Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09711/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th December 2018	**On 18th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

BESART [F]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Albania born on 15th September 1999. The Appellant claims to have arrived in the United Kingdom on 31st March 2015. He claimed asylum on 16th June 2015 on the basis of his membership of a particular social group, namely that he was of Gypsy/Jevg ethnicity. That application was refused by the Secretary of State on 19th November 2015. At the time of application and refusal the Appellant was a minor. The Appellant went through the appeal system and his appeal was dismissed by the First-tier Tribunal Judge on 5th May 2016. The Appellant submitted an application for further leave to remain on 1st March 2017 and that leave to remain was refused

on 25th July 2018. The Appellant appealed against the refusal and the appeal came before Judge of the First-tier Tribunal Sweet sitting at Hatton Cross on 5th September 2018. In a Decision and Reasons promulgated on 18th December 2018 the Appellant's appeal was dismissed on all grounds.

The Appellant lodged Grounds of Appeal to the Upper Tribunal on 28th September 2018. Those grounds contended that the Tribunal had failed to undertake an assessment within the Immigration Rules as per paragraph 276ADE(vi) and secondly, that the Tribunal had erred in the approach to Article 8 outside the Rules by failing to take into account material considerations/failing to give adequate reasons. On 11th October 2018 First-tier Tribunal Judge Lambert granted permission to appeal. Judge Lambert noted that the decision disclosed adequate evidence-based reasons for concluding that there was no basis for departing from the findings in the previous appeal by the Appellant and that there was no new evidence sufficient to establish risk as a result of discrimination against Roma in Albania and that the Appellant would not be at risk on return and there was no breach of Article 8. The grounds maintain that there was a failure to make an assessment as to whether there were very significant obstacles under paragraph 276ADE(vi). Judge Lambert considered that it was correct that although the judge records at paragraph 24 the fact that Counsel for the Appellant made submissions on this point there was no assessment in the decision. Whether or not that is a material error of law in view of the other findings made by this and the previous judge as to the treatment of Roma people in Albania may, as Judge Lambert considered, be debatable.

It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. There is no attendance by the Appellant. His instructed solicitors served notice that they no longer represent the Appellant by letter to the Tribunal dated 20th November 2018. Notice of hearing was sent on 2nd November 2018 to both the Appellant's home address and to his instructed solicitors. There is no suggestion that any correspondence has been returned and I am satisfied that the Appellant has been duly served and notified of the hearing. He has chosen therefore not to appear. The Secretary of State appears by her Home Office Presenting Officer, Mr Bramble.

Submissions

Mr Bramble advises that the judge was entitled to take as his starting point the findings of the initial First-tier Tribunal Judge and that the question arises as to whether or not the judge has fallen into error with regard to his approach to paragraph 276ADE. He submits, however, that if the Appellant is unable to succeed on asylum grounds he finds it difficult to see in a case of this instance how the Appellant could possibly succeed on proving that there are significant obstacles to returning. He acknowledges that at paragraph 32 of the First-tier Tribunal Judge's decision the judge has made a finding that he is not persuaded that the Appellant has formed a private life to the extent that it would be disproportionate to return him to Albania and that there is nothing within the decision that would show that even if there is any error it is material. He

submits that it would be necessary for the Appellant to show that it would be appropriate for a Roma from Albania in the Appellant's particular circumstances to show significant obstacles in returning. He submits that no such finding has been made.

Mr Bramble goes on to comment that the question is based on the fact that the judge in the first decision had made findings on the Appellant having family in Albania and, having made such a decision and come to the conclusions that he has family in Albania, as set out at paragraph 89 of that decision, that the judge was entitled to rely on it and even if there has been scant regard at paragraph 32 to such finding the question remains as to its materiality, that there are no very significant obstacles, that the threshold has not been reached and that the Appellant therefore has not shown that there is a material error of law in the decision of the First-tier Tribunal. He asked me to dismiss the appeal.

The Law

Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

Mr Bramble acknowledges that the conclusions reached at paragraph 32 are scant in their conclusions but he relies on the materiality of any finding, bearing in mind the previous findings set out at paragraphs 26 to 31 and the findings made by the original judge who dismissed the appeal back in 2016.

He has reminded me that the judge has made conclusions at paragraphs 26 to 30 to the extent that the Appellant's claim for asylum fails along with the

claims pursuant to Articles 2 and 3 of the European Convention of Human Rights. The judge has referred to the previous decision and the findings of the First-tier Tribunal Judge therein and the reflection therein that as a minor the Appellant's family had been found in Albania and that having such family, even if they have relocated and are still in Albania there are no very significant obstacles to the Appellant returning.

Whilst the findings of the judge are not detailed I am satisfied that they do set out conclusions and reasons that the judge was entitled to reach and that there is before the Tribunal, or indeed was at that stage, no reason to show why the Appellant could not return to Albania, and no medical evidence that the Appellant would be returning to a situation where he would be found to be vulnerable as a young adult. Even if the scantness of the findings can be criticised I am not satisfied that the threshold is reached by which there would be any error of law that was material and in such circumstances the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal Judge contains no material error of law. The Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris