



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

**Appeal Number: UI-2021-001347**  
on appeal from PA/04596/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 April 2022**

**Decision and Reasons  
Promulgated  
On 7 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**F M (ALBANIA)  
[ANONYMITY ORDER]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the appellant: Ms Ella Gunn of Counsel, instructed by Parker Rhodes  
Hickmotts Solicitors

For the respondent: Mr David Clarke, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 10 June 2021 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Albania.
2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall

publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**

3. **Vulnerable appellant.** The appellant was a minor at all material times and has medical evidence indicating that he has depression and trauma-related difficulty with giving a reliable history. He is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.
4. **Mode of hearing.** The hearing today took place face to face.

## **Background**

5. The appellant was born in Albania in 2001 and is now 20 years old. His account is that he got into difficulty with a gang in his home area, and in March 2016 was attacked and stabbed while out with a friend.
6. He came to the UK in 2016 and claimed asylum on 1 November 2016. He was served with illegal entry papers.
7. The appellant claimed to have been trafficked. He was referred to the NRM on 2 May 2017 and received a positive Reasonable Grounds decision. On 9 August 2018, the respondent reached a negative Conclusive Grounds decision.
8. On 10 April 2019, the Secretary of State decided the protection application. She accepted the appellant's Albanian nationality but not his account of facing problems in Albania from a gang.
9. The respondent identified several difficulties with the appellant's account of his history, at [33]-[39]. The respondent considered that the appellant's minority and youth were not sufficient explanation for what she described as an 'array of inconsistencies' in his various accounts.
10. In particular, she noted that the appellant had given an account of travelling from Albania to Belgium in a car with two men on 29 September 2016, and then onward in a lorry from Belgium to the UK. The respondent had checked the appellant's travel movements through the British Embassy in Tirana, Albania and on 13 June 2017 had received information that the appellant had left Albania on 29 September 2016, travelling on his own passport on an Adria Airways flight to Paris.
11. The respondent considered that if, which she did not accept, the appellant was at risk in his home area from a gang, he could relocate internally within Albania. The humanitarian protection and Article 3 ECHR claims fell with the Refugee Convention claim.

12. The appellant had neither partner nor child in the UK and could not bring himself within paragraph 276ADE. There were no exceptional circumstances for which leave to remain should be given outside the Immigration Rules HC 395 (as amended). The appellant was already over 17½ years old and discretionary leave was not appropriate, having regard to the appellant's section 55 best interests.
13. The Secretary of State refused leave and the appellant appealed to the First-tier Tribunal.

### **Dr Rachel Thomas' report**

14. The First-tier Judge had the benefit of medical evidence from Dr Rachel Thomas BA (Hons), BSc (Hons), PGCE, CPsychol, TQAP, who describes herself as a Consultant Clinical Psychologist and Consultant Adult Psychologist. From 2008-2014, Dr Thomas worked at the Tavistock and Portman NHS Foundation Trust, and thereafter as Clinical Lead and Director Elect for the Clinic for Dissociative Studies, of which she became the CEO in 2018, before leaving to focus on her medico-legal practice and private client work in September 2019.
15. Dr Thomas was instructed that discrepancies in the evidence might be the result of interpreter difficulties, misunderstandings, that the appellant's witness statements might not have been read back to him such that he was unclear what he was signing but was also asked to identify any possible mental health reasons why the appellant might be a poor historian.
16. Dr Thomas saw the appellant by video link on 28 April 2021 and prepared a report on 16 June 2021. Her report referenced the Istanbul Protocol, but her conclusions do not use the precision language which the Protocol advises.
17. Dr Thomas reported that the appellant was a traumatised and psychiatrically unwell young man who presented 'in a manner entirely consistent with an individual suffering from mild symptoms of Major Depressive Disorder'.
18. His psychiatric disorder in her opinion was caused partly by the events he said occurred in Albania, and partly by detention and his failed asylum claim, with a risk of return to Albania. If he were to be removed, it was likely to deteriorate rapidly. She advised against further detention and considered that harm had been caused by the three months' detention which the appellant had experienced already.
19. Dr Thomas considered the appellant's account to be psychologically plausible and unlikely to be fabricated. He had some cognitive impairment but was able to give evidence, with proper support, as set out in her report at [90].

20. At the end of her report, Dr Thomas stated that she was aware of her duty as an expert witness. However, at [144]-[146] Dr Thomas then descended into the arena, giving it as her opinion that the appellant's leave status should be resolved in his favour so that he could remain in the UK.

### **Mr Graham Johnson's report**

21. A medical report from Mr Johnson found three scars, none of which he considered to be determinative of an inflicted injury.

### **Ms Sonya Landesmann's report**

22. Ms Sonya Landesmann BA (Hons), PG Dip, UKCP is an intercultural and psychoanalytic psychotherapist, and a former teacher of English to speakers of other languages. She provided country evidence which is summarised at [117]-[120]: the judge's assessment of her evidence is not challenged.
23. **Other evidence.** There was a letter from the appellant's key worker at his supported accommodation, and one from iCope of Kingston Psychological Therapies Service. Neither added a great deal to the evidence, and the First-tier Judge's assessment of that evidence is not challenged.

### **First-tier Tribunal decision**

24. The appellant gave evidence at the First-tier Tribunal hearing. His written and oral evidence is set out in the First-tier Tribunal decision.
25. The First-tier Tribunal also considered the psychiatric evidence provided by Dr Thomas, and a country expert report from Ms Sonya Landesmann BA (Hons), PG Dip, UKCP.
26. First-tier Judge considered the evidence but rejected the account of gang violence and the risk therefrom. There was a preliminary issue as previous Counsel's advice on the merits of the appeal had been included in the papers filed and the judge had read it. Ms Fitzsimons, Counsel on the day, could not explain that and nor could those instructing her. She asked the judge to recuse himself. Mr Lumb for the respondent said he remained ready to proceed and that it was a matter for the Tribunal.
27. The First-tier Judge proceeded to hear the appeal. There is now no complaint in relation to that decision: permission was not granted on ground (6) of the grounds of appeal which refers to this issue, and Ms Gunn told me that she was not seeking to renew ground (6) at the oral hearing.

### **Permission to appeal**

28. The live grounds of appeal are grounds (1)-(5), in which the appellant contended that the First-tier Judge erred in:

- (1) Finding that there was any internal inconsistency as to the means by which the appellant travelled across Europe to reach the UK;
  - (2) Failing to have regard to the appellant's status as a unaccompanied asylum-seeking child of 15 and to the explanations he gave for having given confused accounts in his interview, given his age, his vulnerability, and the high temperature in the interview room;
  - (3) Failing to give adequate or proper weight to the psychological evidence of Dr Rachel Thomas, which the judge accepted as reliable, both as to the appellant's capacity to be a good historian, and his mental health difficulties generally;
  - (4) Failing to consider the corroborative potential of that medical evidence; and
  - (5) Failing to have regard to the evidence/bare plausibility of the appellant's account.
29. First-tier Judge Welsh granted permission on grounds (1)-(5) above, but refused permission on ground (6).

#### **Rule 24 Reply**

30. On 24 February 2022, the respondent filed a Rule 24 Reply, the core of which is paragraph 3:

"3. The grounds are a disagreement with the findings of the judge. The determination shows that the judge was very careful in their approach to the evidence and went through the appellant's accounts in detail. The judge was clearly aware of the appellant's mental health issues, and it is abundantly clear from the determination that they took this into account when making the credibility assessment."

31. The respondent invited the Upper Tribunal to uphold the decision of the First-tier Tribunal.
32. That is the basis on which this appeal came before the Upper Tribunal.

#### **Upper Tribunal hearing**

33. Ms Gunn did not appear in the First-tier Tribunal nor did she settle the grounds of appeal to the Upper Tribunal. She has been unable to assist me today as to whether those instructing her made any application to the First-tier Tribunal for vulnerability adjustments arising out of Dr Thomas' recommendations.
34. Ms Gunn argued that the judge failed to have regard to the heat in the interview room when the appellant was interviewed, which had been flagged up by his previous representative, but Mr Clarke pointed out that the appellant had been given a break and the room changed.

35. Ms Gunn further argued that the evidence from Dr Thomas that the appellant had a major depressive disorder was not mentioned or taken into account and might have been determinative in his favour, explaining away the credibility issues in his evidence.

## **Analysis**

36. The First-tier Judge at [138]-[142] took account of the impact on his evidence of the appellant's vulnerability and youth. His self-direction is clear and sound. At [144] he found that the appellant, even with those caveats, could be expected to know how he travelled across Europe and that there were 'numerous and significant inconsistencies' in his evidence which could not be explained away by his youth or his mental state. That finding was open to the judge and the grounds of appeal are no more than a disagreement with his findings.
37. The contention that the First-tier Judge failed to have regard to the appellant's status as an unaccompanied asylum-seeking child of 15 and to the explanations he gave for having given confused accounts in his interview, given his age, his vulnerability, and the high temperature in the interview room, is unarguable. The judge's self-direction on this issue is impeccable.
38. The ground regarding the weight given to the evidence of Dr Rachel Thomas, which the judge accepted as reliable, both as to the appellant's capacity to be a good historian, and his mental health difficulties generally, is in effect a repetition of ground (2) and the same is true of ground (4). It is not right to say that the judge overlooked the finding of 'mild symptoms of a major depressive [dis]order' (see [111]) in the First-tier Tribunal decision).
39. Dr Thomas' evidence was accepted, but the weight which it would bear was a matter for the First-tier Judge as the fact-finder. His approach was neither perverse nor *Wednesbury* unreasonable, the only basis on which the Upper Tribunal could interfere.
40. Finally, the appellant contended that the First-tier Judge failed to have regard to the evidence/bare plausibility of the appellant's account. Again, this is in reality just a disagreement with the outcome of the appeal. The First-tier Judge gave proper, intelligible and adequate reasons for finding the appellant's account to lack credibility, even making allowances for his youth and mental health issues.
41. It follows that this appeal must be dismissed. I uphold the decision of the First-tier Judge.

## **DECISION**

42. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 17 May 2022