



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13374/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 5 December 2019**

**Decision & Reasons Promulgated
On 19 December 2019**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**'SC'
(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 his family. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: *Mr B Hawkins*, instructed by Fadiga & Co Solicitors

For the respondent: *Mr S Walker*, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are the approved record of the decision and written reasons which were given orally at the end of the hearing on 5 December 2019.

Introduction

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Abebrese (the 'FtT'), promulgated on 19 September 2019, by which he dismissed the appellant's appeal against the respondent's refusal on 9 November 2018 of his protection and human rights claims. That decision had in turn refused the appellant's application for leave to remain based on based on a claim to have been a victim of modern slavery, as a result his father incurring debts to pay for medical treatment of a family member. He then claimed to have been trafficked to the UK via Belgium, where his traffickers had forced him to beg. The appellant, then a minor, feared harm or being re-trafficked, if he were returned to his country of origin, Albania.
3. The core points taken against the appellant by the respondent related to her concerns about inconsistencies in the appellant's account, notwithstanding his age at the time, as a minor; as well as the plausibility of his account - in particular, it was regarded as implausible that the appellant would not have used the opportunity to escape whilst begging in Belgium; or that those who trafficked him would exercise so little control over him in Belgium. Whilst he claimed that his passport had been kept by an agent, he produced this at the respondent's asylum unit in November 2016. Given what she regarded as the inconsistencies and implausibilities in his account, the respondent did not give the appellant the statutory 'benefit of the doubt'. In addition, the appellant's family was relatively financially comfortable and he would be up to access state protection in Albania.

The FtT's decision

4. The FtT did not regard the appellant credible. The FtT regarded the appellant as vague in relation to his assertion that his knowledge that his father had borrowed money was based on conversations that he had overheard, rather than discussed directly. The FtT also regarded as not plausible that the appellant had never attempted to escape his traffickers in Belgium or that a stranger would be willing to help him come to the UK without asking about his family. While FtT noted that the appellant was accepted as a vulnerable witness, and that he had been assessed as suffering from PTSD, his medical needs did not meet the threshold under article 3 the European Convention on Human Rights ('ECHR') and there was no evidence that he would not be able to receive medical treatment in Albania.

The grounds of appeal and grant of permission

5. The appellant lodged grounds of appeal which are lengthy, but the gist of which I summarise below. On a minor issue, the FtT had referred incorrectly to the appellant's name and gender in the original promulgated decision. More importantly, the FtT had failed to consider that the appellant's parents might not have discussed the issue of the loan with the

appellant, as he was only 15 at the time and it was not an issue raised in cross-examination.

6. The FtT had also erred in findings based on an incorrect record of the appellant's evidence: while FtT had recorded that the appellant as making little attempt to contact his parents, his direct oral evidence was the contrary; the FtT recorded an inconsistency with the appellant's witness statement referring to him not remembering whether loan sharks came to the family home, when the witness statement did not include such a passage; whilst the FtT had referred the appellant's claim of a 'stranger' helping him, this had not been the appellant's evidence.
7. The FtT had failed to consider properly the expert report of a psychiatrist, when assessing the appellant's credibility, noting the appellant's severe depression and PTSD was attributed to being held captive by traffickers.
8. The FtT had also failed to assess the evidence from the same psychiatrist about risk of suicide, including the submissions made in relation to the well-known authority of Y & Z (Sri Lanka) v SSHD [2009] EWCA Civ 362.
9. Finally, the FtT failed to give proper consideration to a separate country report of Dr Antonio Young, who had provided an opinion as to why the appellant's account was plausible and consistent background evidence.
10. First-tier Tribunal Judge Grant-Hutchison granted permission to appeal to this Tribunal on 29 October 2019. She regarded it as arguable that the FtT had failed to take into account the appellant's age, (15) at the time when his father borrowed money; failed to properly consider the appellant's personal evidence; and failed to consider the objective expert evidence. The grant of permission was not limited in its scope.

The hearing before me

11. Mr Walker conceded, on behalf of the respondent, that the FtT's decision did contain a number of material errors of law both in its recording of the appellant's evidence (for example in relation to the visits by loan sharks and people said to be 'strangers') and also in other areas, including a failure to consider the medical report, objective country evidence and the risks as a consequence of mental health. All were accepted to be material and as a consequence both representatives agreed that the FtT decision needed to be set aside in its entirety, without any preservation of finding.

Decision

12. As a consequence of the respondent's concession, I find that the FtT's decision did contain material error of law and I set it aside in its entirety, without any preservation of finding of fact.
13. Both representatives agreed that it was appropriate, in the light of the need for detailed evidence and consideration of credibility, that the matter

needed to be remitted back for remaking to the First-tier Tribunal, to a judge other than Judge Abebrese.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal:

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Abebrese.

The anonymity directions continue to apply.

Signed J. Keith

Date: 16 December 2019

Upper Tribunal Judge Keith