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05173/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2016

Decision and Reasons Promulgated
On 29 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR F B
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms K Wass, Counsel (instructed by Barnes Harrild and Dyer)
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. I continue the anonymity direction made by the First-tier Tribunal Judge. No report or other publication of these proceedings or any part of them shall name or directly or indirectly identify the appellant. Failure by any person, body or institution whether corporate or unincorporated, including a party to this appeal, to comply with this direction may lead to proceedings for contempt of court. The direction shall continue in force until another appropriate Court shall lift or vary it.
2. The appellant is a national of Albania, born on 2 May 1998. His appeal against the decision of the respondent to remove him to Albania, having refused his application

for asylum, was dismissed by the First-tier Tribunal Judge in a decision promulgated on 17 September 2015.

3. The appellant claimed that he was a victim of domestic violence and had been kidnapped by persons who owed his father money. He contended that he was unable or too fearful to avail himself of the protection of Albania. The Judge found that the central issue between the parties related to the credibility of the appellant's account [28].
4. She did not find that the core of the appellant's account was credible. She found it to be "extremely unlikely" that the appellant's teachers would not take any action to protect him if, as he stated in his oral evidence, he had attended school on various occasions with marks on his face.
5. In his evidence, he stated that he told five of his teachers what had happened and that "they did nothing." Although he had seen teachers hitting pupils at school, the Judge found that it was not credible "...that him (sic) reporting serious abuse within his family home on numerous occasions, resulting in him often missing school, would not be taken seriously and acted upon." This she found undermined the credibility of the appellant's account [32].
6. On 6 November 2015, Upper Tribunal Judge Rintoul granted the appellant permission to appeal on the basis that it is arguable that at [32] in assessing how Albanian teachers would react to a child alleging violence from his father, the First-tier Tribunal Judge "speculated". There was arguably no evidence to support the observation. He referred to the decision in Y v SSHD [2006] EWCA Civ 1223 at [20] and [25]. As this finding was central to the adverse findings of credibility, Judge Rintoul found that it was arguable that the findings as a whole are undermined.
7. Ms Wass, who did not represent the appellant before the First-tier Tribunal, sought permission pursuant to Tribunal Procedure (Upper Tribunal) Rules 2008, to admit a research report sponsored by Unicef Albania, entitled "Violence Against Children in Albania." The report addresses an issue relevant to the assessment of the appellant's credibility. The conclusions regarding violence against children addressed in the Report have a direct bearing on matters raised by the appellant in evidence, the effect of which is to undermine the basis of the Judge's credibility findings on this particular issue.
8. As this was not anticipated at or before the hearing, Ms Wass sought to rely on the main findings contained in the report as set out at paragraph 3.1 of the Executive Summary. There it is stated that research, sponsored by Unicef Albania, concluded that even though it is commonly held that violence should only be used when necessary, in day to day practice, physical and psychological violence are the chief means of ensuring discipline, both at home and in school.
9. It is also noted at page 10 of the report that female teachers more commonly resort to physical and psychological violence in schools than male teachers. Male teachers exercise harsher forms of physical violence, whereas female teachers exercise harsher forms of psychological violence. At page 25 of the report, it is noted that children reported many cases where parents, keen to demonstrate "ownership" of their own children, went to school and beat their children in front of

other students. On one occasion it was reported that a mother beat her daughter in front of the whole class because of a poor grade. On another occasion the father, a policeman, turned up in his uniform and beat his son in the schoolyard, in front of the other students, because the boy had failed to tell him about the parents' assembly in the school. There are also many reported cases of parents authorising teachers to beat their children, when necessary. Page 26 of the report sets out the forms of violence used against children at home and in schools.

10. Ms Wass noted that the report, dated 2006, was not before the First-tier Tribunal, as the question of whether the appellant's teachers would have failed to report evidence of his having been subjected to physical abuse, was only raised at the hearing and thereafter in the Judge's decision.
11. Mr Walker did not oppose the admission of that evidence.
12. Ms Wass contended that the First-tier Tribunal Judge began her "negative credibility findings" when referring to the issue of the appellant's teachers at [32]. She submitted that the finding is flawed, having regard to the background material contained in the research report dated 2006.
13. Ms Wass submitted that in paragraphs 15 and following in the reasons for refusal the respondent did not raise as part of her credibility assertions, any issue regarding a lack of involvement at the school.
14. In her consideration of the merits, the respondent noted at paragraph 17 that the appellant claimed in his witness statement that he told his teachers what happened but that nothing had happened. In the remaining paragraphs, the respondent rejected his contention that he had been forced to work and that he had been mistreated by his father in Albania (paragraph 19).
15. The respondent having considered the credibility points in the round concluded that he had failed to substantiate his claim that he had been abducted on two occasions by unknown people in Albania.
16. Ms Wass thus submitted that the issue referred to by the Judge relating to the lack of involvement by the school, was not one of the "credibility points" that was considered by the respondent.
17. At [8] the Judge recorded that the appellant stated in evidence that he had told his teachers on various occasions what was happening but they failed to take action. This then became a distinct core issue which had not been raised beforehand. The appellant had been cross examined on the issue [16]. There he stated that he told his teachers on five occasions about his problems because they had noticed marks on his face when he had been going to school but they had not done anything to assist him. The appellant also stated that he had seen teachers hit pupils at school in Albania.
18. Ms Wass submitted in the alternative that in the absence of the report, the Judge had impermissibly speculated at [32] that it was "extremely unlikely" that the appellant's teachers would not take action to protect him if he attended school on

various occasions with marks on his face. That was despite the fact that he had told his teachers what had happened and that they did nothing.

19. The Judge noted at [32] that although the appellant stated that he had seen teachers hit pupils at school, she did not find it credible that his reporting of serious abuse within his family home on numerous occasions would not be taken seriously and acted upon by his school. That she found undermined the credibility of the appellant's account.
20. Ms Wass relied on the Court of Appeal's decision in Y v SSHD [2006] EWCA Civ 1223 at [20-25]. There, the Court of Appeal had regard to an earlier decision of the Court of Appeal in HK v SSHD [2006] EWCA Civ 1037 where Neuberger LJ stated at [28-29] that in many asylum cases some of the appellant's story may seem inherently unlikely but that does not mean it is untrue. The ingredients of the story as a whole have to be considered against the available country evidence and reliable expert evidence. Inherent probability can be a dangerous, even wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact finding tribunal have any experience.
21. At [22] of Y, reference was made to Chadwick LJ's judgment in HK at [72] where he stated that it was unsafe to reject facts because they are so unusual when they are said to have occurred in an environment and culture wholly outside the experience of the decision maker.
22. At [25] of Y, Lord Justice Keene set out the legal principles applicable to the approach to be adopted towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently credible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events in the context of conditions in the country from which the appellant comes. That did not mean, however, that a Judge is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human nature the account may be. The decision maker is not expected to suspend his own judgment.
23. In an appropriate case, he is entitled to find that an account of events is so far fetched and contrary to reason as to be incapable of belief. At [27] Lord Justice Keene agreed with that approach, stating that a decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question.
24. In Y, the Judge had regard to the information about conditions in Iran provided by the Home Office CIPU report. Nor could it be said that he fell into the trap of merely asserting that the appellant's account was incredible without giving reasons for such a finding. He had given a number of reasons.

25. Ms Wass submitted that it is apparent that the First-tier Judge in the appellant's appeal was influenced by the standards in a UK society, regarding the approach of schools where there have been reports of violence.
26. She contended that the admission of new evidence showed that the findings were not supported by any "objective evidence." Even in the absence of the report, it is clear that the Judge speculated and gave no appropriate reasons for the adverse finding of the appellant's credibility.
27. On behalf of the respondent, Mr Walker submitted that the complaint made with regard to [32] was only one of the credibility points made. It was not however the core point.
28. Mr Walker submitted that even if the Judge had the whole report she would not have come to the conclusions she reached at [32], there are nonetheless other credibility findings she made justifying the credibility conclusions she reached. It is accordingly severable from the other findings.
29. He also submitted that the documents should have been put forward at the hearing as this is what the case was based on.
30. In reply, Ms Wass submitted that the subsequent assessment of the feasibility of internal relocation has to be viewed in the light of the credibility findings.

Assessment

31. The respondent in the reasons for refusal letter had not sought to rely on the asserted failure of the school teachers to respond appropriately to reports made by the appellant of violence that had been taken against him.
32. The appellant gave detailed evidence before the Judge and stated when cross-examined what he had told his teachers on five occasions about his problems, when they had noticed marks on his face when he had been going to school; however, they did nothing to assist him [16]. In re-examination he stated that he had seen teachers hit pupils at school in Albania [17].
33. Whilst it might have been prudent for the appellant's solicitors to have obtained the background report which has subsequently been produced, the respondent in the reasons for refusal had never sought to rely upon the claim made by the appellant in his witness statement that he had told his teachers but that nothing had happened - Reasons for refusal, paragraph 17.
34. The First-tier Judge did not simply take into account as one of several adverse findings relating to the appellant's credibility that it was unlikely that his teachers would not take any action to protect him in the circumstances that he claimed. Instead she found that the core of his account was not credible. It was extremely unlikely that his teachers would not have taken any action to protect him. Although the appellant stated in re-examination that he had seen teachers hit pupils at school, she found that it was not credible that his reporting of serious abuse within his family home on numerous occasions resulting in his often missing school would

not be taken seriously and acted upon by the school. That she found undermined the credibility of his account.

35. Although she did not accept the appellant's claim that he had been kidnapped on two occasions by a criminal gang and that his account of his journey from Albania was also lacking in credibility, she did not find that these amounted to "the core" of his account not being credible.
36. Quite apart from the evidence subsequently produced, which tended to show that the attitude of the appellant's teachers might not have been unlikely, I find that the Judge's finding at [32] was not properly reasoned, and as noted by Upper Tribunal Judge Rintoul, was speculative in the absence of evidence to support the observation. Moreover, it appears that her finding relating to the core of his account was that it did not seem reasonable as it could not happen in this country. There was no evidence before her as to the conditions in Albania in respect of the approach and attitude of reports of violence in Albanian schools, and the Judge did not remind herself of the need to look at the issue in the foreign context. In the event the Judge did not seek to provide any reasons justifying her finding that this undermined the credibility of the appellant's account.
37. Although Mr Walker submitted that that was a finding which can be separated from the rest of the findings relating to the appellant's credibility, it is difficult to assume that even in the absence of such a finding, the same conclusion would have inevitably resulted. The finding that the Judge made related to the "core" of his account.
38. Insofar as internal relocation is concerned, the finding by the Judge, as contended in the grounds of appeal, was premised upon the appellant's ability to call upon his wider family members when internally relocating. However, there was an absence of evidence regarding contact between those family members and the appellant. Accordingly the finding is based again on supposition. The appellant gave evidence as to the distance between his family home and that of his other family members. He was not asked by anyone whether it would be feasible for him to go and live with these other family members.
39. Moreover, the Judge found that it was not suggested that the gang would have the means of tracing him if he moved to a different area. The appellant had however contended in evidence that his father or the gang could find him through the police, having regard to the fact that the police are corrupt.
40. I am accordingly satisfied that the decision of the First-tier Tribunal contained material errors of law. In the circumstances I set it aside. I consider that this is a case where the extent of judicial fact finding which is necessary for the decision to be re-made. I have had regard to the Senior President's Practice Statement regarding the remitting an appeal and the overriding objective. This is a case where there will be extensive judicial fact finding. It is accordingly just and fair to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. It is remitted to the First-tier Tribunal (Hatton Cross) for remaking before another Judge.

An anonymity direction is made.

Signed

Date: 23 February 2016

Deputy Upper Tribunal Judge Mailer