



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001089
First-tier Tribunal No:
PA/01074/2021
PA/54614/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 September 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

EM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins (counsel instructed by Marsh & Partners solicitors)
For the Respondent: Ms Everett (senior home office presenting officer)

Heard at Field House on 22 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

Case No: UI-2023-001089
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DECISION AND REASONS

1. The appellant, who is a citizen of Albania, appeals against a decision made by FTJ Veloso (“FTT”) promulgated on 22.12.2022 in which she dismissed his asylum/protection appeal. The appellant was found to be entirely credible as to his claim, however, the FTT concluded having assessed the background material, there was no real risk of persecution on return. The FTT took the view that the appellant, who was a supporter of the Democratic Party (“DP”), would be able to continue to attend demonstrations.

Decision and Reasons

2. The FTT found that the appellant was a credible witness and that his account was consistent both internally and externally. The FTT found that he was a supporter/member of the Democratic Party (“DP”) and politically active, he had attended 4 demonstrations, had been arrested by the police twice and was beaten and ill treated while in detention in May 2019. His passport and DP membership card had been taken by the police and his father had paid a bribe for his release and for the return of his passport [36]. The appellant remained in hiding at his uncles’ during which time the police visited his home. The decision sets out in detail the appellant’s claim taken from the interviews conducted [16/17/18/19], his witness statements and his oral evidence [21]. The FTT specifically addresses the concerns raised in the refusal letter and accepts the appellant’s explanations [21-27].
3. The FTT had regard to background material of the US State Department report dated April 2022 and the Freedom House report 2022 [34-39]. She found that the DP participated in the 2021 elections and that there continued to be demonstrations which on occasion turned violent. Reports of police abuse of detainees continues.

Grounds of appeal for permission

4. The grounds of appeal argued that the FTT erred by failing to consider the position of the appellant on return following **RT**(Zimbabwe) v SSHD [2012] UKUT UKSC 38, to the extent that he should not have to forgo his beliefs and/ or political opinion given the positive findings made by the FTT [36].
5. Further that the FTT failed to adequately reason her conclusions as to future risk with reference to the background material.

Permission to appeal

6. UTJ C. Lane granted permission to appeal in terms that “having accepted the appellant’s account, including past ill treatment at the hands of the state authorities”, it was “just” arguable that the FTT failed adequately to analyse the evidence and background material in dismissing the protection appeal. He observed that the focus would be on the background material before the FTT and not new evidence.

Further papers

7. At the hearing Mr Collins produced a supplementary skeleton argument and the CPIN on Albania relied on at the FTT hearing which had not thus far appeared in our bundle.

Error of law hearing

8. We heard from Mr Collins who emphasised firstly, that the refusal letter (R/L) contained a concession that if found credible as to his claims of State persecution, the respondent accepted that there was no question of internal relocation and sufficiency of protection (R/L parag 40). He further submitted that having found the appellant credible the FTT failed to engage sufficiently with the background evidence which established a real risk on return for the appellant based on his specific circumstances. Mr Collins was clear that the case had been argued on the basis that the appellant had in effect been targeted by the authorities. He directed us in particular to the answers given by the appellant in interview, for example at Q62 *“only the last protest and they tortured me there and kept my passport, i(sic) had the fore warnings not to protest and not to support the democratic party”*. And at Q73 *“Yes they did take but they had this info before because i (sic) had warnings from them before. I believe the police who arrest me hid identity so nothing could come back to them.”* Q81 *During the other protests, other gov party supporters attend and take information of protestors, they take ID's who attend and question*. There was a specific interest in him locally. Mr Collins argued that it was of significance that the appellant's passport was taken away and his father had to pay for it to be returned and that the appellant had been told to leave Albania.
9. Ms Everett submitted that the FTT properly assessed the background material having regard to her findings and concluded that there was no indication that future participation in demonstrations would lead to adverse attention from the authorities. Further the FTT was entitled to make her own assessment of internal relocation and sufficiency of protection [40]. The reference made in the refusal letter at paragraph 40 did not amount to a concession.

Discussion

10. We are mindful that this is a case where the respondent comprehensively disbelieved the entirety of the appellant's account. The FTT found his account to be entirely credible. We have looked at the account that he has given including his answers in interview and have formed the view that his case was indeed premised on his being known to the authorities. The FTT makes no specific findings on this issue and in effect treats the appellant simply as a demonstrator who was arrested and assaulted by the police and assesses risk in that context. Rather than a failure to consider the background material fully, our view is that the FTT failed to fully analyse the appellant's particular case which indicated a specific adverse interest in the appellant as to the risks on return in light of the background material. The FTT set out her summary of the background evidence at [34-35]. She found that there had been some improvement and that the DP freely participated in the most recent election. Reference was made to the continuing reports of police abuse of detainees.
11. We find merit in the ground argued that the FTT did not fully embrace the future risks for this appellant having found that he is politically active as a

supporter/member of the DP, has attended demonstrations where violence has erupted and the police have been involved and he has been arrested, ill treated and detained. His passport and membership card were taken and his father had to pay a bribe for his release and for the return of his passport. He left Albania because he was told to leave. The appellant was ill treated and physically assaulted and his evidence was that the authorities subsequently visited his home. In short the FTT accepted that the appellant was arrested and ill treated by State authorities on the basis of his political opinion. There is no indication in the decision that the FTT did not accept any aspect of the appellant's account [36]. The evidence was that he was "known" and had some history including threats made 3 years prior to his arrest when he started striking against the government, that he had been forewarned by the police not to continue protesting and not to support the DP (see interview Q62,68,69), and to leave the country.

12. The FTT concludes that, "There is no indication that resuming public demonstrations in Albania, where the Democratic party is legally participating in elections, would lead to any further adverse attention for the appellant. I take into account and give weight to the fact that the police intervened in a protest, during which violence was aimed at the Democratic Party." [38] The FTT concludes that the appellant can "resume attending demonstrations on behalf of the DP." [39]. We have regard to the clear indication in the background material that there remains corruption and police abuse of suspects and detainees. We are of the view that it cannot be concluded to the lower standard that the appellant faces no real risk on return, as he will continue to be politically active and attend demonstrations. Furthermore, given that it is the police that he fears, it cannot reasonably be argued that State protection is available and/ or that internal relocation is a reasonable option. We conclude that the FTT failed to fully consider the background material in light of the entirety of his particular claim which indicated that there was some specific interest in him. He was abused by the police and on return would be at risk of a repetition of abuse for political reasons. The background material establishes that there continue to be demonstrations which turn violent involving the police notwithstanding that the DP has now participated in elections in 2021. There nevertheless remains the risk of abuse from the police towards suspects and detainees. Given that the appellant has a history and was known to the authorities there remains a real risk that if he attends a demonstration in future he will face a repetition of past ill treatment. If he refrains from attendance then that would be a breach of his right to express political opinion.

Notice of Decision

13. We find a material error of law in the decision which is set aside and we have remade the decision to allow the appeal.

G A Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

