IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003750

First-tier Tribunal Nos: HU/54645/2022
IA/07295/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

AK
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A Khan, instructed by Mohammad Amir Farooqui Thompson & Co Solicitors,
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 24 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant is a citizen of Albania born on 21 March 2001, who entered the UK on 21 March 2018 and claimed asylum the same month.

2. The respondent refused the appellant's claim for protection on 7 July 2022. On 15 June 2023 the appellant was granted 12 months discretionary leave to remain. The appellant's appeal was dismissed by Judge of the First-tier Tribunal Easterman ("the judge") on 31 July 2023.

Grounds of Appeal

3. The appellant appealed with permission of the First-tier Tribunal, in summary on the following grounds:

(1) that the appellant failed to make a finding on a core part of the appellant's claim for protection, specifically that he was re-trafficked in the UK in 2020;

(2) that the judge erred in rejecting the appellant's claim that he would be at risk of re-trafficking on return to Albania including that the judge had failed to consider that the appellant had already been re-trafficked and was re-trafficked by the same criminal gang which had trafficked him initially;

(3) that the judge erred in finding that the appellant would not be at risk of re-trafficking in failing to consider when applying the guidance in **R (on the application of TDT) v SSHD [2018] EWCA Civ 1395**;

(4) the judge erred in failing to provide any or proper reasons for finding that it was not realistic that the gang had been looking for him in Albania since 2020 and it was claimed that the judge failed to treat the appellant as a vulnerable witness in making this finding;

(5) the judge was argued to have erred in failing to properly consider the expert evidence of Dr Korovilas, in particular at [55];

(6) it was argued that the judge failed to consider the background material in relation to his finding of a particular social group at [60];

(7) it was argued that the judge failed to properly consider the risk of persecution as a victim of trafficking and that internal relocation was not a viable option in his findings at [59];

(8) the judge failed to make a proper finding as to whether the appellant qualified for humanitarian protection.

(9) the judge failed to assess Article 8.

(10) the judge failed to consider whether the appellant met the requirements for permission to stay under the Immigration Rules.

Preliminary Issues

4. The respondent lodged a Rule 24 response on 26 September 2023. It was argued that **Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC)** was authority for the proposition that the grant of permission by First-tier Tribunal Judge Chohan in which Judge Chohan had considered that there was nothing to suggest that the judge's consideration of the risk of trafficking was inadequate, was an express limitation of the grounds of appeal for the Upper Tribunal.

5. As I indicated at the hearing, **Safi** does not give the respondent the support that was pleaded in the Rule 24. The Upper Tribunal decision in **Safi** was very clear that it is essential for judges granting permission only on limited grounds to say so in the required standard form, as opposed to just the reasons for decision and that it is likely to be only in **very exceptional circumstances** (my emphasis) that the Upper Tribunal will be persuaded to entertain the submission that a decision, which on its face grants permission to appeal without express limitation, is to be construed as anything other than the grant of permission on all grounds. I indicated that all grounds were arguable before me.

6. The Rule 24 stated that even if the grounds of appeal on trafficking were before the Upper Tribunal they were without merit. The Rule 24 response at [17] indicated that the respondent did not dispute the appellant's grounds of appeal that there were no findings made on Article 8 and the Secretary of State did not oppose an oral hearing taking place for the Article 8 claim to be canvassed for consideration by the Upper Tribunal.

7. However, Mr Melvin before me indicated that the judge had taken the view that discretionary leave had been granted and therefore there was no chance of removal. Mr Melvin relied on the judge's findings, including at [61] that whether the appellant should be entitled to 30 months discretionary leave rather than the one year he had been given was a matter for the respondent, the judge took into consideration that:

> *"bearing in mind that he has been given leave and is not subject to immediate removal, it seems to me that that is a matter which must be taken up if and when removal directions are made."*

8. Mr Melvin submitted that this was sufficient to deal with any required Article 8 findings and it was open to the appellant to make submissions for further leave before his discretionary leave expired and therefore Mr Melvin withdrew the Rule 24 concession that an error of law was made out on Article 8.

9. I considered the relevant authorities, including the guidance in **NR (Jamaica) v SSDH [2009] EWCA Civ 856** in relation to the withdrawal of the concession on Article 8. I allowed Mr Khan the opportunity to take further instructions. However, he indicated before me that ultimately such was not required. Mr Khan relied on the grounds of appeal and made further submissions in relation to the Article 8 permission grounds. Mr Khan submitted that he was in a position to proceed, notwithstanding the withdrawal of the concession at the hearing before me. I was satisfied that the appellant was not prejudiced by the Upper Tribunal proceeding in light of the withdrawn concession.

Discussion

10. I have considered the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in **Volpi & Anor v Volpi [2022] EWCA Civ 464** at [2] as follows:

"i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

11. In the earlier case of **Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5** at [114]: the Court of Appeal similarly advised appropriate restraint in the approach to first instance decisions:

"i. *The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.*
ii. The trial is not a dress rehearsal. It is the first and last night of the show.
iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."

12. In respect of grounds 1 to 7, in summary and for the reasons set out below, I am satisfied that no material error of law is disclosed in the judge's consideration of the risk to the appellant of re-trafficking. The judge considered this issue from paragraph [46] onwards of the decision. The judge considered the expert report, including at [41] and [42].

13. The judge considered the conclusive grounds finding, that the appellant had been a previous victim of trafficking, including at para [12] and [26] – [27] of the judge's decision and reasons. The judge went on to consider and made findings at paragraphs [46] to [49] and [53] to [55] and [59], ultimately concluding that the trafficker's connections to Albania were "wholly unknown" and "in the same way that the Appellant is unable to identify his traffickers, save by description, there is absolutely no reason to believe that the traffickers have any better way of identifying the Appellant". The judge plainly had in mind in his consideration of all the evidence that the appellant had been trafficked and re-trafficked. The judge set out including at [26] that he had considered the 23-page skeleton argument on behalf of the appellant and the judge set out at [20] that it was the appellant's evidence he was found in 2020 whilst in London by the people who brought him to work in the cannabis farm.

14. The judge also considered at [26] the submission on behalf of the appellant that there had been no challenge by the respondent, to the appellant being "re-trafficked in December 2020" and the judge considered the submission that if this could happen to the appellant in the United Kingdom where he was given support, it was argued that it was more likely it would happen in Albania. The judge therefore had in mind the relevant evidence including that the appellant had been trafficked and retrafficked. It cannot be properly said that the judge failed to make a finding on a core part of the appellant's claim or that the judge failed to consider that the appellant had been trafficked and retrafficked.

15. The judge set out at [40] that the appellant had in effect two claims, the first being a fear of return due to a blood feud with the Hoxha family with claimed inadequacy of protection and the second claim that having been re-trafficked in the UK and having escaped at one point and being forced to sell cannabis and then being recaptured, that he was in danger from the traffickers if he was returned to Albania. It was argued in both cases that the appellant was a member of a particular social group.

16. The judge at [41] to [45] considered the appellant's claim in relation to the blood feud, including the evidence provided by Dr Korovilas in his expert report. The judge made findings that there was no blood feud as such. There has been no challenge to that finding. The judge also made adverse findings, including that it did not appear that the expert had been told that the young lady concerned in the claimed blood feud had subsequently married and therefore the expert was unable to comment on how this may or may not affect the appellant on return. Again, there was no challenge to that finding.

17. The judge went on to conclude therefore, that even if he accepted the truthfulness of the appellant's account in relation to his claimed affair, he did not find that the appellant was the victim of a blood feud and in the alternative, even if there was a blood feud, there was a functioning police force in Albania, albeit

that some are corrupt but there was no reason to believe that the appellant would not get assistance from the authorities and the judge took into consideration that there had been no threat since 2017. Those findings are unchallenged.

18. The judge went on to consider the appellant's separate claim in relation to the traffickers from [46] onwards and the judge very clearly had in mind the trafficking and re-trafficking; the judge noted the appellant's account of having been in Holland and brought to the UK and set to work in a cannabis factory and then sent to work on the streets. The judge noted that those who forced him to do this, did not appear to have kept him under much surveillance as the appellant was able to run off, taking the money he had earned to fund his trip to London. The judge then noted at [47] that the appellant indicated that by chance he met another Albanian and claimed asylum and then whilst under the care of Social Services it was claimed that he again was encountered by the traffickers who took him back under control until he was arrested by the police.

19. The judge noted at [48] that there was little or no evidence in relation to these traffickers who were clearly operating between Holland and London and certainly no evidence as to their connections in Albania. The judge was therefore considering the specific risk the appellant following being re-trafficked in the UK, including that the judge took into consideration at [49] that the appellant was in a "particularly vulnerable position" concluding that by nature of wanting to come to the UK by means of illegal transport, forced him into contact with criminals.

20. It was in this context that the judge considered the risk on return and the judge was satisfied that there was no obvious reason why, if the appellant returned to his family in Albania, why he would be looking to enter the UK by illegal transport. Therefore there was no obvious reason why he would come into contact with his traffickers.

21. In reaching these findings, the judge took into consideration that there was corruption in the Albanian system and also took into consideration that those who have been trafficked are more liable to be re-trafficked. The judge reminded himself that every case is fact-sensitive and took into consideration the appellant's background and how he came to be in Albania in the first place. The judge made findings that were open to him that for this particular appellant, unless he was seeking to leave Albania, with a view to illegally entering the UK, there was no reason why he would be at risk of being re-trafficked. The judge took into consideration Dr Korovilas' expert opinion, including at [52] of the judge's findings. The judge noted that the expert's view of the difficulties in internal relocation appear to overlook the fact that the appellant had family in Albania and that he had previously relocated to a cousin in Albania.

22. Mr Khan argued that the judge had overlooked the view of the expert opinion as to the three main reasons why the appellant would be of interest to the re-trafficking gang. These were that, first the criminal gang 'may' continue to prey upon the appellant because they know that he is scared of them; secondly that the criminal gang may wish to either recapture or eliminate the appellant to remove the risk that his insider knowledge of their operation could be used against them; and thirdly that there would be a desire to take revenge against people who have defied/betrayed the criminal gang.

23. It is trite law that the judges do not have to set out each and every element of the evidence before them. The judge referenced Dr Korovilas' expert report on a number of occasions and it cannot be said that his decision discloses that he has not considered all the evidence carefully in the round.

24. The judge's primary finding was that there was 'little or no evidence in relation to these traffickers' and what their connections in Albania were 'is wholly unknown'. Dr Korovilas' expert opinion about the reasons why the appellant might be of interest to the traffickers, could not make a material difference, given the judge's findings that there was 'absolutely no reason to believe that the traffickers have any better way of identifying the appellant'.

25. This is underlined in the judge's conclusion at [55] that he did not accept there was a reasonable likelihood that the appellant would be of interest to this gang, should the appellant be returned to Albania "notwithstanding the view of Dr. Korovilas". It is evident that the judge in his careful consideration of all of the information before him, including the detailed expert report from Dr Korovilas had regard to all the relevant factors. The grounds of appeal amount to no more than a disagreement with those findings.

26. In respect of grounds 8 to 10, in relation to the appellant's ground of appeal that the judge failed to deal with Article 8, it is accepted by both parties that the judge set out at the beginning of his decision, that he had considered at [7] that in the context of Article 8 the appellant must show that his removal would create a real risk to his physical and moral integrity and at [8] of his decision, the judge set out that in considering private or family life, the first consideration is whether an appellant can meet the provisions of the Immigration Rules. The judge went on at [9] to set out the step by step approach that would be required in relation to Article 8.

27. The judge at [38] indicated that the Presenting Officer did not look in detail at Article 8 because at the time of the hearing the appellant had leave and therefore those matters were no longer deemed to be within the appeal. The judge went on to state that he would take into account the respondent's views as expressed in the Reasons for Refusal Letter and the respondent's review.

28. It is in this context where the appellant has existing leave to remain that the judge went on to consider at [61] the argument that the appellant should be entitled to 30 months' discretionary leave rather than one year. It was open to the judge to conclude that that was a matter for the respondent and in finding that whilst the judge did not know whether leave would be extended at the end of the current period, bearing in mind that the appellant had been given leave and was not subject to immediate removal, that was a matter for when removal directions were made.

29. The judge went on to dismiss the appellant's Article 8 appeal. It is difficult to see what other decision the judge could have reached, including that the appellant had extant leave and was not liable to removal and therefore Article 8 was not engaged.

30. As there was no prospect of the appellant's removal at the date of the hearing, it was open to the judge to dismiss the appellant's Article 8 consideration and there is no material error in not making more detailed findings given the appellant's extant leave.

31. Although it was argued in the grounds that the judge did not specifically assess humanitarian protection (although this was not specifically pursued by Mr Khan) I note that the appellant did not rely on this argument in the skeleton argument dated 21 February 2023. In any event, any error is not material, given that there was no suggestion that the factual nexus differed. In such circumstances the judge's reasoning for rejecting the appellant's asylum claim is sufficient to indicate that his claim for humanitarian protection was rejected on the same basis (and the grounds of appeal did not address why the appeal ought to have been allowed on humanitarian protection grounds.

32. Although the grounds also argued (although again, not Mr Khan) that the judge failed to assess whether the appellant met the requirements for permission to stay under the Immigration Rules, as already noted at the date of hearing the appellant had been granted leave in line with the respondent's discretionary leave policy and was not facing removal. The judge considered, at [61], whether the appellant was entitled to 30 months' discretionary leave, rather than one year, coming to the reasoned conclusion that such was a matter for the respondent. Any challenge to the respondent's policy on discretionary leave, which this ground amounted to, would be a matter for judicial review.

Notice of Decision

33. The decision of the First-tier Tribunal does not disclose an error of law and shall stand. The appellant's appeal is dismissed.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023