Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09195/2018

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 4 March 2019 **On 20th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

A F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:
For the Appellant: Mr J Collins, Counsel, instructed by Sentinel Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

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1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Burnett (the judge), promulgated on 26 November 2018, in which he dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims. The Appellant's human rights claim was based on the fact that he had been a victim of modern slavery whilst in Albania and that there was a risk of either retribution or further enslavement upon return to that country. Prior to the hearing before the judge the Competent Authority had concluded that the Appellant had in fact been a victim of modern slavery.

The judge's decision

2. Quite rightly, the judge did not seek to go behind the conclusion that the Appellant had been a victim of modern slavery. He noted the Appellant's vulnerability, in light of the fact that the Appellant was born in 2000 and by the time of the hearing had only just reached his majority. The Appellant was not called to give oral evidence at the hearing.

3. In [48] the judge sets out aspects of the evidence and reaches some findings on these, although the wording is not as clear as it might otherwise have been. Of more significance is [50] in which the judge notes the importance of a family unit in cases involving trafficking (and presumably modern slavery as well). The judges notes that the Appellant had in fact been assisted by family members in the past: when his difficulties with the gang which had used him came to light, family members had taken him in and then arranged for his departure from Albania.

4. The judge notes the Appellant's own evidence that the gang had not caused any problems during the period after he stopped working for them and whilst he remained in Albania for the next month or so. The judge was of the view that this was an indication that there was no ongoing risk to the Appellant, particularly if, as the judge found would be the case, family members could assist him on return.

5. The judge cites passages from the country guidance case of TD and AD (trafficked women) CG [2016] UKUT 00092 (IAC), noting that each case would be fact-specific. At [54] he considers a number of factors relevant to the Appellant's circumstances. Having done so, he finds that there was no evidence to suggest that either the Appellant's family or the Appellant himself had been actively sought out by the gang. The judge goes on to emphasise once again the fact of the familial support on return and notes that the Appellant would now be an adult.

6. At [57] the judge brings the various proceeding elements together and concludes that the Appellant would not be at risk from the gang and that in any event there would be a sufficiency of protection and/or a viable internal relocation option.

7. Finally, the judge concludes that there was no prospect of an Article 8 claim succeeding.

The grounds of appeal and grant of permission

8. The grounds of appeal make a number of criticisms of the judge's approach to the Appellant's case. In summary, they assert that:

   (i) the judge failed to have proper regard to the Appellant's young age at all material times;

   (ii) the judge failed to consider the issue of family support in its proper context and given what had happened to the Appellant in the past;

   (iii) the judge's conclusions on sufficiency of protection and internal relocation were inadequately reasoned;

   (iv) the judge failed to assess whether the Appellant would be at risk of being re-trafficked either by the original gang or another;

   (v) the judge failed to give proper consideration to paragraph 276ADE(1)(vi) of the Immigration Rules.

9. Permission to appeal was granted by First-tier Tribunal Judge Davies on 28 December 2018. Whilst the grant of leave was not restricted, the only comment made by Judge Davies relates to the fact that there was a three-month delay between the hearing and the promulgation of the judge's decision.

The hearing before me

10. At the outset Mr Collins helpfully confirmed that he was not relying on the judge's delay in getting the decision written and promulgated as a freestanding ground of challenge. This point had been noted in the grounds simply as an indication that the judge had failed to adequately consider the Appellant's appeal generally.

11. Mr Collins relied on his grounds of appeal, emphasising the following matters. In respect of the Appellant's age, there had simply not been enough consideration of this important factor. There was a real lack of reasoning in [57] as regards sufficiency of protection and internal relocation. The consideration of the potential family support on return was inadequate given that the family had failed to protect the Appellant from becoming a victim of modern slavery in the first place. Mr Collins referred me to three particular answers given by the Appellant in his substantive interview and paragraph 4 of his appeal witness statement in respect of his view that the gang had connections with the Albanian police.

12. For his part, Mr Bramble relied on the Respondent's rule 24 document. He submitted that the judge had had the Appellant's age and vulnerability well in mind when considering the evidence, and the findings and conclusions set out in [50] and [54] were sustainable. In respect of the risk from the gang, I was referred to [48], [50] and [54]. Again, the findings and conclusions were all open to the judge. In relation to the potential risk of re-trafficking, Mr Bramble referred me to the extract from TD and AD cited at paragraph 12 of the grounds of appeal. In contrast to the situation of the Appellants in the country guidance decision, this Appellant would not be socially isolated as he had family support.

13. By way of reply, Mr Collins reiterated his submission that family help would not be enough to show sufficient protection to the Appellant and there had not been enough analysis in respect of internal relocation.

14. At the end of the hearing I reserved my decision.

Decision on error of law

15. After a careful and holistic consideration of the judge's decision, the grounds of challenge and the submissions made at the hearing, I conclude that there are no material errors of law in this case. My reasons for this conclusion are as follows.

16. In my view Mr Collins was right to have accepted that there was not a causal nexus between the delay in writing up the decision and any alleged errors of law. To this extent I take no account of this particular factor

17. In my view the judge was well-aware of the Appellant's age at all relevant times. This fact was never in dispute between the parties and the judge makes reference to his young age at various points in the decision (see [32] and [43] in particular). In addition, the judge was aware of the Appellant's vulnerability, both as a victim of modern slavery and on account of his age, and applied the appropriate Presidential Guidance (see [44]). Despite the fact that the Appellant was not called to give evidence at the hearing, it is clear enough to me that the judge had in mind these relevant factors and there is no sound basis on which it can be said that the judge had simply allowed these matters to have escaped his mind when assessing the evidence as a whole.

18. I turn to the issue of the Appellant's family. There is no challenge to the judge's finding that the Appellant did in fact have family members in Albania and that they did in fact assist him when his problems with the gang came to light. Those findings were clearly open to the judge.

19. Mr Collins has emphasised the fact that the family members were unable to prevent the Appellant becoming involved with the gang in the first place. As a simple matter of fact, that must be correct. However, the point must be seen in its proper context. Nobody knew about him being drawn

in by the gang: he did not disclose it (and no criticism of him is meant by this in any way) and indeed, he tried to cover it up. Therefore, it was not a case in which the family had been aware and had tried to take steps, but to no avail. Rather, this was a case in which the family members were entirely ignorant of the problems until the Appellant himself stopped “working” for the gang in question. Once the family members did become aware they took action, housed the Appellant until arrangements could be made for him to leave the country, and then actually facilitated the departure. This context supports the judge’s view that the family had provided in the past, and could provide again in the future, effective assistance to the Appellant.

20. This context must also be seen in combination with the judge’s finding, which has not been challenged and which in any event was open to him, that during the period between the Appellant getting away from the gang and his departure from Albania (a period of approximately a month), there was no adverse attention from the gang. In my view, the judge was entitled to regard this as being an indication that there was not an ongoing adverse interest in the Appellant.

21. In addition, the judge was entitled to find that there was no reliable evidence to suggest that there had been subsequent adverse interest in the Appellant following his departure from Albania. On this particular point, although Mr Collins has referred me to certain aspects of the Appellant’s evidence in the substantive interview and witness statement, the grounds did not contain any specific challenge alleging a failure to take relevant evidence into account on the judge’s part.

22. Having looked at this specific evidence for myself, and again with all due respect to the Appellant given his age at the material time, a fair reading of it suggests that he was expressing a subjective belief on possible links between the gang and the police rather than a view based on direct knowledge or other sources of reliable evidence. There is no error by the judge in respect of this specific matter.

23. Turning to the country guidance decision in TD and AD, this was before the judge and he considered it, albeit in the context that of course the Appellant was not a female victim of trafficking. In my view, the judge was entitled to have regard to it in respect of its relevance to the wider issue of state protection and/or internal relocation.

24. What of course was all-important were the particular circumstances of the Appellant if returned to Albania. In my view, relevant factors have been properly taken into account by the judge in [54]. It is adequately clear that important matters such as his age, his past experiences, the familial assistance, and the absence of ongoing threats, were all properly considered. In turn, these fed into an assessment of future risk, sufficiency of protection, and possible internal relocation.

25. On the issue of future risk, the judge was entitled, having regard to his findings and conclusions, to say that there was no risk from the particular gang that had enslaved the Appellant in the past.

26. It is right that he has not specifically addressed the issue of whether another gang would seek to re-enslave or traffic the Appellant. However, the paragraph of TD and AD cited in Mr Collins' grounds refers to possible victims being "socially isolated". On his sustainable findings of fact and conclusions, particularly those contained in [50], [54] and [56], the judge was entitled to conclude (in effect, if not stated expressly) that the Appellant would not fall into this category, albeit he would clearly still be a young man who had been a victim of modern slavery in the past. The failure to address the issue of risk from other unspecified gangs does not therefore render the decision as a whole unsound.

27. In terms of sufficiency of protection, whilst the reference to it in [57] is brief, it must be seen in the context of the decision as a whole, including the findings on family assistance, the fact that the problems had not been reported to the police in the past and the relevant passages from TD and AD cited by the judge at [51] and [52]. If the decision is read in this way, the judge's overall conclusion is adequate.

28. In respect of internal relocation, again the reference in [57] is brief, but again must be seen in context. As I have already said, the judge took a number of relevant characteristics into account in [54]. In light of these, it was open to the judge to conclude that relocation would, if necessary, be a reasonable option. It must of course be borne in mind that the judge has, as a primary conclusion, stated that there would not be any risk in the home area in any event and thus internal relocation did not, strictly speaking, arise at all.

29. Finally, in respect of paragraph 276ADE(1)(vi) of the Rules, Mr Collins accepted that this provision requires an assessment of circumstances as at the date of the claim. In this case, the Appellant made his human rights claim on 20 January 2016. At that time he was only 15 years old and therefore was unable to rely on this provision of the Rules, as it applies only to those aged between 18 and 25 years old. No other specific challenge in relation to Article 8 has been made in the grounds of appeal.

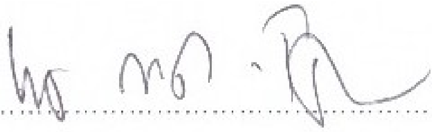
30. In light of the above, the decision of the judge shall stand.

31. In respect of the favourable decision of the Competent Authority, any grant of leave is a matter for the Respondent.

Notice of Decision

The decision of the First-tier Tribunal does not contain material errors of law.

The decision of the First-tier Tribunal stands.

Signed  Date: 17 March 2019

Deputy Upper Tribunal Judge Norton-Taylor