



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13740/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17th January 2018

Promulgated

On 12th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SD

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Wass, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 25th November 2016 to refuse his application for asylum in the UK. First-tier Tribunal Judge Abebrese dismissed the appeal in a decision promulgated on 3rd July 2017. The Appellant now appeals to this Tribunal with permission granted by Deputy Upper Tribunal Judge Doyle on 27th November 2017.

2. The background to this appeal is that the Appellant claims to have arrived in the UK on 16th May 2013 and claimed asylum on 17th May 2013, he was a minor when he arrived (his date of birth is 26th January 1998). The Appellant's application for asylum was refused on 4th December 2013 but he was granted discretionary leave to remain as an unaccompanied asylum-seeking child until 22nd July 2015. The Appellant did not appeal against this decision but made an application for further leave to remain on 24th July 2015. The Appellant claims that he is at risk on return to Albania because he was involved with a criminal gang who used him for criminal purposes. In the reasons for refusal letter of 4th December 2013 the Secretary of State set out reasons why the Appellant's claim to have been involved with a criminal gang was not accepted. In any event the Secretary of State considered that there was sufficiency of protection from the authorities in Albania and that in the alternative the Appellant could internally relocate within Albania.
3. In considering the appeal the First-tier Tribunal Judge set out details of the Appellant's claim and his oral evidence. The judge made findings at paragraphs 24-28 of the decision. The judge found that the Appellant's claim was not credible, that there was a sufficiency of protection in Albania and that the Appellant could relocate internally.

Error of law

4. The Appellant applied for permission to appeal to the First-tier Tribunal and when that application was refused a renewed application was made to the Upper Tribunal which was granted. The grounds are set out in the application to the First-tier Tribunal. There are essentially two Grounds of Appeal. It is contended in the first ground that the First-tier Tribunal Judge erred in relation to his findings as to the Appellant's credibility. Within this ground it is contended that the judge erred in the findings about the Appellant's claimed gang membership and the relationships the gang may have had with the police. It is further contended that the judge erred in his decision in relation to the Appellant's claim to have been trafficked. The second ground contends that there are errors in relation to the judge's findings as to sufficiency of protection and internal relocation.

Ground 1

5. In relation to credibility and in particular as to the findings in relation to the Appellant's claim to have been trafficked, Ms Wass referred to paragraph 24 of the judge's decision which states:

"I also find that the appellant's claim that he was trafficked from Albania is also dismissed because he has his claims investigated by a competent body and it was concluded that his application was unfounded."

6. Ms Wass contended that the conclusion by the competent authority in relation to the Appellant was made on the balance of probabilities and that the judge erred therefore in concluding that the application was unfounded. She submitted that this impacted upon the judge's

consideration of credibility. At the hearing Ms Wass also referred to the decision in the case of **MS (Trafficking - Tribunal's Powers - Art. 4 ECHR) Pakistan [2016] UKUT 00226 (IAC)**. She submitted that this case highlights that it is within the Tribunal's powers to make its own decision as to whether an Appellant is a victim of trafficking and that the Tribunal may be better equipped to decide that. She pointed out that paragraph 16 of the judge's decision set out the Appellant's responses in cross-examination when he discussed the journey made by him and his brother to Italy or their journey to the UK. She submitted that this oral evidence stands apart from the assessment by the competent authority and the judge should have made his own assessment of this issue.

7. Mr Melvin submitted that the decision in **MS** highlights that the appropriate challenge to a decision by the competent authority is by way of judicial review. The decision by the competent authority in this case was made in December 2013 and the Appellant had chosen not to challenge that decision by way of judicial review. He referred to head note (iv) in the decision in **MS** and emphasised that a Tribunal can make their own decision as to whether an Appellant was a victim of trafficking where satisfied that a negative trafficking decision is perverse. He submitted that this Appellant left Albania on his own passport and the judge fully considered the factual matrix in relation to trafficking and followed the guidance in **MS**. He submitted that it is clear from the decision in **MS** that a Tribunal would have to be satisfied that a trafficking decision is perverse before reconsidering it and in this case the trafficking decision is sustainable.
8. I have considered the decision in **MS** and in particular head note (iv) where the Tribunal said:

“(iv) Where satisfied that a negative trafficking decision is perverse, Tribunals are empowered to make their own decision on whether an Appellant was a victim of trafficking”

9. It seems to me that Mr Melvin's interpretation is the proper one. The Tribunal in **MS** emphasised the ability of an Appellant to challenge a trafficking decision on the basis that it is not in accordance with the law [43]. The Tribunal in **MS** refers to the prospect of the Secretary of State failing to apply her own policy or making a perverse decision in relation to the competent authority. In **MS** the Tribunal referred to the case of **AS (Afghanistan) v Secretary of State for the Home Department [2013] EWCA Civ 1469** and highlighted paragraph 18 where the Court of Appeal stated:

“No doubt, if a conclusive decision has been reached by the Competent Authority, First Tier Tribunals will be astute not (save perhaps in rare circumstances) to allow an appellant to re-run a case already decided against him on the facts. But where, as here, it is arguable that, on the facts found or accepted, the Competent Authority has reached a decision which was not open to it, that argument should be heard and taken into account.”

10. In my view, in the instant appeal, the judge was entitled to take into account the decision by the competent authority as he did at paragraph 24. However it is clear that the judge did not consider that decision to be determinative of the issues before him and that this was taken into account as one matter in the assessment of the Appellant's credibility and the assessment of the Appellant's claim.
11. The second matter raised within the criticism of the judge's assessment of credibility is that of the collusion issue. At paragraphs 20 and 22 the judge made findings in relation to elements of the Appellant's appeal. The judge found that the Appellant's claim to fear a criminal gang and to have been trafficked was not credible. Among the reasons put forward by the judge for that decision is that the Appellant claimed that there may be collusion between police and members of the gang. The judge found "the Appellant has not provided evidence to show that in this instance there was collusion on the part of the police" [20]. The judge then referred to objective evidence and went on to conclude that corruption does remain a problem in Albania but that the Appellant had options to seek redress which he had not taken the opportunity to avail himself of. The judge also found at paragraph 21 that the police do not act with impunity in relation to corrupt activities and there are mechanisms to ensure that this does not take place. The judge considered that the Appellant did not utilise all of the avenues available to him and that his mistrust of the local police should not have prevented him from going to another police station.
12. It is contended on the Appellant's behalf that the judge failed to take into account that the Appellant was a child at the time these events occurred and at the time he provided his substantive account in his interview. It is contended that the requirement placed by the judge upon the Appellant to provide evidence of collusion is unreasonable and places too high a burden of proof on the Appellant. It is contended that the judge's assessment that the Appellant did not avail himself of opportunities to raise this with police or another police station failed to take account of his age and the fact that he was committing criminal offences at that time. Ms Wass submitted that the judge failed to give any consideration to the fact that the Appellant explained at questions 243-245 of his asylum interview why he believed that there was collusion between the gang and the police. In his submission Mr Melvin submitted that the judge made adequate findings based on the Appellant's evidence given that the judge made clear that he had not believed the Appellant's evidence.
13. The judge made reference at paragraph 20 to the Appellant's answers to questions 240-245 of the asylum interview. Therefore it is clear that the judge had these answers in mind when considering the issue of collusion. The judge attached weight to the objective evidence and accepted that corruption does remain a problem but highlighted the fact that the Appellant had options within the system to seek redress from the local police or from police in another area. Ms Wass highlighted that the Appellant was a child at this time, he was around 13. However, it was the Appellant's claim that he was arrested then (although I note that there are significant inconsistencies as to the Appellant's claim as to when he was

arrested and for how long he was detained as highlighted in paragraph 24 of the reasons for refusal letter of 4th December 2013). I note that in the judge's record of the Appellant's oral evidence, at paragraph 15, the Appellant said that he could not remember much about his claimed arrest in February 2013. In any event it was the Appellant's case that he had been arrested. In the circumstances and on the basis of the evidence I am satisfied that it was open to the judge, having considered all of the evidence, to conclude that the Appellant had failed to pursue the avenues available to him for protection and had failed to establish that there was collusion in this case.

14. A further significant factor in the judge's adverse credibility findings is set out at paragraph 22. There the judge set out that the Appellant's brother (who the Appellant claimed was a member of the criminal gang who escaped along with him and travelled to the UK with him) was present at the appeal hearing but did not provide a witness statement and did not give oral evidence. It is clear that the judge attached significant weight to this factor in making the adverse credibility findings going to the heart of this appeal at paragraph 22. Mr Melvin referred to the case of **TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40** and submitted that this is evidence that was available to the Appellant and that it was open to the judge to make adverse credibility findings based on the failure of the brother to give evidence despite being present in court. Ms Wass submitted that the lack of corroborative evidence from the Appellant's brother could not impact on the assessment of the issue of collusion. In any event she submitted that it had been explained to the First-tier Tribunal that the reason why the brother did not give evidence was a matter of privilege and the privilege was not going to be waived to satisfy the First-tier Tribunal Judge's questions as to why the brother was not to give evidence.
15. In my view the issue of privilege does not adequately explain why the Appellant's brother did not give evidence at the hearing. On the basis of the limited explanation as to why he did not give evidence the judge was entitled to take into account the failure by the brother to give evidence as a significant factor in assessing the Appellant's credibility. This is particularly the case where in this Appellant's case it is claimed that the brother was part of the Appellant's entire account including his account of events in Albania and his journey to the UK.

Ground 2

16. It is contended in the second Ground of Appeal that the judge fell into error in relation to the assessment of sufficiency of protection and internal relocation. Ms Wass pointed out that at paragraph 23 the judge concluded that the Appellant could relocate internally in Albania and that his fear is localised to where the gang operates and that the gang operates in Tirana, Kosovo and possibly Italy. Ms Wass submitted that these findings are contradictory in that there is some degree of acceptance of the extent of the gang's reach. The acceptance that the gang operates in Tirana,

Kosovo and possibly Italy this involves a cross-border element which contradicts the finding that the gang is localised.

17. In my view the structure of paragraphs 20-25 is somewhat unclear. However, in reading paragraphs 20 to 24 of the decision as a whole it is clear that the judge made sufficient findings. The primary finding is that the Appellant's account of his membership of a gang in Albania is not credible [20-22]. A factor of significant weight in this assessment is the failure of the Appellant's brother to give evidence [22]. Having made that finding it was not necessary for the judge to consider sufficiency of protection or internal relocation. However the judge did so in a holistic manner. It was clear from paragraphs 20 and 21 that the judge considered (on the basis of the background evidence) that there is a sufficiency of protection for the Appellant in Albania against any claimed threat from a criminal gang. These findings were open to the judge on the basis of the evidence. It is also clear from paragraph 23 that the judge found that (even if he were credible in relation to his claimed fear of the criminal gang) he could internally relocate in Albania. Whilst it was the Appellant's case that the gang operates in Tirana, Kosovo and possibly Italy it was also the Appellant's case that in terms of Albania itself the gang operated in the Tirana area (asylum interview, Q84-90) and the Appellant put forward no evidence that the gang operated anywhere else within Albania. In these circumstances it was open to the judge to conclude that the Appellant could, if necessary, relocate within Albania.
18. Looking at the decision as a whole I am satisfied that the judge made sufficient and adequately-reasoned findings that the Appellant had not established that he was a member of a criminal gang in Albania or that he has a well-founded fear of persecution as a result of his involvement with a criminal gang. The judge found that in any event there was a sufficiency of protection for this Appellant in Albania and further the judge found that the Appellant could relocate internally in Albania. Looking at the decision as a whole I am satisfied that the reasoning is sufficient.
19. In these circumstances I am satisfied that the grounds disclose no material error of law in the judge's decision.

Notice of Decision

20. The decision of the First-tier Tribunal Judge does not contain a material error of law.
21. The decision of the First-tier Tribunal shall stand.

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 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: 7th February 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed and therefore there is no fee award.

Signed

Date: 7th February 2018

Deputy Upper Tribunal Judge Grimes