IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000909
First-tier Tribunal No: LP/02011/2023 PA/52522/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

RT
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Alam
For the Respondent: Ms H Gilmore

Heard at Field House on 24 April 2024

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, given that this is an asylum appeal.

DECISION AND REASONS

1. This is the appeal of RT, an Albanian citizen, against the decision of the First-tier Tribunal of 17 January 2024 dismissing his appeal on asylum and human rights grounds, itself brought against the Respondent's refusal of his further representations on 11 January 2021.

2. The Appellant's claim was essentially that he had been recruited and trafficked to the UK from the Netherlands by a criminal gang and feared re-trafficking, having escaped from the gang's control whilst in this country. He was trafficked from Albania to the Netherlands where he

was beaten following a problem arising in his work. He was then trafficked to the United Kingdom to work on a cannabis farm. The gang had influence significant enough that they had harassed his family, his father being so badly affected that he had suffered a heart attack. The police had been of no assistance as they were corrupt and would not make a stand against criminal interests of the nature feared by the Appellant. The Respondent's specialist team within the NRM had recognised the trafficking dimension of these claims as established to the conclusive grounds standard.

3. The First-tier Tribunal dismissed the Appellant's appeal because, as to his asylum claim:

   (a) There was a very significant inconsistency in the evidence, between that of his family whose statements set out that the gang leader, AS, had threatened the Appellant and themselves in 2014 in Albania, and that of the Appellant, which was that he had never encountered AS before meeting him in the Netherlands in 2020. This utterly undermined his account of being a trafficking victim.

   (b) Albania was now considered by the UK Parliament to be a safe country via the amended s80AA of the Nationality Immigration and Asylum Act 2002.

4. And, as for his human rights claim, he would face no very significant obstacles to integration back in Albania as he was now an adult and there was some assistance available to returnees such as himself. Whilst he had a UK resident partner, it would be proportionate for him to return abroad and apply for entry clearance from his country of origin.

5. Grounds of appeal contended that there were material errors of law in the First-tier Tribunal's decision because it had

   (a) Failed to weigh relevant factors, including the Appellant's partner's evidence, when assessing proportionality, instead confining itself to consideration of his precarious residence status.

   (b) Failed to take account of the fact that the family's witness statements had been translated by the Appellant's sister, a minor.

   (c) Wrongly taken account of s80AA of NIAA 2002 as relevant to credibility.

   (d) Failed to take account of the Appellant's trafficking and modern slavery status determined to the conclusive grounds standard, which should have been assessed having regard to the considerations set out in DC (Albania) [2019] UKUT 351.

6. The First-tier Tribunal granted permission to appeal to the Upper Tribunal on 6 March 2024 because arguably the mental health consequences of the accepted trafficking ought to have been expressly considered when assessing the proportionality of the immigration decision's interference with his private and family life, having regard to DC Albania.

Decision and reasons

7. Before me the parties were agreed that the First-tier Tribunal had committed material errors of law, in particular in failing to take account of the positive NRM decision when assessing the proportionality of the interference with the Appellant's private and family life. There was brief discussion as to whether the limited terms of the permission grant were such as to permit me the Upper Tribunal to have regard to the conclusions on the international protection ground of appeal. On reflection, I believe that it is important that I do adjudicate on the lawfulness of the First-tier Tribunal's findings on that issue.

8. One has some sympathy for the First-tier Tribunal, faced as it was with asylum and human rights claims that were advanced via only scant detail. Nevertheless those claims demanded lawful adjudication.

9. The First-tier Tribunal's treatment of the human rights claim is very brief, amounting to the simple statement that the Appellant's residence in the UK was precarious and that he should return to Albania to seek entry clearance. However this fails to engage with the implications of the NRM finding, not least that his very presence in this country was at least partly due to his exploitation by a powerful third party. Additionally Articles 12 and 14 of the European Convention against Trafficking require that signatory states "assist victims in their physical, psychological and social recovery" and that a residence permit should be issued where "their stay is necessary owing to their personal situation". There was evidence of the Appellant suffering depression for which he was prescribed Sertaline and Mirtazapine. These are relevant considerations when considering the proportionality of an interference with a trafficking victim's private and family life.

10. As to the asylum dimension of the case, it is plainly very unsatisfactory that witness statements were put forward via a translation by a minor; whether or not as a result of that infelicity, they undoubtedly contain a very significant inconsistency with the account advanced by the Appellant himself, as alighted upon by the First-tier Tribunal. They will require professional translation before the appeal is re-heard. But there are nevertheless two fundamental difficulties with the decision below:

    (a) The Judge believed that s80AA of the Nationality Immigration and Asylum Act 2002 was in force such that Albania should be treated as a safe country. That provision, addressing the "Inadmissibility of certain asylum and human rights claims", was inserted into the NIAA 2002 on 28 September 2023 by sections 59(3) and 68(1) of the Illegal Migration Act 2023 but only for specified purposes, *viz* for the purpose of making relevant Regulations (see para 2 of The Illegal Migration Act 2023 (Commencement No. 1) Regulations 2023). In reality no such Regulations have so far been made in relation to the section 80AA regime. This is an important consideration, as asylum claims from countries so categorised would be deemed inadmissible absent exceptional circumstances. This potentially wholly changes the basis on which an asylum claim is considered, both in the assessment of risk and when assessing the asylum seeker's contentions as to the well-foundedness of their

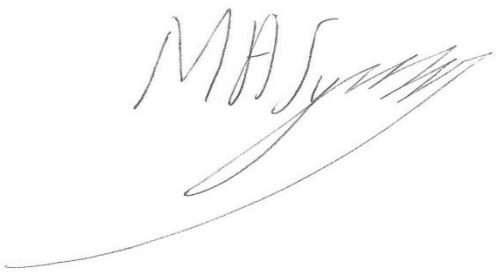
fears and experiences of state protection. It was wrong for the First-tier Tribunal to treat the provision as in force, in so doing putting a significantly higher onus on the Appellant to adduce country evidence rebutting the proposition that Albania was generally safe than the law presently requires.

(b) The Judge gave no credit to the Appellant for his modern slavery and trafficking claim having been accepted as established to the conclusive grounds standard by the body institutionally competent to make such decisions, the National Referral Mechanism. The NRM comes to its view on the balance of probabilities, whereas of course the question on an appeal such as the instant one is simply whether there is a real chance of the account's veracity, affording a positive role to uncertainty and applying the benefit of the doubt in the asylum seeker's favour. Whilst the Judge was clearly aware of the affirmative finding by the NRM, he gave no consideration whatsoever to its implications for his own fact finding. A decision of this nature does not bind the First-tier Tribunal, but it must be treated as a highly material consideration which can only be departed from via cogent evidence. It seems to me that any such departure requires the Judge to expressly confront its implications, given the expert trafficking body's own assessment.

11. I conclude there are significant errors of law present in the First-tier Tribunal's decision that it must be set aside, both on international protection and human rights grounds. Given the scale of the fact finding when this appeal is re-heard, there is no alternative than to remit it for re-hearing before the First-tier Tribunal. The Appellant's advisors should be on notice that if they are to properly assist the Tribunal in making a lawful decision on the next occasion, they will need to advance a more detailed narrative of the Appellant's true circumstances supported by cogent medical evidence.

Decision:

The decision of the First-tier Tribunal contained material errors of law. I accordingly set it aside and remit the appeal for re-hearing.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

15 June 2024