



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

Case No: UI-2023-004475
First-tier Tribunal No: PA/52010/2022

THE IMMIGRATION ACTS

Decisions and Reasons issued

On 23rd of February 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr FATLIND DACI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel
(instructed by Lords Solicitors)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at FIELD HOUSE on 9 February 2024

DECISION AND REASONS

Introduction

1. The Appellant appealed against the decision of First-tier Tribunal Judge Coll who had dismissed the appeal of the Appellant against the refusal of his international protection and human rights claims, brought in response to the decision of the Respondent to refuse to revoke the

deportation order earlier made against him. Judge Coll's decision and reasons was promulgated on or about 5 July 2023.

2. The Appellant is a national of Albania, born on 12 June 1998, i.e., he was 25 years of age at the date of the First-tier Tribunal hearing. (The Appellant had also used various aliases with different dates of birth.) He claimed that he had arrived in the United Kingdom on 17 July 2015 but there was no record of that date as he had entered illegally. He would then have been 17 years of age if the birth date stated above is accurate. The Appellant was arrested on 28 October 2016 for possession of another person's driving licence, and for illegal entry. The Appellant subsequently claimed asylum and also claimed that he was a victim of trafficking. The National Referral Mechanism ("NRM") made a reasonable grounds decision in his favour on 9 May 2017.
3. Between 13 August 2018 and 2 July 2019 the Appellant was convicted of seven offences, and received a prison sentence of 8 months. On 18 July 2019 the Respondent made a decision to make a deportation order. The Appellant disclaimed his right to make representations against the order and withdrew his asylum and trafficking claims. Removal directions to Albania were set, but were cancelled shortly before his planned departure when the Appellant's representatives contended that the Appellant had not understood the implications of signing a disclaimer. His trafficking claim was reinstated and he was interviewed. On 26 March 2020 a positive conclusive grounds decision was made by the Single Competent Authority regarding his trafficking claim. The Appellant maintained that in consequence he should be granted discretionary leave to remain if not recognition as a refugee.
4. After analysing the Appellant's evidence in detail, Judge Coll found that it was unreliable to the lower standard, save that it was accepted that he was a victim of trafficking for forced sexual labour purposes. There were a number of serious inconsistencies in the Appellant's account. The judge placed little weight on the Single

Competent Authority's conclusive grounds decision, albeit made to a higher standard of proof, because inadequate explanations had been given by the authority for accepting that the majority of the inconsistencies identified in the Appellant's story were not of any consequence. The two experts' reports (medical and country respectively) produced on the Appellant's behalf did not assist him and attracted little weight as they depended on the credibility of the Appellant's evidence.

5. In particular, Judge Coll found that it was not reasonably likely that the Appellant had been thrown out by his family in Albania and thus made homeless, had no contact with his family or had little education and no work experience. Nor was it reasonably likely that the Appellant would be re-trafficked from Albania, which mainly depended on acceptance of his account. In any event, the Appellant had not heard from the persons he claimed to fear for over 7½ years and was no longer a late adolescent minor and thus not of interest to traffickers for forced sexual labour. It was not reasonably likely that the persons the Appellant claimed to fear had returned to Albania as the Appellant said that the United Kingdom was more lucrative for them. Nor was it reasonably likely that those persons would know the Appellant's home address in Albania as they had met one another (according to the Appellant) in Tirana or Durrës. The Appellant was found to have no subjective fear of persecution or serious harm as a returning victim of trafficking. Hence the appeal was dismissed.
6. Judge Handler refused permission to appeal in the First-tier Tribunal on 27 September 2023 however Upper Tribunal Judge Lindsley granted permission to appeal on 19 December 2023. UTJ Lindsley considered that it was arguable that (a) Judge Coll had reached inconsistent findings as to whether the Appellant was a victim of trafficking ([88], [89] and [90] of the decision); (b) the judge's finding that the Appellant had no subjective fear of return to Albania was perverse; (c) it was similarly perverse to find that the Appellant had been rejected by his family and lost contact with them, and had little education or work experience as these would be common factors which

would have led to his being trafficked; (d) the judge had failed to take account of paragraph 339J of the Immigration Rules given that the Appellant had suffered past persecution and (e) the judge had acted irrationally when finding that the Appellant could find safety via internal flight when he would be returned to Tirana, his place of persecution, and similarly to find that there was a sufficiency of protection when his claim was that he was also abused by the police and the gang sold him to the United Kingdom showing that it had international reach and was wealthy.

7. Judge Lindsley considered that it was arguably not open to the judge to reopen the issue of whether the Appellant had suffered trafficking for sexual exploitation given the decision of the competent authority and the Respondent's acceptance that the Appellant was a victim of trafficking as set out in paragraph 17 of the reasons for refusal letter.

Submissions

8. Ms Jegarajah for the Appellant applied to amend the grounds of appeal to refer to and rely upon the recent decision of XY v Secretary of State for the Home Department [2024] EWHC 81 (Admin), Lane J. That case showed that the Home Office had operated a secret policy concerning discretionary leave for victims of trafficking, a policy from which the Appellant should have benefitted by being granted discretionary leave to remain following a positive finding by the NRM. The Home Office had acted illegally in not applying the policy to the Appellant, pending resolution of his asylum claim. That was not in accordance with the law. That gave the Appellant a successful Article 8 ECHR appeal.
9. The application to amend was opposed by Mr Avery. XY (above) was not relevant to the facts of the present appeal, which was about revocation of a deportation order on asylum and human rights grounds, not whether it was necessary for the Appellant to have a form of discretionary leave to remain based on his personal circumstances pending resolution of his asylum claim.

10. The tribunal refused the application to amend, made on the morning of the hearing. XY was a judicial review decision and concerned a distinctly different situation to the facts of the present appeal. The appellant in XY was a young Albanian victim of trafficking who was suffering from serious mental health difficulties. That was not in dispute before the court. Thus he had shown a need for discretionary leave to remain because of his personal circumstances, pending resolution of his asylum claim, in accordance with a Home Office policy which had not been published. The fact that the appellant in XY could not be removed before his asylum claim was finally decided was held not to be sufficient for his interim protection. Lane, J., found that there had been a breach of Article 8 ECHR.
11. That had not been the Appellant's case. He had not shown personal circumstances which needed a grant of discretionary leave to remain. Judge Coll found that by the date the Appellant was discovered as an illegal entrant, he had on his own case been free from his traffickers for over 14 months and had had the stability of living in the same place for 11 months: see [50] of the decision. The Appellant had raised mental health issues but at [40] and [41] of his decision Judge Coll had noted that the Appellant had not pursued counselling in the United Kingdom since some initial visits made in 2017, i.e., some six years ago. That plainly undermined any case for discretionary leave based on personal circumstances, i.e., mental health. Moreover, the Appellant was a persistent criminal offender who had requested return to Albania when faced with deportation. Late in the day, he had reinstated his modern slavery, asylum and human rights claims which he had pursued to appeal. The Appellant had been found to have no claim for international protection. His trafficking was in the past and had been found not to be at risk of re-trafficking. His claims had been resolved by Judge Coll's decision, albeit that decision was under appeal.
12. Ms Jegarajah then addressed the tribunal on the (unamended) grounds of appeal and UTJ Lindsley's grant of permission to appeal. Ms Jegarajah rehearsed the main

elements of the Appellant's claim, like any advocate not incidentally resisting the opportunity to reargue the case. It had been her considered choice not to call the Appellant at the First-tier Tribunal hearing because it had been accepted that the Appellant was a victim of modern slavery. The judge's rejection of the decision made by the Single Competent Authority was perverse. The Home Office policy of granting discretionary leave to remain to persons recognised as victims of trafficking who had pending asylum claims had not been followed, which was unlawful as the policy was binding on the Secretary of State.

13. Ms Jegarajah further submitted that Judge Coll's other findings were similarly perverse, as well as inconsistent and irrational. Here counsel referred to [88], [89] and [93] of the decision, which paragraphs she submitted could not sit together. The logical inference from the evidence was that the trafficking gang had international reach. The judge had been perverse and/or irrational not to accept that. Judge Coll's decision should be set aside in its entirety.
14. Mr Avery for the Respondent submitted that the Appellant's grounds of appeal had not been made out and no error of law had been shown. The judge's decision had been reached on the basis of the extensive, properly reasoned adverse credibility findings. The judge had accepted that the Appellant was a victim of trafficking in the past but that was the beginning, not the end of the matter. The judge had considered both expert's reports submitted on the Appellant's behalf and had given proper reasons for giving them little weight. There was a proper assessment of risk on return. The judge had taken account of the Single Competent Authority's decision as part of the evidence but was entitled to make his own findings about the substance of the Appellant's case. There was no reason to interfere with the judge's decision, which should stand.
15. Ms Jegarajah wished to add nothing more by way of reply.

No material error of law finding

16. At the conclusion of submissions the tribunal reserved its reasoned decision, which now follows. The tribunal rejects the submissions as to material error(s) of law made on behalf of the Appellant. In the tribunal's view, the errors of law asserted to exist in the decision are misconceived and are based on a failure to read Judge Coll's decision as a whole with sufficient attention and to set the relevant facts into their proper context.
17. That context was plain. The Appellant was recognised as victim of trafficking and thus a Particular Social Group member but he had since his arrival in the United Kingdom been the subject of multiple criminal convictions, some of which were for offences committed after he had first been notified of his liability to deportation. The Appellant sought to resist deportation with his asylum and human rights claims, which the judge was required to examine. That examination included consideration of the nature and extent of the past persecution the Appellant claimed he had suffered. The judge gave adequate reasons for finding that past persecution, i.e., trafficking, was not reasonably likely to recur.
18. As noted above in the summary of the judge's findings, the judge accepted that the Appellant was a victim of trafficking for forced sexual labour purposes, and thus a member of a Particular Social Group within the Refugee Convention. This is emphasised at [89], and again at [93] and [94] of the judge's decision, where the risk of being re-trafficked is considered. The assertion that the judge reached inconsistent findings there or elsewhere in the decision is mistaken and confuses the judge's acceptance of the historic trafficking with the judge's rejection of the rest of the Appellant's story, which was found incredible.
19. As Mr Avery submitted, the judge was not bound by the Single Competent Authority's decision, and was entitled to reach his own conclusions on the evidence before him. The judge explained where and why he differed from the Single Competent Authority. He gave detailed and sustainable reasons for giving little weight to the Single

Competent Authority's inadequate analysis in the face of the numerous serious inconsistencies in the Appellant's testimony, which were not answered by the Appellant's expert medical report, which had been prepared without reference to the Appellant's medical records. No less than 34 paragraphs of the decision, with subheadings as appropriate, were devoted to the dissection of the Single Competent Authority's report.

20. The judge similarly gave sufficient reasons why he gave little weight to the Appellant's country expert report, which was based on wholesale acceptance of the Appellant's story and so was of minimal assistance given that the judge had found the majority of the Appellant's testimony incredible. As the judge found that the Appellant was no longer at real risk from his traffickers, or of being re-trafficked by others, the issue of relocation within Albania was of marginal relevance. The judge was not perverse or irrational in reaching that finding: it was the Appellant's own case that his traffickers found it more lucrative to operate in the United Kingdom than in Albania. In fact the judge found that the Appellant could return to the family home safely and that there was a sufficiency of protection available in Albania in any event. The judge did not accept the Appellant had any basis for fearing the police. It was open to the judge to find that these were reasons for the Appellant to have no subjective fear of return to Albania, because his case was not established even to the lower standard.
21. The decision of Judge Coll provides a clear, structured analysis of the case advanced by the Appellant. Alternative possibilities are examined where appropriate, demonstrating abundant anxious scrutiny. Once the Appellant's asylum and human rights claims had fallen away, there was no good reason for the deportation order to be revoked. The public interest plainly outweighed the Appellant's private interests, such as they were. The tribunal finds that there were no material errors of law in the decision challenged. The onwards appeal is dismissed.

Notice of decision

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 20 February 2024
Deputy Upper Tribunal Judge Manuell