Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-004964**
[PA/04698/2020]

THE IMMIGRATION ACTS

Decided On the Papers
On the 01 December 2022

Decision & Reasons Promulgated
On the 06 December 2022

Before

UPPER TRIBUNAL JUDGE SMITH

Between

AS
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, I continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant [AS] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS
MADE UNDER RULE 34 TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

© CROWN COPYRIGHT 2022

1. The Appellant appeals against the decision of First-tier Tribunal Judge Mathews promulgated on 16 August 2022 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 6 November 2020 refusing his protection and human rights claims. The claims were made in the context of a challenge to the Appellant's deportation to Albania. The Respondent intends to deport the Appellant because of his criminal offending. The Appellant claims that he has been the victim of trafficking within the UK. The NRM has rejected that claim.

2. The Respondent's decision to deport the Appellant (made under section 32 UK Borders Act 2007) also certified the Appellant's case under section 72 Nationality, Immigration and Asylum Act 2002 ("Section 72") on the basis that he constitutes a danger to the community of the UK and should be excluded from the prohibition of return under the Refugee Convention.

3. The Judge found that the Appellant had rebutted the presumption under Section 72. However, he agreed with the NRM's conclusive grounds decision that the Appellant was not the victim of trafficking. He found that the Appellant would not be at risk on return to Albania as a result of a blood feud which he claimed arose from events before he came to the UK nor from his involvement in the criminal offence in the UK. The Judge also rejected the Appellant's human rights claim arising from his family and private life formed in the UK. He therefore dismissed the appeal on all grounds.

4. The Appellant appeals the Decision on four grounds summarised as follows:

   Ground 1: The Judge failed to consider the report from a country expert.

   Ground 2: The Judge has misunderstood the basis of the Appellant's trafficking claim.

   Ground 3: In the context of the trafficking claim, the Judge has failed to take into account the evidence of Dr Cordwell who provided an expert psychological report.

   Ground 4: As a consequence of his misunderstanding of the basis of the trafficking claim, the Judge has failed properly to consider the risk to the Appellant on return to Albania.

5. Permission to appeal was granted by First-tier Tribunal Judge Hatton on 22 September 2022 in the following terms (so far as relevant):

   "... 3. ... the grounds assert at [2.1] that the Judge failed to consider the country expert report and/or provided no reasons for rejecting it. Whilst I note the Judge granted the expert's request for anonymity at [2] and held they were to be referred as '*the country expert, CE*', I note the Judge made no subsequent reference to either the expert or their report.

   4. Correspondingly, in the conspicuous absence of any discernible engagement with the country expert's report in the Judge's decision, it is

> arguable the Judge erred, especially because their finding at [58] that there was no basis on which the Appellant is of interest to any criminal organisation either in the UK or in Albania, was made without reference to said report.
>
> 5. In addition, I am concerned by the Judge's preceding finding at [56] that there was no evidence the Appellant had been exploited in relation to the offence which triggered deportation proceedings, because *'it has not been found that he was unwilling to participate at the time'.* In considering whether a person is a victim of modern slavery, as a matter of law, I am mindful that a child is incapable of consenting to their exploitation. Indeed, the Council of Europe Convention on Action against Trafficking in Human Beings (2005) ('ECAT') makes this explicit. Given the Judge's acceptance at [13] that the Appellant was just 16 at the time of the index offence, the Judge's subsequent finding at [56] is arguably an erroneous pretext for concluding the Appellant was incapable of being a victim of modern slavery, especially given the Sentencing Judge's finding that it was clear the Appellant was recruited by a criminal gang prior to the offence's commission [13].
>
> Permission is granted on all grounds."

6. By a Rule 24 response dated 5 October 2022, the Respondent indicated that she does not oppose the Appellant's appeal. She says the following:

> "... 4. In summary, the Respondent agrees with the ground of appeal that the Judge has failed to consider the expert report and/or provide reasons for rejecting it. The only reference in the decision to the expert report is in relation to the request for anonymity [2]. There is no reference to the report when the Judge assess risk on return [45-53].
>
> …"

The Respondent proposed that the Decision be set aside, and the appeal be remitted for a hearing de novo in the First-tier Tribunal.

7. Having had sight of the Respondent's Rule 24 reply, on 29 November, the Appellant's solicitors emailed the Tribunal to indicate that he did not object to remittal of the appeal to the First-tier Tribunal. However, the Appellant contended that the Judge's finding at [44] of the Decision that the Appellant has rebutted the presumption under Section 72 should be preserved. The Respondent's views were sought in that regard. By an email dated 30 November, Mr Kotas on behalf of the Respondent accepted that the finding in that regard should be preserved as it was not impugned in the Rule 24 reply.

8. Paragraph 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 permits the Tribunal to make a decision without a hearing. In deciding whether to do so, the Tribunal must have regard to the views of the parties. The Appellant's solicitor made clear in his email that he was content for the appeal to be remitted without a hearing provided that the finding at [44] of the Decision was preserved. The Respondent having agreed to that course, no purpose would be served by a hearing in

relation to error of law. The Tribunal accepts the Respondent's concession in that regard.

9. For the reasons set out in the Respondent's Rule 24 reply, the Decision contains an error of law. That error is material. I therefore set aside the Decision. However, the error has no impact on the Judge's finding at [44] of the Decision that the Appellant has rebutted the presumption that he represents a danger to the community of the UK. Accordingly, his finding that the Section 72 certificate should be set aside stands unchallenged and is preserved. The appeal is remitted to the First-tier Tribunal for a full de novo hearing.

DECISION

The Decision of First-tier Tribunal Judge Mathews involves the making of material errors on a point of law. I therefore set aside the Decision but preserve the finding at [44] of the Decision that the Appellant has rebutted the presumption that he is a danger to the community of the UK. The certification under section 72 Nationality, Immigration and Asylum Act 2002 therefore no longer stands. I remit the appeal to the First-tier Tribunal for a full de novo hearing before a Judge other than Judge Mathews.

Signed L K Smith Dated: 1 December 2022

Upper Tribunal Judge Smith