Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/51283/2020
(UI-2022-000798); IA/01651/2020

THE IMMIGRATION ACTS

Heard at : Field House
On : 11 August 2022

Decision & Reasons Promulgated
On : 27 September 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

AS
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, Counsel
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Albania, born on 8 August 2000 in Diber, Albania. He claims to have left Albania at the end of February 2017 and to have to travelled to Spain before arriving clandestinely in the UK in a lorry on 11 March 2017. He claimed asylum on 15 March 2017, was interviewed in August

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2017, made further submissions in April 2018 and received a decision in his claim on 19 August 2020.

3. The appellant's asylum claim was made on the basis of a fear of persecution due to a blood feud arising from a relationship he had with a girl, LX, who was in the year below him at school and whose family was well-known for being aggressive and rude. They were in a relationship for one year. In October or November 2016, LX's cousins saw LX and the appellant leaving school together and saw that the appellant had his hand on her neck. They approached him and threatened to kill him, and he ran away. In order to protect herself from her own family LX told them that the appellant had forced her into a sexual relationship. Two to three weeks later three of her cousins grabbed the appellant in the street and took him to a disused storeroom where they beat him and told him they would kill him because he had dishonoured LX. He managed to escape and went to stay with an uncle. A week after that incident LX's mother came to his family home and told his mother about the relationship and said that there was now a blood feud between the X family and the appellant's family, and that he would be killed. The appellant left Albania with a friend who was also experiencing problems and they found a man who drove them to Spain where they found someone who helped them get to the UK. After arriving in the UK, in December 2017, he discovered from Facebook that his father was in the UK, in hospital. When he visited him, his father told him that he had been in Greece, having left Albania because he was being pursued by the X family, and had been attacked by the X family in Greece but had managed to escape. His father subsequently died of cancer on 28 December 2017 but also had head injuries. The appellant feared the X family and believed that they could find him anywhere in Albania because they were famous and rich and had contacts in high places.

4. The respondent, in refusing the appellant's claim, noted that he had initially said that he was unable to contact his parents but later admitted that he was in contact with his mother. The respondent did not believe that the appellant's father would have been able to travel from Greece to the UK if he had a serious head injury and did not accept that he had been attacked by the X family as claimed, nor that the appellant was in a blood feud. The respondent rejected the appellant's account of events in Albania and considered that he did not meet the criteria in <u>EH (blood feuds) Albania CG [2012] UKUT 00348</u> for demonstrating risk on return as a result of a blood feud in any event. The respondent found further that there was a sufficiency of protection available to the appellant from the Albanian authorities and that he could also safely and reasonably relocate to another part of Albania such as Durres. The respondent did not accept that the appellant would be at any risk on return to Albania and considered that his removal would not involve a breach of his human rights.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Dineen on 12 November 2021. The appellant gave oral evidence before the Tribunal, and also produced a medical report from Dr AK Hammed, a consultant psychiatrist instructed by his solicitors, to support his claim to have mental health problems. The judge did not find it credible that the appellant managed to escape from LX's cousins on two occasions by simply

running away and did not believe that there was such a family as the X family who had the ability to track the appellant down anywhere in Albania. Neither did the judge accept the appellant's account of his father being attacked in Greece. The judge also found the appellant's credibility to be damaged by the fact that he told Dr Hameed that he had lost contact with his family in Albania but had stated in oral evidence that he was in contact with his mother in Tirana who had told him that the X family were still looking for him. The judge did not accept that a blood feud had been instigated against the appellant but considered in any event that there was a sufficiency of protection available to him and that he would not be at risk on return. The judge considered that any psychiatric or psychological assistance required by the appellant would be available to him in Albania and that his removal to that country would not breach his human rights. He accordingly dismissed the appeal on all grounds.

6. Permission was sought on behalf of the appellant to appeal the decision to the Upper Tribunal on three grounds. Firstly, that the judge had erred in law in his assessment of credibility by failing to consider the appellant's evidence in the context of him being a vulnerable witness, by rejecting his account on grounds of implausibility, by wrongly finding that he had failed to give details about how he had escaped from LX's cousins, by relying upon a discrepancy arising from his account given to Dr Hameed when Dr Hameed was not a fact gatherer, and by failing to give weight to corroborating medical evidence. Secondly, that the judge's conclusions did not reflect the assessment of Dr Hameed, they were selective in their reliance upon parts of his report, and they did not take account of the fact that the appellant's medication was not available in Albania. Thirdly, that the judge's findings on sufficiency of protection were inconsistent with the Home Office CPIN report 'Police and corruption in Albania' and the country guidance in TD and AD (Trafficked women) CG [2016] UKUT 00092 and his findings on internal relocation failed to take account of relevant country guidance and failed to engage with the impact on the appellant's mental health.

7. Permission was refused in the First-tier Tribunal, but was subsequently granted by the Upper Tribunal upon a renewed application.

8. The matter then came before us for a hearing. Both parties made submissions which are addressed in our discussion below.

Discussion

9. Mr Eaton began his submissions by addressing the second ground of challenge since, as he stated, that impacted upon both the first and third ground. That ground related to the medical evidence, which consisted of the medicolegal report from Dr Hameed. Mr Eaton, in both his written grounds and oral submissions, made various assertions about the judge's lack of proper engagement with the report. However, we do not find there to be merit in those assertions and consider that the judge's findings and conclusions indicate that he had full and careful regard to Dr Hameed's assessment and properly engaged with the medical evidence. It is relevant to note that Dr Hameed's report was the only supporting medical evidence before the judge aside from a

copy of a prescription for Mirtazapine. We note further that, at [6.1] of his report, Dr Hameed confirmed that there had been no previous formal diagnosis of a mental illness and that, whilst he recommended psychological intervention for the appellant, there was no evidence before the judge to show that the appellant had sought to avail himself of such treatment in the five months following his appointment with Dr Hameed.

10. Mr Eaton submitted that Judge Dineen's lack of engagement with the medical evidence was illustrated by the fact that in his summary of Dr Hameed's report, at [17] of his decision, he completely failed to consider or mention the diagnosis of PTSD and failed to recognise the severity of the appellant's condition as suggested in the report. However, we do not agree. As Mr Avery properly submitted, there was no diagnosis of PTSD made by Dr Hameed. Rather, at [7.2] of his report, he referred to there being symptoms of PTSD. In our view Judge Dineen's summary at [17] was an accurate reflection of Dr Hameed's report and indeed we note that it was specifically and directly taken from Dr Hameed's summary, conclusion and opinion at [9.1] to [9.4]. In our view, the judge clearly fully appreciated, and had regard to, the full extent of the appellant's mental health problems as indicated by the evidence.

11. In so far as the grounds suggest that the judge was selective in his reliance on Dr Hameed's report and in particular on the assessment of the risk of suicide, we consider that in fact the contrary is the case, and that the judge's assessment reflected the overall tenor of the expert's opinion. The appellant's grounds, at [25] and [26], rely upon extracts from Dr Hameed's report in relation to the appellant's previous self-harm and attempted suicide, and intentions towards suicide if returned to Albania, but a closer examination of the report shows that that was Dr Hameed's record of the appellant's account to him, as is apparent at [4.11] and [7.12], and that those claims were not independently evidenced. Dr Hameed's own assessment of the appellant's risk of self-harm or suicide on return at [7.12] to [7.13] is not that he is likely to attempt suicide if returned, just that there is an increased risk. We consider that Judge Dineen's observations and findings at [17] and [42] provided a more accurate reflection of Dr Hameed's own opinion than the extracts relied on by the appellant. We also reject the suggestion that the judge made any error in his findings on the availability of the required medication in Albania. Although the appellant produced a prescription for Mirtazapine, there was no evidence to suggest that that was the only medication he could take. As the judge said at [42], the appellant was only taking Kalms at the time he was assessed by Dr Hameed. Dr Hameed's recommendation, at [7.5] and [9.1] of his report, was that there were various antidepressants from which the appellant may benefit. We note from the Home Office CPIN 'Albania: Mental Healthcare', as referred to at [24 of the grounds of appeal, that those were available in Albania.

12. Accordingly, we find no merit in the second ground of appeal and reject the assertion that Judge Dineen's decision failed to reflect the medical evidence or that he failed properly to engage with that evidence. Likewise, we reject the assertion in the first ground that the judge failed to assess the appellant's credibility against the medical evidence and in the light of his mental health problems. On the contrary, it is clear that the judge had full

regard to the medical opinion as to the appellant's vulnerability and treated him, and his evidence, with the appropriate understanding, in accordance with the guidance on vulnerable witnesses. The judge referred to the Presidential Guidance on vulnerable witnesses at [4] and [5] of his decision, and at [32], he specifically stated that he had regard to the appellant's age at the time of the alleged events in Albania as well as the medical evidence and his vulnerability, when assessing his claim. We consider there to be no reason for concluding that he did otherwise.

13. Ground one raises further challenges to the judge's credibility assessment. It is asserted at [13] of the grounds, and submitted by Mr Eaton, that the judge erred by reaching his adverse findings and conclusions on the basis of implausibility. Reference is made in particular to the judge's findings at [33] and [34] whereby he rejected the appellant's account of having escaped from LX's cousins on two occasions. We note that the judge did indeed find the appellant's account of his escape to be lacking in plausibility, but he also found, at [34], that the credibility of the account was undermined by the appellant's inability to give a detailed explanation of the second incident. Mr Eaton submitted that the judge, in so finding, failed to consider the detailed description given by the appellant in his statement and interview. However, not only is it clear that the judge, as he confirmed at [30], had regard to all of the appellant's evidence when assessing the credibility of his claim, but we also agree with Mr Avery that the judge's particular concern was his inability to provide any detail when describing the event before the Tribunal. The fact that a witness is vulnerable does not mean that shortcomings in their oral evidence must be disregarded, provided the judge has taken appropriate account of the vulnerability (as we have already noted the judge did in this case).

14. It is also apparent to us that the judge's adverse findings were based on significantly more than a lack of plausibility, when considering the other reasons that he provided for rejecting the appellant's account. At [35] he considered a lack of supporting evidence to be a reason to doubt the appellant's claim as to the significant influence of the LX's family and at [37] he noted a discrepancy in the evidence which undermined the credibility of the claim. Specifically, the judge noted in that paragraph that, whilst the appellant's oral evidence before the Tribunal was that his mother had recently told him that the X family were still looking for him, he had previously told Dr Hameed that he had lost contact with his family (including his mother) in Albania. Clearly that was a particularly material inconsistency, and the judge was perfectly entitled to draw adverse conclusions from that. The appellant now seeks to distance himself from that discrepancy by asserting, in his grounds of challenge, that those were Dr Hameed's words, which he did not rely upon. However, we note from [4.10] of Dr Hameed's report that the appellant's account of the loss of contact with his family was recorded in some detail and cannot be characterised as an error by Dr Hameed. Moreover, Dr Hameed assessed the appellant's loss of contact with his family as a contributory factor for him feeling low in mood, and that is an assessment on which the appellant continues to rely.

15. The appellant also seeks to challenge the judge’s failure to give weight to the medical evidence relating to the appellant’s father which provided support for his claim that his father was attacked by the X family and sustained a head injury. It was Mr Eaton’s submission that the appellant’s father’s clinical notes and death certificate did not give any details of the cause of the head trauma because his treatment and death were related to his cancer rather than the head injury, and that the judge was therefore wrong to dismiss that evidence in the way that he did. However, the judge was merely observing the limited corroborative nature of that medical evidence, which he was perfectly entitled to do, as the evidence does not assist with either the cause or timing of the head injury and therefore does not assist with the credibility of the appellant’s second-hand account of his father’s experiences. In the circumstances, it was fully and properly open to the judge to accord the evidence the weight that he did.

16. For all of these reasons we consider that the grounds do not identify any errors of law in the judge’s credibility assessment. The judge plainly had regard to all the evidence and considered it in the round, taking account of the expert medical opinion and assessing the appellant’s own evidence in the light of his mental health and vulnerability. The judge provided adequate reasons for concluding that the appellant’s account was not a credible one and the adverse findings that he made were fully and properly open to him on the evidence before him. In view of our conclusion that the judge was entitled to reject the appellant’s account of his past experiences in Albania and his reasons for fearing return, and to conclude that he was at no risk on return, the challenge in the third grounds, which relates to sufficiency of protection and internal relocation, is immaterial. Mr Eaton accepted that. In any event we find no merit in that ground, having considered the judge’s full and proper assessment of those matters in the context of the background country information. In the circumstances it was fully and properly open to the judge, on the evidence available to him, to conclude that the appellant was able to return to Albania, that he was at no risk there, that he was able to access any medical treatment and medication that he required in Albania, and that his removal would not breach his human rights.

17. Accordingly, the grounds of challenge are not made out and we find no errors of law in Judge Dineen’s decision. The decision is upheld.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede Dated: 12 August 2022
Upper Tribunal Judge Kebede