IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002266

First-tier Tribunal No: PA/00542/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th September 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

The Secretary of State for the Home Department

Appellant

and

Elfat Osmani
(ANONYMITY DIRECTION REVOKED)

Respondent

Representation:
For the Appellant: Mr E. Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr M. Moriarty, Counsel, instructed by Warren Grant Immigration

Heard at Field House on 31 August 2023

DECISION AND REASONS

1. By a decision promulgated on 20 April 2023 First-tier Tribunal Judge Brannan ("the judge") allowed an appeal brought against a decision of the Secretary of State dated 10 July 2021 to refuse a protection and human rights claim. The Secretary of State now appeals against the decision of the judge with the permission of First-tier Tribunal Judge S. Aziz.

2. Although this is an appeal of the Secretary of State, for ease of reference we will refer to the appellant before the First-tier Tribunal as "the appellant".

© CROWN COPYRIGHT 2023

3. At the hearing on 31 August 2023, we announced that the appeal would be dismissed with written reasons to follow, which we now give.

Factual background and the decision of the First-tier Tribunal

4. The appellant is a citizen of Albania. He arrived in the UK on 20 October 2015 as an unaccompanied child. He claimed asylum shortly afterwards. The claim was refused but he was granted leave as an unaccompanied minor. He made further representations in support of his protection claim on 1 June 2020, and it was the refusal of that claim that was under appeal before the judge below.

5. The appellant claimed asylum on the basis that he was at a real risk of being subjected to domestic abuse by his father. He claimed to be in a particular social group on that account and, in the alternative, to meet the requirements for a grant of humanitarian protection. He also maintained that his removal would be disproportionate under Article 8 of the European Convention on Human Rights ("the ECHR").

6. The judge rejected the appellant's submissions that the Refugee Convention was capable of being engaged on the facts of his claim. As for the underlying facts, the Secretary of State had contended that the appellant would no longer be at risk from his abusive father upon his return to Albania, because he would be doing so is a grown man. At para 15, the judge rejected that assessment. It was speculative, he found. It was reasonably likely that the appellant would continue to face a risk from his father: the fear the appellant had of his father was well-founded.

7. The judge found that the appellant would not enjoy a sufficiency of protection from the authorities in Albania (paras 16 and 17) and proceeded to consider whether he would be able internally to relocate within Albania (para. 18 and following). The judge observed that internal relocation was "the real thrust" of the Secretary of State's position.

8. The appellant argued that internal relocation would not be an option for him. He would be returning to Albania with no support at all. His grandmother, who was 70 when he left, may now be dead. There was no reason to conclude that his extended family would provide support for him against the wishes of his father. Albania was a small country. His father's connections with the police would mean he could be tracked down. See para. 19.

9. Having directed himself pursuant to *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, the judge's operative reasoning was in the following terms in relation to the appellant's ability internally to relocate within Albania:

> "21. I do find this question in the present case difficult. On the one hand, the Appellant would find himself free from the risk of violence and as a young man who can support himself as well as any other able-bodied man in Albania. On the other hand, the absence of all family support makes this significantly more difficult than it would be for many young men.
>
> 22. The additional factor, which I find tips the balance in favour of the Appellant, is that the Appellant's stability and independence is not something he has developed in Albania. He is stable and independent

> in the UK. I am not in reality looking at whether it is reasonable for him to escape serious harm by moving internally within Albania. I am looking at whether it is reasonable for him to leave the life he has developed lawfully in the UK, with the support of social services here, and live independently in a part of Albania where he has never lived and without any family support. That real world outcome impact is unduly harsh."

10. The judge allowed the appeal on humanitarian protection grounds. He also found that the appellant would face "very significant obstacles" to his integration in Albania for the purposes of para. 276ADE(1)(vi) of the Immigration Rules, on the same grounds that he found internal relocation would be unreasonable.

Issues on appeal to the Upper Tribunal

11. As pleaded, the Secretary of State's grounds of appeal challenge the decision in three ways:

    a. First, it was wrong for the judge to apply the "unduly harsh" threshold when considering internal relocation in a humanitarian protection case; the test was one of reasonableness. There was "no evidence" that the appellant would be at risk upon his return. Mr Tufan abandoned the first limb of this ground before us, focussing on the sufficiency of the evidence and the reasoning concerning the judge's findings of fact that the appellant remained at risk in Albania.

    b. Secondly, the judge failed to provide sufficient reasons to support his finding that there were "very significant obstacles" to the appellant's integration in Albania.

    c. Thirdly, the judge failed to perform an overall proportionality assessment for the purposes of Article 8(2) ECHR.

12. Mr Moriarty relied on a rule 24 response dated 24 August 2023.

The law

13. By way of a preliminary observation, in exercising its error of law jurisdiction, it is necessary for this appellate tribunal to exercise considerable restraint when scrutinising the findings of fact reached by a first instance trial judge. In *Perry v Raleys Solicitors* [2019] UKSC 5, Lady Hale PSC summarised the principles concerning challenges to findings of fact on appeal stating, at para. 52, that the principles:

> "…may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

14. It is well established that the conclusion that a judge has given insufficient reasons will not readily be drawn: see *South Buckinghamshire District Council v Porter (No 2)* [2004] UKHL 33, at para. 36. See also *English v Emery Reimbold & Strick Ltd. (Practice Note)* [2002] EWCA Civ 605 at, for example, para. 118:

> "…an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision."

15. In relation to internal relocation, the Immigration Rules, in the form they stood at the time of the decision of the Secretary of State, provided as follows, at para. 339O:

> "(i) The Secretary of State will not make:
>
> […]
>
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country."

The first issue: internal relocation

16. Mr Tufan rightly abandoned ground 1's criticism of the judge's approach to the legal test for internal relocation. The test under the Immigration Rules at para. 339O(i)(b) is whether the appellant could "reasonably be expected to stay" in another part of the country where he would not be at risk. The test is expressed in materially identical terms in relation to claims under the Refugee Convention (para. 339O(i)(a)). As Mr Tufan realistically accepted, there is no reason to conclude that the authorities concerning internal relocation under the Refugee Convention do not apply to humanitarian protection cases. The contrasting criterion to "reasonable" is, as held in *AH (Sudan)*, "unduly harsh", as the judge noted in his extensive quote from para. 5 of Lord Bingham's opinion at para. 20 of his decision. The judge was correct in his application of the "unduly harsh" threshold to this case. A finding that internal relocation would be "unduly harsh" is, by definition, a finding that it would *not* be reasonable.

17. The reformulated focus of Mr Tufan's submissions was that the judge gave insufficient reasons for his finding that the appellant was at risk from his father in the first place.

18. The grounds of appeal merely make a passing reference, at para. 4, to there being "no evidence" that the threat continued to exist. That is the language of a rationality-based challenge, not a reasons-based challenge. Procedural rigour is important in this jurisdiction. The Secretary of State did not apply for, and does not enjoy, permission to appeal against the judge's findings of fact on rationality grounds.

19. Moreover, to the extent that para. 4 of the grounds legitimately puts in issue the reasons given by the judge for his findings concerning the contemporary risk faced by the appellant, neither the grounds nor Mr Tufan's submissions engage with the findings reached by the judge by reference to the evidence that was before him, or the issues as narrowed between the parties before the First-tier Tribunal, as would be necessary properly to advance this submission. Nor do the grounds engage with the judge's observation, at para. 18, that the "crux" of the case was internal relocation. Had the grounds done so, they would have to have

scrutinised the judge's approach by reference to the issues as set out in the *Respondent's Review*, in particular at paras 4 and 5:

> "4. In the refusal letter of 6 June 2016 it was accepted that the appellant's father was violent towards him. However, there is both sufficiency of protection and an option to internally relocate for the appellant. Detailed reasons are given in the reasons for refusal letter dated 10 July 2021 (RFRL).
>
> 5. The appellant is now an adult with educational qualifications from the UK. There is no reason why the appellant's father would pursue him in Albania and the appellant can lead an independent life. There are family members in Albania who could support him."

20. Those paragraphs demonstrate that (i) the respondent had accepted that the appellant's father had been violent in the past; and (ii) raised sufficiency of protection and internal relocation as a means to avoid the (accepted) risk posed by the father. There has been no challenge to the judge's approach to sufficiency of protection. In our judgment, the judge was entitled to reach the findings he did concerning the ongoing risk posed by the appellant's father to him, and to treat internal relocation as being the "crux" of the issue, for the reasons he gave. Far from having reached findings that no reasonable judge could have reached, the judge approached the issues before him by reference to the agreement of the central disputed issues between the parties, directed himself in accordance with the relevant legal principles, and reached findings of fact that were open to him on the evidence before him.

21. The principal authority cited by the judge in relation to internal relocation was *AH (Sudan)*. Coincidentally, the opinion of Lady Hale at para. 30 of *AH (Sudan)* is relevant to our task in this appellate role:

> "This is an expert tribunal charged with administering a complex area of law in challenging circumstances. …the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

22. The reasons given by the judge for reaching his operative conclusion in relation to internal relocation are clear and were open to him. While another judge may not have reached this conclusion, nothing about the findings reached by the judge on this occasion involved the making of an error of law.

Remaining issues: Article 8 inside and outside the rules

23. The judge's remaining findings stand or fall with his findings concerning internal relocation. A person for whom internal relocation would be unduly harsh would,

by definition, encounter “very significant obstacles” to their integration. That being so, the appellant additionally demonstrated that he met the requirements of the immigration rules under paragraph 276ADE (1)(vi). It was not necessary for judge to conduct a separate proportionality assessment; his finding that the appellant met the rules, both on humanitarian protection and private life grounds, was positively determinative of the appeal in his favour: see *TZ (Pakistan)* [2018] EWCA Civ 1109.

24. This appeal is dismissed.

Anonymity

25. The judge made an order for the appellant’s anonymity but did not say why. There is no finding that the appellant is at risk in the UK or that publication of his details would expose him to any form of risk. We therefore lift the order.

Notice of Decision

The appeal is dismissed.

The decision of Judge Brannan did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 September 2023