



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2024-002252**  
**First-tier Tribunal No:**  
**PA/50186/2023**  
**IA/00727/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 20 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**  
**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**AB**  
**(ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Halliday, counsel, instructed by SJK, solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**Heard at 52 Melville Street, Edinburgh, on 6 June 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### Introduction

1. We make an anonymity direction because this appeal arises from the appellant's protection claim.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge O'Hagan, dated 29/12/2023, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant is a citizen of Albania. The Appellant claimed asylum on 29 May 2015. That application was refused and certified as being clearly unfounded on 1 July 2017. The Appellant then absconded – but was trafficked in the UK by an Albanian gang. When he escaped his traffickers, the Appellant was referred into the NRM. A positive Conclusive Grounds Decision was issued on 2 December 2022 which recognised the Appellant as a victim of human trafficking.
4. On 2 May 2022 the appellant made a fresh claim for asylum. On 28 December 2022 the respondent refused his claim for international protection.

### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge O'Hagan ("the Judge") dismissed the appeal on all grounds.
6. The Appellant lodged grounds of appeal, and, on 29/04/2024, Tribunal Judge Chowdhury gave permission to appeal on limited grounds.
7. The application for permission to appeal was renewed, and on 22 May 2024 the Upper Tribunal granted permission to appeal on all grounds.

### The Hearing

8. For the appellant, Mr Halliday moved the grounds of appeal. Mr Halliday took us to [18] to [21] of the decision where the Judge finds the appellant's evidence to be contradictory. The Judge thought that the appellant said he has no family left in Albania in one strand of his evidence, but in another strand of evidence says that he does have family in Albania. Mr Halliday told us that it all comes down to the definition of the word "Family". In one part of his evidence,

the appellant is saying that his parents and siblings are not in Albania, in another part of his evidence, the appellant says that, even though his immediate family are not in Albania, his more distant relatives remain there.

9. Mr Halliday told us that the Judge failed to follow country guidance. BF (Tirana- gay men) Albania [2019] UKUT 00093 (IAC) says that individuals can be traced in Tirana by word-of-mouth. The Judge found that the appellant would not be traced to because nobody would know his address.

10. At [23] to [25] of the decision The Judge deals with an expert report. The expert's opinion supports the appellant's claim. Mr Halliday told us that the Judge gives inadequate reasons for rejecting the expert opinion and that her decision to follow the guidance in TD & AD (trafficked women) CG [2016] UKUT 00092 (IAC) is both unexplained and flawed. Mr Halliday said that the Judge's consideration of sufficiency of protection and the viability of internal relocation is inadequate.

11. Mr Halliday asked us to set the decision aside and remit the appeal to the First-tier Tribunal to be determined of new.

12. Mr Mullen, for the respondent, resisted the appeal. He told us that the Judge's decision does not contain errors of law, material or otherwise. He said that the Judge was empowered to draw an inference that the appellant consistently spoke of his immediate family (only) throughout his evidence. He told us that the Judge gave adequate consideration to the expert evidence and gave good reasons for finding that there is not enough in the expert report to enable her to depart from country guidance.

13. Mr Mullen said that the Judge's decision was made on the evidence placed before her. There is no evidence that the appellant's former traffickers know where he is now, so they are even less likely to find him if he returns to Albania. He said that the possibility of discovery on return is a fact-based exercise, and the Judge made adequate findings in fact.

14. Mr Mullen emphasised that the appellant was trafficked in the UK. Since escaping from his traffickers, he has travelled only a short distance within the UK, and that has been enough to remove him from his traffickers.

15. Mr Mullen urged us to dismiss the appeal and allow the Judge's decision to stand.

### Analysis

16. In his submissions, Mr Halliday read from the appellant's witness statement prepared for his hearing before the First-tier Tribunal, and read extracts from the transcripts of the appellant's interviews. At [18] and [19] of the decision, the Judge applies a narrow interpretation to the word "*family*". The Judge interprets the word *family* to be limited to parents and siblings. That limited interpretation led the Judge to conclude that the appellant has been dishonest about the extent of the traffickers' knowledge of his family.

17. It is far more likely that the appellant uses the word *family* both to describe his parents and siblings and separately to describe his extended family. At [18] and [19] the Judge relies on an inconsistency in evidence which does not exist.

18. The Judge carries the perceived inconsistency into the logic employed at [20], and then fails to apply the guidance about the importance of knowledge gleaned from word-of-mouth in Albania given in BF (Tirana- gay men) Albania [2019] UKUT 00093 (IAC).

19. At [23] of the decision the Judge considers the reach of the appellant's traffickers. It is implicit in the Judge's decision that the expert report supports the appellant's claim, but at [23] the Judge says

I find no evidence to support the expert report...

20. There is no requirement for corroboration. An expert report is a freestanding source of evidence which requires some Judicial analysis. The report cites many sources. An expert's opinion does not need to be accepted, but the Judge must give reasons for either accepting or rejecting expert witness evidence. Those reasons are not in the Judge's decision.

21. At [27] the Judge records that the expert's opinion is that there is no viable option of internal relocation, but rejects the expert's opinion, preferring to accept

submissions in the respondent's review.

22. The Judge probably balances the expert's opinion against the country guidance given in TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), but she does not say that, and she does not explain the reasons for rejecting the expert opinion.

23. The Judge's reasoning starts by relying on an inconsistency that does not exist. The Judge does not give adequate reasons for rejecting the expert report, which is an important strand of evidence. Failing to consider the guidance in BF

(Tirana- gay men) Albania [2019] UKUT 00093 (IAC) creates a gap in the Judge's logic. Cumulatively, these are errors of law which affect the outcome of the appeal. They are material errors of law.

24. Because the decision is tainted by material errors of law we set it aside. It is a matter of agreement that a fresh hearing is necessary before the First-tier Tribunal.

#### Remittal to First-Tier Tribunal

25. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

26. We have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

27. We remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge O'Hagan. An Albanian interpreter will be required.

#### **Decision**

**The decision of the First-tier Tribunal is tainted by a material error of law.**

**The Judge's decision promulgated on 29 December 2023 is set aside.**

**The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed  
10 June 2024

Paul Doyle

Date

Deputy Upper Tribunal Judge Doyle