



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004747
First-tier Tribunal No:
PA/54860/2022
LP/00419/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AZ

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Walker, Senior Home Office Presenting Officer

For the Respondent: Mr Easty of Counsel, instructed by Parker Rhodes Hickmotts Solicitors

Heard at Field House on 16 February 2023

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, 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 members of 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 make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. I refer to the parties as they were in the First-tier Tribunal, with ZA as the Appellant and the Secretary of State as the Respondent.
2. This is an appeal against a decision of First-tier Tribunal Judge Dineen (“the Judge”), promulgated on 10 October 2023. By that decision, the Judge allowed the Appellant’s appeal against the decision of the Respondent to refuse his protection and human rights claim. Permission to appeal was granted by first-tier Tribunal Judge Hollings-Tennant.

Factual background

3. The Appellant is a national of Albania, born in 2001. He entered the United Kingdom (“UK”) as a child. In 2022, a positive conclusive grounds decision was made that he was the victim of trafficking on the basis that he had suffered abuse at the hands his father and had been subject to labour exploitation.
4. His protection claim was refused, in a decision dated 21 October 2022, on the grounds, inter alia, that there was no real risk of persecution on return or, alternatively, there was sufficiency of protection and the option of internal relocation was available to the Appellant.
5. The Judge allowed the appeal on both the asylum and human rights grounds.

The grounds of appeal and the error of law hearing

6. The grounds pleaded one ‘headline’ ground of appeal, namely the failure to give adequate reasons for findings on a material matter, but the particulars identified for separate grounds.
7. In his oral submissions, Mr Walker relied upon only two grounds. Mindful that it was not my role to argue the Secretary of State’s case for her, I observed that there were in fact four matters pleaded and clarified with Mr Walker whether the Respondent was relying solely upon the grounds on which he had made oral submissions. He confirmed that it was just the two matters, not the other grounds, and therefore the hearing proceeded on that basis.
8. The grounds relied upon by the Respondent were therefore:
 - (1) Ground 1 - the Judge failed to give adequate reasons for his conclusion that the Appellant is at real risk of trafficking on return and/or failed to have regard to the Respondent’s evidence about re-trafficking.
 - (2) Ground 2 - the Appellant’s relationship with his partner was a new matter and consent had been not given. Consequently, the Judge ought not to have taken this relationship into account in reaching his conclusions.

Discussion and conclusions

Ground 1 - risk of re-trafficking

9. Mr Walker submitted that the Judge failed to give adequate reasons for his conclusion and failed to take into account the Respondent's evidence relevant to the determination of this issue.
10. Ms Easty submitted that most of the facts were not in dispute, as is apparent from the refusal decision. In reaching his conclusion, the Judge relied upon the expert reports of Professor Sen and Ms Young and no express criticism was made of the reasoning or conclusions of either expert by the Respondent. In relation to the Respondent's evidence, the Judge expressly took it into account in reaching his conclusions.
11. I remind myself of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Lowe [2021] EWCA Civ 62, at paragraphs 29-31 and AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41. I also remind myself that the Judge's decision must be read sensibly and holistically and that I am neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons.
12. Whilst the decision of the Judge would have been improved by a more thorough explanation of his reasoning, I am satisfied that the reasons given adequately explain why he concluded that the Appellant is at risk of re-trafficking. I reach this conclusion because:
 - (1) at [31] the Judge explained why he accepted the evidence of the two experts and how their evidence was relevant to the question of risk; and
 - (2) at [33-34] the Judge stated he concluded that the Appellant was particularly vulnerable.
13. The submission that the Judge failed to take into account the Respondent's evidence is unsustainable given:
 - (1) it is apparent, from the Judge's summary of the Respondent's case at [26], that he took this evidence into account; and
 - (2) he explained at [36] that, for the reasons set out at [31-35], he accepted the Appellant's case, which included that part of his case [19] in which it was argued that the Respondent's evidence on the general risk of re-trafficking did not apply to this particular Appellant.

Ground 2 - new matter

14. Mr Walker submitted that Professor Sen's conclusions relied, in part, on the fact of the Appellant's relationship with his partner. This relationship was a new

matter for which consent had not been given and therefore the Judge should have had no regard to evidence which relied upon the fact of the relationship.

15. Ms Easty submitted that the relationship was no more than part of the background evidence and, further, the Judge made no mention of family life and did not even take into account the relationship with a partner when reaching conclusions about the Appellant's private life.
16. I have no hesitation in concluding that Ms Easty is correct in her submissions. Section 85(6) of the Nationality, Immigration and Asylum Act 2002 defines a "new matter" as being one that constitutes a ground of appeal which has not previously been considered by the Secretary of State in her refusal decision. That is not the circumstances in which the Appellant's relationship with his partner arose in this case: in his Article 8 claim, the Appellant did not rely upon, and the Judge making findings in relation to, his family life with his partner. This evidence was, as Ms Easty submitted, simply part of the factual background of the case. It was not a ground of appeal.

Notice of Decision

17. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and so the decision stands.

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 April 2024