



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006091**  
**First-tier Tribunal No:**  
**PA/53077/2020**  
**IA/02846/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**FS**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Smith, of Counsel, instructed by AG Law Ltd  
For the Respondent: Ms S Cunha Senior Home Office Presenting Officer

**Heard at Field House on 21 March 2023**

**Order Regarding Anonymity**

**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 or his family, likely to lead members of the public to identify the appellant or his family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Albania born in November 1999. He arrived in the UK in 2015 and claimed asylum. His application was refused and his appeal dismissed in October 2016, but he was granted leave to remain until May 2017

as a minor. He was tried but not convicted of being part of a drugs distribution network at Canterbury Crown Court in May 2019 following a plea of duress. He applied to remain in the UK on the basis that he was at real risk of serious harm from drugs gang members and also on Article 8 ECHR family life grounds. His application was refused on 15<sup>th</sup> December 2020. His appeal against this decision was dismissed by First-tier Tribunal Judge G Richardson after a hearing on the 28<sup>th</sup> September 2022.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on 4<sup>th</sup> January 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to accept that the Crown Court had found that the appellant was not guilty of the drugs charges based on the defence of duress, and thus in failing to take the correct facts into account in making his decision. The grant of permission was not limited.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide whether any such error was material and whether the decision should be set aside.

#### *Submissions – Error of Law*

4. In the grounds of appeal it is contended, in short summary, as follows.
5. Firstly, it is argued, that the First-tier Tribunal erred in law in failing to take into account that it was not disputed by the respondent in the reasons for refusal letter (and other evidence supported) that the appellant was acquitted of the criminal offences due to the fact that he had successfully argued he committed them under duress in the form of threats from a man (H). It is argued that this lead to a failure to find that he had been trafficked and/or exploited and was at real risk of serious harm on return to Albania; and was combined with a failure to consider relevant evidence of the expert, Dr Tahiraj, on criminality and Albania, which is not referenced at all in the findings relating to the protection claim.
6. Secondly, it is argued, that the First-tier Tribunal erred in law when finding that there were no very significant obstacles to integration for the appellant on return to Albania by failing to give adequate reasons for not taking into account that the appellant's mother had been accepted on appeal as being the long-term victim of domestic violence at the hands of her brother in law (who is the appellant's paternal uncle) and had been trafficked for prostitution and was at risk of honour based violence from her brother in law/ the appellant's paternal uncle, and that her children including the appellant were abused by this man. The First-tier Tribunal also failed to consider the appellant's criminal exploitation as set out above and the expert evidence when looking at this issue.
7. Thirdly, it is argued, the First-tier Tribunal erred in the proportionality assessment under Article 8 ECHR in failing to take into account a relevant matter, namely the findings of trafficking for prostitution in Kosovo and Belgium, and violence in relation to the appellant's mother, and also those in relation to his younger sister who was found to have been a victim of abuse at the hands of the uncle and to have been traumatised by what happened in Belgium on route to the UK. This is relevant to the importance that the support the appellant provides to his UK based family.

8. Ms Cunha relied upon a Rule 24 response dated 13<sup>th</sup> January 2023 which had not made it to the Upper Tribunal file. In this notice it was accepted that there was no reference to the expert evidence of Dr Tahiraj in the decision under appeal but it was not conceded that this was a material error. Before me, however, Ms Cunha accepted that this was a material error as the report provided evidence supporting the contention that young vulnerable men could be trafficked and subject to threats to kill, and so the evidence needed to be considered in the context of the appellant's appeal. Ms Cunha also accepted that the First-tier Tribunal erred in failing to take the duress plea leading to the acquittal of the appellant on criminal charges before the Crown Court as the starting point for their decision as to whether the appellant had been subjected to duress by drug dealers, as this was not put in question by the respondent and was supported by evidence. She did point out however that the burden of proof was different in an asylum appeal as compared to the situation in the criminal courts. Ms Cunha did not defend the decision on Article 8 ECHR either as she accepted that the expert evidence was clearly relevant to very significant obstacles to integration under the private life Immigration Rules and in a wider consideration of Article 8 ECHR.

*Conclusions - Error of Law*

9. It is therefore found by consent that the First-tier Tribunal erred in law on the basis of the grounds of appeal for the reasons given by Ms Cunha. It was agreed by the parties that no findings could be preserved.
10. It was agreed that given the extensive remaking needed, which will involve a rehearing of the whole appeal with three witnesses and extensive documentary evidence, and includes supplementary evidence regarding what happened in the criminal trial which was adduced before the Upper Tribunal with a Rule 15(2A) notice, and which I admitted as relevant evidence for the remaking, that the appeal should be remitted to the First-tier Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I remit the appeal to the First-tier Tribunal for remaking de novo at Taylor House before a Judge of the First-tier Tribunal other than G Richardson.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant and his family from the contents of his and their protection claims.

**Fiona Lindsley**

Judge of the Upper Tribunal

**Case No: UI-2022-006091**  
**First-tier Tribunal No: PA/53077/2020**

Immigration and Asylum Chamber

**21<sup>st</sup> March 2023**