Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02946/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 December 2019	**On 6 December 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

E B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Iqbal, counsel instructed by M & K Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge M B Hussain, promulgated on 19 June 2019. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 22 October 2019.

Anonymity

2. Such a direction was made previously and is reiterated below.

Background

3. The appellant, a national of Albania, arrived in the United Kingdom clandestinely on 21 June 2016, aged 16. He applied for asylum the following day. The basis of that claim was that the appellant was forced, by the use of violence, to work by his brother and mother for approximately two years after his father died in May 2014. He left Albania with the assistance of his paternal uncle's son. In addition, the appellant claimed to fear ISIS, after being held against his will in Italy and overhearing a discussion regarding sending him to Syria.

4. In a letter dated 14 March 2019, the Secretary of State refused the appellant's protection claim. The respondent noted that in the appellant's National Referral Mechanism decision made on 18 July 2016, it was concluded that he was a victim of human trafficking or slavery, servitude, or forced/compulsory labour. That the appellant was a male victim of trafficking was not considered to be a Refugee Convention reason. The appellant's age and nationality were accepted as well as that he was beaten and forced to work by his mother and brother. The respondent further accepted that the appellant was held against his will in order to be recruited for ISIS. Nonetheless, the Secretary of State considered that the appellant's genuinely held fears were not objectively well founded because there was a sufficiency of protection in Albania and internal relocation was a reasonable option.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, an application was made to adjourn the appeal in order to obtain a country expert report. The judge refused the application as well as to give his reasons for doing so. The judge received, at his request, information from the presenting officer as to "*the basis on which the (appellant's claim) he had been trafficked was accepted by the respondent.*" Counsel for the appellant unsuccessfully sought another adjournment in order to take instructions on this material. Counsel then declined to accept service of the documents and withdrew from the proceedings, albeit remaining in the hearing room. No witness statement for the appellant or bundle was served prior to or at the hearing.

6. The appellant was briefly questioned by the presenting officer, who made detailed submissions. The appeal was dismissed owing to the judge's conclusion that there was no basis for finding that the appellant would be at risk from his family now and that his paternal uncle and cousins could offer him some protection. The judge dismissed the human rights appeal for the same reasons.

The grounds of appeal

7. The grounds of appeal were drafted by different counsel and were accompanied by a witness statement from Mr G Symes, who was counsel at the First-tier Tribunal hearing prior to withdrawing representation.

8. The six grounds were as follows:

- Firstly, the judge failed to grant an adjournment on the basis that there was sufficient information in the public domain but had failed to refer to any such information in dismissing the appeal;
- Secondly, the judge conversed with the presenting officer about the appellant's case in the absence of his counsel;
- Thirdly, the judge misconceived the nature of the risk the appellant faced on return and failed to have regard to the accepted facts
- Fourthly, the judge failed to apply paragraph 339K of the Rules
- Fifthly, there was a failure to make proper findings on sufficiency of protection and internal relocation
- Lastly, there was a failure to address whether the appellant could meet the requirements of paragraph 276ADE(1)(vi).

9. The application for permission to appeal was made out of time. The judge granting permission extended time for appealing and admitted the application. Permission to appeal was granted on the basis sought, with comment being made that the issue of the conversation between the judge and the presenting officer "*must be explored further as there may well have been procedural unfairness, which may have impacted on the overall findings*."

10. The respondent's Rule 24 response, received on 6 November 2019, indicated that the appeal was opposed. It was stated that the presenting officer's hearing minute did not give an indication that the judge discussed the case with her.

The hearing

11. Mr Bramble submitted the minute from the presenting officer who appeared before the judge which did not overtly address any of the issues raised by this appeal.

12. Ms Iqbal urged me to accept the content of the witness statement of Mr G Symes, counsel at the hearing in relation to the first ground,

13. the adjournment issue and made the following points. Firstly, the judge was wrong not to adjourn and secondly, he was wrong to refuse to give reasons at the hearing which was breach of the Presidential Guidance Note and *Ngaiwe*. An expert had been instructed in relation to the risk to the appellant from ISIS. This case had been listed quickly and the solicitors

had sought to adjourn the matter at the earliest stage. Owing to a miscommunication there had been a delay with obtaining the expert report after the hearing, however the report was due any day.

14. As for the bias point, ground two, Ms Iqbal simply relied on the grounds. She argued that there had been a failure to properly assess the issues raised in grounds three to five and a failure to address paragraph 276ADE(1)(vi) at all. On the latter point, Ms Iqbal drew attention to the appellant's initial witness statement and a letter from social services which mentioned the appellant's mental health.

15. Mr Bramble was concerned regarding proceeding in relation to the second ground with no opportunity for the judge to give his view. The statement of counsel said very little on the content of the alleged conversation between the judge and the presenting officer. As for the remaining grounds, he argued that the appellant's representatives were not ready to proceed before the First-tier Tribunal evidenced by the absence of an appellant's bundle or witness statement. The latter was required in order to address the issue of internal relocation as well the likelihood of whether the appellant would be forced into further labour given that his mother and brother knew he was leaving Albania.

16. Mr Bramble pointed to the judge's conclusion at [47] that the appellant was not at risk of re-trafficking if his family let him leave and consequently there was no need for an exploration of internal relocation. As for paragraph 276ADE, there was no witness statement from the appellant to explain the impact upon him of his return to Albania. The previous material was dated and did not address this.

17. In response, Ms Iqbal stated that she was not aware if her instructing solicitors had made a complaint regarding the judge's conduct as she had been unable to contact them. She emphasised that the appellant arrived in the United Kingdom as a minor whose case had been accepted. The judge had treated the appellant's claim with disbelief.

18. At the end of the hearing, I indicated that the judge made a material error of law in failing to adjourn the hearing and set aside the decision.

Decision on error of law

19. The appellant lodged a timeous appeal against the decision of 14 March 2019. In response to the case management hearing enquiry form, his solicitors stated that they were intending to submit expert country evidence and that they had funding to do so. Following that, a written application was made to adjourn the hearing of 29 April 2019, which was refused by a Tribunal caseworker and then a judge. The same reason was given by each, namely that there was ample background material in relation to Albania.

20. The specific issues to be addressed by the expert included whether ISIS had a presence in Albania and whether the appellant could access national protection from his family who had previously forced him to work through violence. In refusing to adjourn the appeal, the judge gave two reasons at [30] of the decision and reasons. Firstly, that there was sufficient information in the public domain and secondly that any country expert was unlikely to be of assistance. Nowhere in the decision and reasons does the judge mention background material which addresses the presence of ISIS in Albania and nor did Mr Bramble draw my attention to any. On the contrary, at [44] the judge merely relied on the Secretary of State's assertions in the decision letter that ISIS did not have a presence in Albania as follows:

> "*The Secretary of State has dealt with the appellant's fear of being forced to join Isis because there is not the presence of that organisation in his home country and he would not be removed to France so that he may come into contact with them. That seems to me to effectively dispose of the appellant's claim in this regard."*

21. The respondent's assertions as to ISIS were not supported by any evidence but were accepted at face value by the judge. Given that the appellant's description of being held against his will with a view to being recruited for ISIS was not in dispute, it would undoubtedly have been of assistance to have the view of a country expert as to whether there was any ISIS presence and whether the appellant was reasonably likely to be at risk in Albania.

22. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power the First-tier Tribunal has to adjourn or postpone a hearing under its case management powers. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly.

23. I have also considered the decision in *Nwaigwe (Adjournment: Fairness)* [2014] UKUT 00418 (IAC). The crucial question being whether the refusal of an adjournment deprived the affected party of a right to a fair hearing and not whether it was reasonable of the judge to have proceeded with the hearing.

24. I have, in addition, taken into consideration the Presidential Guidance note no. 1 of 2014 and note that factors weighing against adjourning an appeal include where a party seeks "*more time to prepare the appeal when adequate time has already been given*." While it is the case that the expert report was not ready and nor had any appellant's bundle been produced, the Guidance states that a failure to comply with directions will not be sufficient of itself to refuse an adjournment.

25. Paragraph 9 of the Guidance refers to a list of factors which may weigh against the granting of an adjournment, none of which applied in the appellant's case. Firstly, the application to adjourn was made nearly a

week prior to the hearing and in circumstances where the representatives had previously stated that they would be obtaining an expert opinion; it was not speculative, in that counsel understood that the expert held a differing opinion to the respondent regarding the presence of ISIS in Albania; the delay was likely to result in the provision of an expert report; it was obvious that the expert report was material to the outcome of the case and it could not be said that adequate time had already been given owing to the fact that less than a month had elapsed between the appellant lodging his notice of appeal and the hearing of that appeal.

26. A further issue is that the judge refused to inform counsel at the hearing of his reasons for refusing the adjournment application. This is admitted by the judge at [30] of his decision. This approach failed to take into consideration Presidential Guidance No.1 of 2014, which counsel brought to the judge's attention, according to Mr Symes' statement. Paragraph 14 of the Guidance states the following:

> "If a judge receives an adjournment application at a hearing and refuses it, the judge should give reasons to the parties. The reasons should be noted in the Record of Proceedings with the expectation that the adjournment application and decision will be included in the decision and statement of reasons subsequently issued. "

27. The aforementioned issue is, therefore, a further breach of the duty of fairness.

28. It was further concerning that the judge expressed his disquiet that the appellant had been accepted as a victim of modern slavery. The minute of the presenting officer notes that the "*IJ did not seem to understand*" the issue even after it was explained to him by both representatives and that the judge insisted on seeing the grant minute sheet, which the presenting officer described as sensitive information which the Home Office do not disclose. This issue did not form part of the grounds and I will say no more about it. Similarly, as the judge did not have the opportunity to comment on the allegation of bias, I make no findings in relation to the whether he discussed the appellant's case with the presenting officer in the absence of the appellant's representative at a time when the latter was still acting.

29. Having regard to the case law and the 2014 Rules, I find that the decision to proceed with the appeal was unfair in the circumstances. I accordingly set aside the decision of the First-tier Tribunal.

30. I am mindful of the Senior President's Practice Statement regarding remitting an appeal to the First-tier Tribunal for a fresh decision however, I am satisfied that the effect of the error has been to deprive the appellant of an opportunity to have his case properly put and considered by the First-tier Tribunal. This is accordingly an appropriate case for remittal to the First-tier Tribunal for a fresh decision to be made.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Hussain.

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 04 December 2019

Upper Tribunal Judge Kamara