Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01152/2020

THE IMMIGRATION ACTS

Heard at Field House by remote video conference on 11 February 2021 (V)	**Decision & Reasons Promulgated On 5 March 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

I N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Ms K. Smith, instructed by Turpin Miller LLP
For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 22 January 2020 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Parkes ('the judge') dismissed the appeal in a decision promulgated on 09 September 2020. The judge rejected the credibility of the appellant's account of abuse by his parents and subsequent exploitation by a local criminal after he ran away from home. The judge noted that the National Referral Mechanism (NRM) found that the appellant was not a victim of Modern Slavery having identified a number of inconsistencies in his account. For example, "the Appellant was inconsistent about whether he had been forced to take the white powder or not.." [11]. The respondent's refusal letter identified other inconsistencies in his evidence as to whether his mother was involved in the abuse or not [12]. The judge took into account the fact that the appellant was a minor when he was interviewed about his claim but noted that he was nearly 16 years old at the time so was "not as young as he might have been" [14] and "would have been old enough to give accounts that were consistent" [15]. Even taking this into account the judge observed that there were a number of differences in the accounts that he had given [14].

3. The judge found that the appellant's account of whether his mother had been involved in his abuse or not was inconsistent [16]. The judge observed that there were "issues over… whether or not he took, or was made to take, the white powder. Either he did take it or he did not, it is not a part of his account where different details are being highlighted, the accounts are different." [17].

4. The judge then noted that he raised an issue with the appellant's counsel during submissions about his ability to leave Albanian using his own passport i.e. after the witness had completed his evidence. In what is a relatively concise decision, the next four paragraphs make a series of plausibility findings relating to the passport. First, the judge inferred that, given his young age, the passport must have been issued with his parents' consent. He concluded that this was inconsistent with the appellant's account of abuse [19]. Second, it was unclear how the passport would have remained in his possession if the account were true [20]. Third, given the treatment the appellant says he suffered from Fredi, it was not plausible that he would be able to retain such an important document [21]. Fourth, the judge found it "surprising" that the appellant would have been able to keep the passport on his person when it would have been an obvious means by which Fredi would seek to prevent his escape [22]. The judge went on to make the following observations before concluding that the appellant's account was not credible:

> "23. That there is domestic violence in Albania, that children can be mistreated by their parent and that children who end up living on the streets are vulnerable to

exploitation following grooming is sadly clear from the background evidence. This is also true in relation to the issue of corruption within the Police in Albania.

24. Reliance is place on the UN Report, report of Steve Harvey of the 15th of October 2019 and the ARC reports. The reports of the circumstances of those caught up in the cycle of deprivation, poverty and abuse make grim reading and for those in such circumstances there is a risk of grooming, the use by criminal gangs and trafficking. The issue is not whether those things happen but whether the appellant's account to the lower standard that applies, shows that he was treated in Albania as he claims and would be at risk on return."

5. The appellant appeals the First-tier Tribunal decision on the following grounds:

(i) The judge erred by failing to engage with evidence that was relevant to a proper assessment of the appellant's credibility. First, the judge failed to take into account an explanation given by the appellant in his statement, which might have explained the apparent inconsistency in his evidence as to "whether or not" he was made to take drugs. Second, the judge made a series of credibility points about the passport without giving the appellant a fair opportunity to address his concerns. Third, the judge failed to give adequate consideration to the expert report of Steve Harvey.

(ii) The judge failed to take into account relevant evidence and failed to make adequate findings relating to sufficiency of protection and internal relocation.

(iii) If the judge erred in relation to the first and second grounds it followed that he also erred in his assessment of whether there were very significant obstacles to integration for the purpose of paragraph 276ADE(1)(vi) of the immigration rules.

Decision and reasons

6. Having considered the grounds of appeal and oral submissions made by both parties I conclude that the First-tier Tribunal decision involved the making of an error of law and must be set aside.

7. The second and third grounds are dependent on the success of the first. It is open to a judge to consider the internal consistency of an appellant's account, but the assessment must be holistic and must also take into account the extent to which the account is consistent with background and other evidence relating to the country concerned. The mere fact that there might appear to be an internal inconsistency is not in itself sufficient to reject the account. A judge must consider whether the appellant has given a reasonable explanation for the inconsistency or whether the inconsistency might be adequately explained by other factors e.g. young age, disability or evidence of trauma.

8. It was open to the judge to consider apparent discrepancies in the appellant's evidence and the findings relating to some of those inconsistencies have not been challenged. None of the three points raised in the first ground would be sufficient to conclude that the credibility findings are unsafe if taken alone. But when taken together I find that they disclose cumulative errors of approach that amount to an error of law.

9. There is force in the submission that the judge failed to consider relevant evidence given in the appellant's witness statement to explain the 'white powder' issue. This originated from paragraph 44 of the respondent's reasons for refusal letter. The respondent specifically identified paragraph 21 of the appellant's original witness statement. It was assumed that when he referred to being "physically forced to take the substance" that this meant that he was forced to ingest the white powder. This was said to be inconsistent with his evidence at question 118 of the asylum interview where, after having described Fredi taking the white powder and telling him that it made him strong, he was asked whether he was "required to take some of this white substance" and he replied "he did but I did not accept". This appeared to be a reference to Fredi taking the white substance but the appellant refusing to do so. The wording of the decision seems to make clear that the judge also reduced the apparent discrepancy to a question of "whether or not he took, or was made to take, the white powder". This was repeated in the next sentence when the judge said "either he did take it or he did not" [17].

10. In fact, the appellant had given an explanation in his most recent witness statement that was more nuanced. He explained that when he said at paragraph 21 of his initial statement that he "physically forced me to take the substance. He was beating me and even threatened me with a gun." that he was referring to being forced to take the bags of drugs to places for Fredi and not to ingesting the white powder. This explanation was at least capable of explaining the inconsistency if read in the context of the rest of his initial statement. From paragraph 17 to paragraph 24 he made repeated reference to being forced to 'take' or 'deliver' bags for Fredi. At paragraph 20 he described how he refused to deliver the bags until he knew what was in them. That is when Fredi showed him the white powder and told him he should 'take' (ingest) some. The wording of paragraph 21 was simply ambiguous in the context of repeated reference to 'taking' (delivering) the bags and then a reference to Fredi telling him to 'take' (ingest) some of the white powder. In English the work 'take' could have a double meaning. In an asylum appeal, this could be further complicated by the way in which it might have been translated to or from Albanian. It was necessary for the judge to resolve this ambiguity by reference to the appellant's explanation. In reducing the issue to whether the appellant did or did not take the white powder, when in fact the evidence was more nuanced, the judge failed to take into account relevant evidence provided in the appellant's statement.

11. It is clear from the face of the decision that the judge did not raise the 'passport' issue until submissions when the appellant had given evidence and could not answer the points. Mr Clarke pointed out that the respondent had noted at paragraph 45 of the decision letter that the appellant had his own passport. It was considered implausible that he would be able to retain it while he lived with Fredi, who he claimed controlled and exploited him. The appellant addressed this issue in his most recent statement. He said that he kept the passport on him at all times. Fredi simply did not know he had it. At [22] the judge refers to the passport being "kept flat against the Appellant". He found that it was implausible that Fredi would not want to take the passport from him but failed to engage with the appellant's explanation. Even if Fredi might have had a motive to take the passport, if he did not know about it, it might still have been possible for the appellant to keep the document hidden.

12. Compared to other credibility issues identified by the judge, the 'passport' issue formed a large part of his reasons for rejecting the credibility of the appellant's account. Some of the points made by the judge were not in the decision letter. The appellant was not given a fair opportunity to respond to those points in evidence if the judge had concerns. It is at least arguably irrational to conclude that if the appellant's parents were abusive that they would not obtain a passport for him. Even bad parents might obtain an identity document for a child if there was a need for one. Aside from not putting this issue to the appellant, the judge failed to take into account relevant evidence that was before him. The screening interview recorded that the passport was issued on 20 August 2014, a year before the appellant left Albania. In a witness statement dated 27 November 2019 the appellant responded to a number of issues raised by the respondent during the NRM process. At [13] of the statement he said that he explained that the abuse from his parents got worse over time. As far as he could remember his mother obtained the passport for him as an identity document for medical purposes.

13. While the judge appeared to acknowledge that the background and expert evidence showed that domestic abuse does lead to children living on the streets in Albania, who are then vulnerable to exploitation, and that there was a risk of grooming by criminal gangs, the last line of [24] does not make clear what weight the judge might have placed on this evidence, or in fact any other evidence, that might have supported the appellant's account.

14. For the reasons given above I conclude that the combination of points raised by the appellant are sufficient to render the credibility findings unsafe. The First-tier Tribunal decision involved the making of an error of law and must be set aside. The parties agreed that it was appropriate for the decision to be remade in the First-tier Tribunal given that it would require a fresh hearing of the case. It is a matter for the First-tier Tribunal to make further directions on mode of hearing or any other case management decisions it deems necessary.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The case will be remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan Date 02 March 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email