



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08467/2015 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 25th January 2021

Decision & Reasons Promulgated
On 19th February 2021

Before:

Upper Tribunal Judge Frances

Between:

Y L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, instructed by Islington Law Centre

For the Respondent: Mr E Tufan, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND DIRECTIONS

1. The Appellant is a citizen of Albania born in 1999. He appeals against the decision of First-tier Tribunal Judge L Rahman, dated 5 April 2016 and promulgated on 5 June 2020, dismissing his appeal against the refusal of his

protection claim on asylum, humanitarian protection and human rights grounds.

2. The Appellant came to the UK in January 2014 as an unaccompanied minor and was granted limited leave to remain until 27 July 2016. His asylum claim was refused on 13 May 2015 and his appeal was heard on 22 February 2016 and 21 March 2016. The Appellant attended the first appeal hearing and gave evidence through an Albanian interpreter. He was represented by counsel instructed by Caveat Solicitors. At the conclusion of his oral evidence, a matter arose as to whether he had a sister in the UK who had made a claim for asylum and was represented by Caveat Solicitors. Counsel was unable to contact his instructing solicitors and, given it was late in the day, the hearing was adjourned part heard.
3. On 29 February 2016, Caveat Solicitors informed the Tribunal that they were no longer acting for the Appellant. The Appellant did not attend the adjourned hearing. The judge found that the Appellant was not credible and dismissed his appeal.
4. The Appellant was referred to Islington Law Centre, his current representatives, on 22 April 2020. They made enquiries with the Tribunal and the decision refusing the Appellant's appeal was promulgated on 5 June 2020. His caseworker is of the view that a medico-legal report is required to assess whether the Appellant had capacity to engage in the proceedings in 2016. There were concerns about possible learning difficulties and whether the Appellant was a victim of trafficking.
5. Permission was granted by First-tier Tribunal Judge Ford on 25 June 2020 on the ground that it was arguable the credibility assessment was flawed given the Appellant's age, and his absence and lack of representation at the adjourned hearing.
6. In her Rule 24 response, the Respondent stated the decision was originally promulgated in April 2016 and expressed surprise at the re-promulgation in 2020. She submitted there was no evidence at the date of hearing that the Appellant had an undisclosed medical issue and the Appellant had been given every opportunity to put his case.
7. In response to directions issued by the Upper Tribunal, the Appellant applied for an adjournment of the error of law hearing to obtain a psychiatric/psychological assessment. It was submitted the Appellant was denied a fair hearing and the appeal should be remitted to the First-tier Tribunal.
8. The hearing was listed for a remote hearing on 25 January 2021. The Appellant applied for an adjournment on the basis the Appellant had an appointment with Dr Rachel Thomas on 12 January 2021 and her report would not be available before 9 March 2021. The error of law hearing was converted to a CMR via Skype. Mr Tufan agreed that the appeal should be remitted to the

First-tier tribunal given the unusual history of the proceedings and the Appellant's vulnerability.

9. I find that there has been procedural unfairness in the conduct of the proceedings giving rise to an error of law. The Appellant was a minor at the date of hearing and there was evidence which cast doubt on his capacity to give evidence. Further, his representatives withdrew soon after the appeal was adjourned part-heard and the appeal proceeded in the Appellant's absence. The delay in promulgating the decision is also a factor which I have taken into account in concluding that the appeal should be remitted to the First-tier Tribunal.
10. The decision dated 5 April 2016, promulgated on 5 June 2020, is set aside and remitted to the First-tier Tribunal. None of the judge's findings are preserved. The Appellant's appeal is allowed.
11. I make the following directions:
 - (a) The Respondent to file and serve, on the Tribunal and the Appellant, a copy of the Respondent's bundle, and any other relevant documents which appear on the Home Office file, by 4pm on 8 March 2021.
 - (b) The Appellant to file and serve a copy of the expert report and any other documentation upon which he intends to rely by 4pm on 29 March 2021.
 - (c) The appeal to be listed before the First-tier Tribunal on the first open date after 12 April 2021.
 - (d) The Appellant and Respondent to file skeleton arguments no later than 7 days before the date of hearing.

Notice of decision

Appeal allowed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed

Date: 25 January 2021

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award. The appeal remains outstanding.

J Frances

Signed

Date: 25 January 2021

Upper Tribunal Judge Frances